

Team Number: 16

**2023 China International Law of the Sea Moot Court Competition**

**Case Concerning Climate Change and its Impacts in the South Gentle Ocean**

(The Federated States of Tagan v.The Commonwealth of Hagatana)

**MEMORIAL OF**

**THE FEDERATED STATES OF TAGAN**

**11 August 2023**

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Statement of Jurisdiction

The Federated States of Tagan (**“Tagan”**) has filed an application against the Commonwealth of Hagatana (**“Hagatana”**) in front of the International Tribunal for the Law of the Sea (**“the Tribunal”**) on February 21, 2023. Tagan submits that the Tribunal has jurisdiction over this case, because [A] Tagan and Hagatana have chosen the Tribunal to settle disputes by declarations; [B] Tagan has fulfilled its preliminary procedural obligations of dispute settlement under Section 1 of Part XV of United Nations Convention on the Law of the Sea (“UNCLOS”); [C] The subject matter of the disputes submitted to the Tribunal falls within its jurisdiction under Article 288 of UNCLOS.

## Tagan and Hagatana have chosen the Tribunal to settle disputes by declarations

Pursuant to Article 287(1) of UNCLOS, States are free to choose means of dispute settlements by a written declaration.[[1]](#footnote-1) If States to a dispute have accepted the same procedure, the dispute may be submitted only to that procedure.[[2]](#footnote-2)

In this case, both Tagan and Hagatana have ratified UNCLOS.[[3]](#footnote-3) Moreover, both States have declared upon ratification that they chose the Tribunal for the settlement of disputes, let alone Hagatana expressed its preference for the Tribunal.[[4]](#footnote-4) Therefore, Tagan and Hagatana can only submit this dispute to the Tribunal.

## Tagan has fulfilled its preliminary procedural obligations of dispute settlement under Section 1 of Part ⅩⅤ of UNCLOS

The preliminary procedural obligations are to ensure that the dispute cannot be solved by less adversarial means.[[5]](#footnote-5) Without fulfilling these obligations ahead, it is premature to resort to compulsory procedures provided in UNCLOS.[[6]](#footnote-6) [1] Tagan has exhausted all possibilities of peaceful settlements; [2] Tagan has fulfilled its obligation to exchange views.

### Tagan has exhausted all possibilities of peaceful settlements

In accordance with Article 280 of UNCLOS, States are obliged to settle disputes by negotiation or other peaceful means chosen by themselves.[[7]](#footnote-7) But possibilities are deemed to be exhausted, once there exist no possible ways of dispute settlement.[[8]](#footnote-8) Specifically, a deadlock of negotiation could imply such exhaustion, even without certain results.[[9]](#footnote-9)

In this case, the official announcements lodged by both States indicate that their stances are opposites on all issues.[[10]](#footnote-10) No space was left for further progress in negotiation or an agreement on dispute settlement. It was impossible for Tagan to take other plausible legal paths of dispute settlement.[[11]](#footnote-11) Therefore, to avoid a procedural impasse, compulsory procedures shall apply.

### [Tagan](file:///C:\\Users\\86188\\Documents\\WeChat%20Files\\wxid_my6u7qj13ogj22\\FileStorage\\MsgAttach\\ba6e78447ff01990c37d55f55b0744c7\\File\\2022-07\\7.1%20memorial.docx" \l "_Toc105742465) has fulfilled its obligations to exchange views

Article 283 of UNCLOS stipulates that States in a dispute shall exchange views regarding peaceful settlement.[[12]](#footnote-12) The obligations intend to ensure that a State would not be surprised at the initiation of compulsory proceedings [[13]](#footnote-13) In this way, a single request could constitute an exchange of views.[[14]](#footnote-14)

In this case, Tagan first proposed to exchange views to address climate change and related impacts in 2018 and proposed again in 2019.[[15]](#footnote-15) However, Hagatana declined and even ignored Tagan’s sincere requests repeatedly.[[16]](#footnote-16) Furthermore, Tagan has lodged a formal protest against Hagatana’s activities of collecting data and the plan of work for exploration conducted by the HHM Geological Survey (**“HHM”**).[[17]](#footnote-17) Thus, Tagan has made serious attempts to exchange views, but Hagatana’s behavior crushed Tagan’s last hope to settle the disputes peacefully and promptly. Having fulfilled its obligations to exchange views, Tagan had no choice but to initiate compulsory proceedings.

## The subject matter of the disputes submitted to the Tribunal falls within its jurisdiction under Article 288 of UNCLOS

The subject matter submitted to the Tribunal falls within jurisdiction because the disputes concern the interpretation and application of [1] UNCLOS, and [2] international agreements related to the purpose of UNCLOS.

### The disputes concern the interpretation and application of UNCLOS

Article 288(1) of UNCLOS provides that to fall within the jurisdiction of the Tribunal, the disputes shall concern the interpretation or application of UNCLOS.[[18]](#footnote-18) To be specific, it is the kind of disputes which constitute the subject matter under the jurisdiction that concern UNCLOS and its annexes.[[19]](#footnote-19)

State responsibility and protection and preservation of the marine environment in the first and second pleadings concern Articles 194, 198, 204, 205, 206, 207, 212, 213, 222, 235, 237, Annex XV Article, 293 of UNCLOS. Archipelagic baselines, maritime limits and freedoms of marine scientific research (“**MSR**”) in the third pleading concern Articles 56(1), 74(1), 76(8), 76(9), 77(1) and Annex II, Articles 4, 246(2) of UNCLOS. The freedom of exploration and exploitation in the Area under the fourth pleading concern Articles 76(1), 77, 153(2)(b), Annex III, Article 6(2)(b) of UNCLOS. Therefore, the second, third and fourth pleadings concern the interpretation and application of UNCLOS.

### The disputes concern the interpretation and application of international agreements related to the purpose of UNCLOS

Article 288(2) of UNCLOS provides that to fall within the jurisdiction of the Tribunal, a dispute shall concern the interpretation or application of an international agreement related to the purpose of UNCLOS.[[20]](#footnote-20) The purpose mainly refers to establishing a legal order for the seas which will facilitate peaceful and effective uses of the seas and also protection and preservation of the marine environment at the same time.[[21]](#footnote-21) To be specific, as the provisions of UNCLOS are general, it usually relies upon UNFCCC, Paris Agreement, and Kyoto Protocol to supply the relevant standards of conduct for UNCLOS.[[22]](#footnote-22) Moreover, the agreements referred to at present explicitly contain UNFSA.[[23]](#footnote-23)

In this case, UNFCCC, Paris Agreement, and especially Kyoto Protocol are needed to determine whether Hagatana has breached its international commitments under UNCLOS by not achieving its GHG emissions reduction targets.[[24]](#footnote-24) Moreover, one deleterious effect that results from climate change was the decreasing yellowfin tuna,[[25]](#footnote-25) which belongs to highly migratory species under Annex Ⅰ of UNCLOS.[[26]](#footnote-26) Under this circumstance, UNFSA applies to the first and second pleadings concerning the protection and preservation of the marine environment. Therefore, the first pleading concerns the interpretation and application of related international agreements.

Questions Presented

**I.** Whether Hagatana has at least a partial responsibility for the deleterious effects that result from climate change in the South Gentle Ocean, which are caused by GHG emissions into the atmosphere.

**II.** Whether Hagatana has breached its international commitments under UNCLOS to protect and preserve the marine environment in relation to the impacts of climate change in the South Gentle Ocean.

**III.** Whether Hagatana has breached its obligations under UNCLOS by undertaking data-collection activities in the EEZ and on the continental shelf of Tagan, since Hagatana must respect the archipelagic baselines and maritime limits of Tagan, including around the Kapalua archipelago.

**IV.** Whether the plan of work of HHM covers part of the continental shelf of Tagan; whether Hagtana must withdraw its sponsorship of the HHM.

Statement of Facts

**Background**

Tagan is a developing archipelagic State owning tourism and fishery as its pillar industries, respectively contributing 45% and 20% to its GDP. The industries have few carbon emissions, but both have been destructively threatened by climate change. Hagatana is the only developed and biggest State in South Gentle Ocean, whose highly-polluted industries are located close to Tagan. It has been repeatedly criticized for poor implementation of international environmental agreements. As the main polluter in South Gentle Ocean and one of the top-five greenhouse-gasses (**“GHG”**) emitting countries over the last 30 years, Hagatana has never achieved GHG emission reduction targets and its own Nationally Determined Contributions (**“NDC”**).

**United Nations Convention on the Law Of the Sea**

Tagan ratified the 1982 UNCLOS on 15 September 1991 and Hagatana on 21 October 1994.

**Other International Treaties Ratified by Tagan and Hagatana**

Tagan and Hagatana are also parties to the following treaties: The 1969 Vienna Convention on the Law of Treaties (**“VCLT”**); the 1992 United Nations Framework Convention on Climate Change (**“UNFCCC”**); the 1994 Agreement Relating to the Implementation of Part XI of the UNCLOS of 10 December 1982; the 1995 Agreement for the Implementation of the Provisions of the UNCLOS of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks; the 1997 Kyoto Protocol to the UNFCCC (**“Kyoto Protocol”**); the 2015 Paris Agreement.

Both parties have deposited their instruments of acceptance of the Doha Amendment to the Kyoto Protocol (**“Doha Amendment”**) adopted on 8 December 2012.

**Kapalua Archipelago**

Kapalua archipelago is one of the three main maritime features of Tagan and is Tagan’s closest part to Hagatana. It has been mostly submerged with destruction over its infrastructure. Consequently, it is irreversibly no longer able to sustain human habitation or economic life.

**Impacts of Climate Change**

Climate change is causing ocean warming, ocean acidification, sea-level rise and other effects.

Both ocean warming and ocean acidification cast catastrophic effects on coral reefs. Ocean warming and ocean acidification have been proved by experts to be the primary cause of mass-coral-bleaching events, which result in widespread coral death and thus impact the ability of coral reefs to maintain themselves healthy. Such bleaching is so disastrous, especially in one of Tagan’s main tourism attractions, that Tagan’s tourism has been crushed and decreased by 75% in merely 20 years.

Ocean acidification causes enormous depletion of yellowfin tuna stocks. Yellowfin tuna is a highly pelagic species that spawns in regions of strong upwelling events, and is always a main export of Tagan fishery. But its growth and survival are seriously damaged by lower pH. Within only 2 decades, yellowfin tuna exports have decreased enormously by 80%. Moreover, younger generations’ moving out contributes to labor loss, even worsening the fishery industry and other traditional economic activities.

Also, sea-level rise leads to population displacement and worsening economic loss. Sea-level rise has not only irreversibly ruined infrastructure and buildings, but also resulted in younger generations’ moving out. Worse still, on 2 January 2017, Taganian government approved the relocation of Kapalua population, because Tagan had no economic resources to tackle the consequences of sea-level rise. All of these have challenged fishery and other traditional economic activities.

**Upwelling**

Upwelling usually occurs along coastlines when surface water is blown away by offshore winds and compensated by rising deeper water. South Gentle Ocean includes regions of strong upwelling events, which are likely to occur along Hagatana’s east coast with offshore winds blowing from west to east. Since Hagatana’s industries and population are concentrated in its eastern part, the emitted GHG as well as the acidified water that has absorbed the GHG are blown eastward to Tagan’s maritime zones.

**Tagan’s Submission to the Commission on the Limits of the Continental Shelf (“CLCS”)**

On 25 July 2011, Tagan successfully submitted an outer limit of the continental shelf to the CLCS in respect of the region known as Lau Ridge. After extensive deliberation, The CLCS fully recommended without a vote. Then, Tagan deposited relevant charts and lists concerning geographic coordinates with the UN Secretary-General.

**Data-collection Activities on Continental Shelf and in the EEZ**

Throughout 2021 and 2022, Taganian fishermen noticed Hagatanian flagged vessels collecting data carefully near Kapalua, and reported to Tagan’s Navy authorities. Tagan firmly sent a note of protest and requested detailed explanations about the nature and objectives of these activities. Hagatana alleged that the vessels conducted hydrographic surveys, and tried to deny the continental shelf and EEZ of Tagan. On the other hand, Taganian authorities reaffirmed its unchanged baselines and maritime limits.

**HHM Geological Survey**

On February 2023, Hagatanian government sponsored a state-owned company named HHM Geological Survey in its application before the ISA to undertake exploration and exploitation of natural resources. Tagan’s representatives to the ISA presented a formal note claiming that HHM’s activities shall be rejected because they covered part of Tagan’s continental shelf and EEZ.

**Dispute History**

On 4 January 2017, the Prime Minister of Tagan firmly announced that Kapalua’s permanent status shall never be changed. Its long history, cultural contribution and maritime entitlements can never be obliterated. The next day, the Ministry of Foreign Affairs (**“MFA”**) of Tagan released a formal note reaffirming its permanent maritime limits and baselines, in the face of sea-level rise. In reply, Hagatana released a short note against Tagan’s declaration, expressing legal doubts.

From 2018 to 2019, Taganian authorities have always sincerely proposed to exchange views on climate change and its impacts with all South Gentle Ocean countries. But Hagatana repeatedly refused such requests.

In 2022, Tagan authorities sent a note of protest asking for detailed explanations for Hagatana’s data-collection activities on Tagan’s continental shelf and in Tagan’s EEZ. Hagatana alleged that it was conducting hydrographic surveys, in the area which was now no longer Tagan’s continental shelf or EEZ. Tagan reasserted that Tagan’s maritime limits and baselines remained unchanged.

On 6 February 2023, the Hagatanian government sponsored the HHM Geological Survey in its application before the ISA. The state-owned company applied for exploration and exploitation of natural resources within the continental shelf of Kapalua. Taganian representatives to the ISA presented a formal note of protest, highlighting the part of work covering Kapalua’s continental shelf must be rejected outright.

Summary of Pleadings

**Pleading I**

Hagatana has at least a partial responsibility for the deleterious effects that result from climate change, including through ocean warming, sea-level rise, and ocean acidification in the South Gentle Ocean, which are caused by GHG emissions into the atmosphere.

*First*, Hagatana has a responsibility for conducting internationally wrongful acts, including emitting excessive GHG and failing to protect and preserve the marine environment.

*Second*, Hagatana has a responsibility under strict liability for causing transboundary harm through hazardous activities not prohibited by international law.

**Pleading II**

Hagatana has breached its international commitments under the UNCLOS to protect and preserve the marine environment in relation to the impacts of climate change, including ocean warming, sea-level rise, and ocean acidification in the South Gentle Ocean.

*First*, Hagatana failed to reduce GHG emissions as a source of pollution, which breached Articles 207(2), 212(2), 213, 222 of UNCLOS and other relevant conventions.

*Second*, Hagatana failed to exercise due diligence to prevent transboundary pollution, which breached Article 194(2) of UNCLOS and other relevant conventions.

*Third*, Hagatana failed to protect and preserve ecosystems, habitats and highly migratory fish stocks, which breached Articles 64(1), 194(5) of UNCLOS and UNFSA.

*Fourth*, Hagatana failed to promote education, training and public awareness related to climate change, which breached UNFCCC, Kyoto Protocol and Paris Agreement.

*Fifth*, Hagatana failed to provide financial resources for Tagan, which breached UNFCCC, Kyoto Protocol and Paris Agreement.

**Pleading III**

Hagatana must respect the archipelagic baselines and maritime Limits of Tagan, including around Kapalua, and in that connection, Hagatana has breached its obligations under UNCLOS by undertaking data-collection activities in the EEZ and on the continental shelf of Tagan.

*First*, Tagan has successfully established the outer limits of the continental shelf under UNCLOS 76(8) which has a binding force upon Hagatana.

*Second*, Tagan’s archipelagic baselines and maritime limits remain unaltered notwithstanding sea-level rise.

*Third*, Hagatana’s data-collection activities belong to MSR and need prior consent to be conducted in the EEZ and on the continental shelf of Tagan.

**Pleading IV**

Hagatana must withdraw its sponsorship of the HHM Geological Survey because the plan of work covers part of the continental shelf of Tagan.

*First,* the plan of work proposed by HHM is for the exploration and exploitation of natural resources.

*Second*, Hagatana has breached its international obligation to respect Tagan’s sovereign rights for exploration and exploitation on its continental shelf.

*Third*, HHM’s plan of work shall be rejected due to its serious harm to the marine environment on Tagan’s continental shelf.

*Fourth*, Hagatana must withdraw its sponsorship of HHM, for it is a regulatory and effective way to reject HHM’s plan of work.

Pleadings

# Hagatana Has at Least a Partial Responsibility for the Deleterious Effects that Result from Climate Change, Including through Ocean Warming, Sea-level Rise, and Ocean Acidification in the South Gentle Ocean, Which are Caused by GHG Emissions into the Atmosphere

General international law regarding State responsibility and liability is “relevant rules of international law” and thus applicable pursuant to Article 235 and Annex XV, Article 293 of UNCLOS.[[27]](#footnote-27) In accordance with Draft Articles on Responsibility of States for Internationally Wrongful Acts (**“ARSIWA”**)[[28]](#footnote-28) and Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities (**“Transboundary Principles”**),[[29]](#footnote-29) Hagatana has at least a partial responsibility for [A]conducting internationally wrongful acts, or, alternatively, under strict liability, [B] causing transboundary harm through hazardous activities not prohibited by international law.

## Hagatana has a responsibility for conducting internationally wrongful acts

State responsibility arises from internationally wrongful acts,[[30]](#footnote-30) which is confirmed as customary international law.[[31]](#footnote-31) Internationally wrongful acts occur when a conduct [1] is attributable to the State under international law, and [2] constitutes a breach of an international obligation of the State.[[32]](#footnote-32) Moreover, [3] Concurrent causes or plural actors shall not preclude Hagatana’s partial responsibility for the deleterious effects.

### The actions of emitting excessive GHG and the omission to protect and preserve the marine environment are attributable to Hagatana

#### Private actors’ conduct of emitting excessive GHG emissions into the atmosphere is attributable to Hagatana

A conduct is attributable to a State if the conduct is under the effective control of that State.[[33]](#footnote-33) Major industries are conceived as being under the State’s legislative and administrative control, thus reaching the standard of effective control.[[34]](#footnote-34) In this case, Hagatana’s greenhouse-gasses (**“GHG”**) emissions mainly came from light and heavy industries.[[35]](#footnote-35) These have been Hagatana’s major industries for a long history and are within categories that would normally be strictly regulated by the State.[[36]](#footnote-36) Therefore, their emissions are attributable to Hagatana.

In the alternative, a conduct is also attributable to a State if that State acknowledges and adopts the conduct as its own.[[37]](#footnote-37) “Acknowledges and adopts” means the State identifies the conduct and makes it its own.[[38]](#footnote-38) In this case, Hagatanian authorities acknowledged and adopted the excessive GHG emissions as its own conduct by recognizing its failure to reduce GHG emissions.[[39]](#footnote-39) Therefore, the excessive GHG emissions are attributable to Hagatana.

#### Hagatanian authorities’ failure to protect and preserve the marine environment is attributable to Hagatana

The conduct of any State organ, including omission,[[40]](#footnote-40) shall be considered an act of that State under international law.[[41]](#footnote-41) In this case, as State organs, Hagatanian authorities were obliged to: reduce GHG emissions as a source of pollution; prevent transboundary pollution; protect and preserve ecosystems, habitats and highly migratory fish stocks; promote education, training and public awareness related to climate change; provide financial resources for Tagan.[[42]](#footnote-42) However, they failed to do so.[[43]](#footnote-43) Such omission is thus attributable to Hagatana.

### Hagatana’s actions and omissions constitute breaches of international obligations to protect and preserve the marine environment

Hagatana’s breaches of its international obligations to protect and preserve the marine environment will be stated in Pleading II, which include Hagatana’s failure to [a] take all necessary measures to prevent transboundary pollution; [b] protect and preserve ecosystems and the habitat of depleted species; [c] cooperate in regional level; [d] promote education, training and public awareness related to climate change.

### Concurrent causes or plural actors shall not preclude Hagatana’s partial responsibility for the deleterious effects

In accordance with international judicial practice,[[44]](#footnote-44) State responsibility shall not be precluded just on the ground of concurrent causes or plural actors.[[45]](#footnote-45) Specifically, a State’s individual responsibility for climate change should not be precluded based on its small share in global GHG emissions.[[46]](#footnote-46) This could stimulate every State to reduce its GHG emissions and make contributions to the alleviation of climate change.[[47]](#footnote-47)

In this case, Hagatana has been one of the top-five GHG emitting countries over the last 30 years.[[48]](#footnote-48) This is all the more reason why Hagatana’s partial responsibility for its GHG emissions shall not be precluded by the multifactorial and collective nature of climate change.[[49]](#footnote-49)

## Hagatana has a responsibility under strict liability for causing transboundary harm through hazardous activities not prohibited by international law

States shall bear strict liability for causing transboundary harm through hazardous activities not prohibited by international law.[[50]](#footnote-50) It does not need proof of fault to establish this responsibility,[[51]](#footnote-51) but requires that [1] the activities involved a risk of causing significant harm;[[52]](#footnote-52) [2] the harm was physical, significant and transboundary;[[53]](#footnote-53) [3] there existed a causation between the activities and the harm.[[54]](#footnote-54) In this case, even if Hagatana is found without an internationally wrongful act, it still has a responsibility due to strict liability.

### Hagatana’s emitting activities involved a risk of causing significant harm

The existence of risk can be proved if a properly informed observer had or ought to have anticipated it.[[55]](#footnote-55) In this case, Tagan has been carrying out annual assessments on coral bleaching.[[56]](#footnote-56) It has also been constantly alerting Hagatana to the deleterious effects caused by climate change.[[57]](#footnote-57) Having been informed of the above circumstances, Hagatana at least ought to know that its excessive emissions had a risk of causing significant harm.

### The harm caused by Hagatana’s emitting activities was physical, significant and transboundary

#### The harm caused by Hagatana’s activities was physical

“Physical harm” intends to only exclude harm caused by State policies in monetary or socioeconomic fields,[[58]](#footnote-58) while including material harm caused to the environment, property or persons.[[59]](#footnote-59)

In this case, the environmental harm includes the mass coral bleaching and dramatically depleted yellowfin tuna.[[60]](#footnote-60) Tagan’s consequent economic losses in tourism and fishery were caused by environmental harm rather than monetary or socioeconomic policies.[[61]](#footnote-61) The destruction of wells, homes and infrastructure shall also be considered as physical harm since they fall within the scope of property.[[62]](#footnote-62) Therefore, the above harm is in line with the “physical” requirement.

#### The harm caused by Hagatana’s activities was significant

To trigger State responsibility, the transboundary harm must be significant.[[63]](#footnote-63) This means the harm should be more than “detectable”, but does not need to be at the level of “serious” or “substantial”.[[64]](#footnote-64) Three criteria can be used to determine whether the harm is “significant”: size,[[65]](#footnote-65) location[[66]](#footnote-66) and effects.[[67]](#footnote-67) Specifically, “location” refers to whether the activities are located in or close to an area of special environmental sensitivity or importance, such as nature reserves.[[68]](#footnote-68) “Effects” include serious effects not only on valued species, but also on humans.[[69]](#footnote-69)

In this case, judging from the size, the scale of coral bleaching caused by ocean warming and ocean acidification is massive and continues to grow year by year.[[70]](#footnote-70) Furthermore, ocean acidification has also contributed to the dramatic decrease in yellowfin tuna’s growth and survival.[[71]](#footnote-71) The consequent depleted fish stocks and substantial losses of tourism revenues cast devastating effects on Tagan’s national economy since they used to represent 65 percent of its GDP.[[72]](#footnote-72)

From the perspective of “location”, Hagatana’s industries and population are concentrated in its eastern part, which is quite close to the environmentally sensitive areas, such as the coral reef ecosystems and yellowfin tuna habitats. [[73]](#footnote-73)

More tragically, given the effects on humans, sea-level rise has caused irreversible destruction to Taganians’ water wells, homes and infrastructure, finally resulting in Kapalua archipelago’s uninhabitability.[[74]](#footnote-74) Therefore, the harm caused by Hagatana’s GHG emissions was significant.

#### The harm caused by Hagatana’s activities was transboundary

“Transboundary” means the harm is caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin.[[75]](#footnote-75) In this case, the GHG emissions were conducted mainly by industries within Hagatana’s territory.[[76]](#footnote-76) However, the harm caused by the emissions has far exceeded Hagatana’s jurisdiction and extended to Tagan’s maritime zones.[[77]](#footnote-77) Therefore, the harm caused by GHG emissions was transboundary.

### Causation exists between Hagatana’s activities and the harm

If the State could have foreseen that its activities would finally lead to the harm through successive links, then causation shall be established.[[78]](#footnote-78) Further, if the activity was objectively capable of causing the damage, then foreseeability shall be confirmed.[[79]](#footnote-79)

In this case, South Gentle Ocean includes regions of strong upwelling events.[[80]](#footnote-80) Upwelling usually occurs along coastlines as compensation for surface water blown away by offshore winds.[[81]](#footnote-81) Hence, the upwelling events are most likely to occur along Hagatana’s east coast,[[82]](#footnote-82) while offshore winds blow from west to east. Since Hagatana’s industries and population are concentrated in its eastern part,[[83]](#footnote-83) the emitted GHG as well as the acidified water that has absorbed the GHG are blown eastward to Tagan’s maritime zones.

Furthermore, Hagatana is the only developed country in the region with a top-five amount of GHG emissions.[[84]](#footnote-84) While anthropogenic GHG have unequivocally caused global warming,[[85]](#footnote-85) exports have also agreed that coral bleaching and yellowfin tuna depletion should be primarily attributed to ocean warming and acidification.[[86]](#footnote-86) With the above information, it can be concluded that Hagatana’s emission activities are objectively able to cause the damage to Tagan.

# Hagatana Has Breached Its International Commitments under the UNCLOS to Protect and Preserve the Marine Environment in Relation to the Impacts of Climate Change, Including Ocean Warming, Sea-level Rise, and Ocean Acidification in the South Gentle Ocean and Has at Least a Partial Responsibility for the Deleterious Effects

Pursuant to Article 237 of UNCLOS, States shall undertake obligations under other conventions relating to the protection and preservation of the marine environment,[[87]](#footnote-87) such as UNFSA,[[88]](#footnote-88) UNFCCC, Kyoto Protocol and Paris Agreement.[[89]](#footnote-89) In this case, [A] Hagatana failed to reduce GHG emissions as a source of pollution, which breached Articles 207(2), 212(2), 213, 222 of UNCLOS and other relevant conventions; [B] Hagatana failed to exercise due diligence to prevent transboundary pollution, which breached Article 194(2) of UNCLOS and other relevant conventions; [C] Hagatana failed to protect and preserve ecosystems, habitats and highly migratory fish stocks, which breached Articles 64(1), 194(5) of UNCLOS and UNFSA; [D] Hagatana failed to promote education, training and public awareness related to climate change, which breached UNFCCC, Kyoto Protocol and Paris Agreement; [E] Hagatana failed to provide financial resources for Tagan, which breached UNFCCC, Kyoto Protocol and Paris Agreement.

## Hagatana failed to reduce GHG emissions as a source of pollution, which breached Articles 207(2), 212(2), 213, 222 of UNCLOS and other relevant conventions

Article 194(3) of UNCLOS obligates States to take necessary measures to minimize all sources of pollution of the marine environment, including pollution from land-based sources and the atmosphere.[[90]](#footnote-90) In this case, Hagatana breached this obligation because [1] GHG constitute pollution of the marine environment from land-based sources and the atmosphere; and [2] failure to reduce GHG emissions breached Articles 207(2), 212(2), 213, 222 of UNCLOS and other relevant conventions.

### GHG constitute pollution of the marine environment from land-based sources and the atmosphere

Land-based sources are defined as “point and diffuse sources on land from which energy or substances reach the maritime area by water, through the air, or directly from the coast”.[[91]](#footnote-91) Anthropogenic GHG from land introduce energy in the form of excess heat as well as a substance in the form of carbon into the marine environment.[[92]](#footnote-92) Therefore, GHG constitute pollution of the marine environment from land-based sources.

The term “from the atmosphere” describes the instance that the atmosphere conveys pollutants affecting the marine environment, such as GHG,[[93]](#footnote-93) which are one of the major contributors to the degradation of the marine environment.[[94]](#footnote-94) Therefore, it is uncontroversial that GHG qualify as “pollution of the marine environment from the atmosphere”.[[95]](#footnote-95)

### Failure to reduce GHG emissions breached Articles 207(2), 212(2), 213, 222 of UNCLOS and other relevant conventions

Articles 207(2) and 212(2) of UNCLOS require States to prevent, reduce and control pollution.[[96]](#footnote-96) To comply with this obligation, States are required to implement relevant international rules and standards,[[97]](#footnote-97) which include UNFCCC, Kyoto Protocol and Paris Agreement.[[98]](#footnote-98) Among them, UNFCCC obligates developed countries in Annex I to take the lead in cutting down GHG emissions.[[99]](#footnote-99) As further implementation of UNFCCC,[[100]](#footnote-100) Kyoto Protocol and Doha Amendment set specific GHG reduction targets for Annex I countries,[[101]](#footnote-101) while Paris Agreement sets out NDC as an obligation of conduct.[[102]](#footnote-102)

In this case, since Hagatana is listed in Annex II to UNFCCC,[[103]](#footnote-103) it would naturally be included in Annex I to UNFCCC and thus shall take the lead to achieve the specific targets.[[104]](#footnote-104) However, Hagatana has never achieved its reduction targets, which breached Kyoto Protocol and Doha Amendment.[[105]](#footnote-105)

Moreover, Hagatana’s failure to implement its NDC not only violated Paris Agreement,[[106]](#footnote-106) but also breached its obligations deriving from the NDC itself as unilateral declarations.[[107]](#footnote-107) Additionally, as an obligation of conduct, the fulfillment of NDC requires a chain of continuous compliance and thus any interruption shall be considered a breach.[[108]](#footnote-108) Hence, Hagatana’s recent actions cannot exempt its previous breach of the obligation of conduct.[[109]](#footnote-109) Therefore, Hagatana has breached Articles 207(2), 212(2), 213, 222 of UNCLOS and other relevant international rules and standards.

## Hagatana failed to exercise due diligence to prevent transboundary pollution, which breached Article 194(2) of UNCLOS and other relevant conventions

Article 194(2) of UNCLOS provides that States shall take all necessary measures to prevent transboundary pollution, which is an obligation of conduct.[[110]](#footnote-110) Specifically, this entails an obligation of due diligence,[[111]](#footnote-111) which includes cooperating, monitoring, conducting environmental impact assessments (**“EIA”**) and publishing reports.[[112]](#footnote-112) In this case, Hagatana failed to exercise due diligence because: [1] Hagatana failed to monitor its GHG emissions’ risks and effects and notify the affected State; [2] Hagatana failed to conduct EIA and publish reports concerning its GHG emissions’ risks and effects; [3] Hagatana failed to cooperate at a regional level.

### Hagatana failed to monitor its GHG emissions’ risks and effects and notify the affected State

Articles 198 and 204 of UNCLOS require States to monitor the risks or effects of pollution and notify other States that are likely to be affected by the pollution.[[113]](#footnote-113) In this case, it is Tagan rather than Hagatana that has been closely monitoring and notifying other States, especially Hagatana, about the GHG emissions’ risks and effects on the South Gentle Ocean.[[114]](#footnote-114) Even after knowing the potentially disastrous risks and effects, Hagatana did not take any actions to monitor its GHG emitters though it is the only developed country in this region as well as a top-five emitter in the world.[[115]](#footnote-115)

### Hagatana failed to conduct EIA and publish reports concerning its GHG emissions’ risks and effects

Article 206 of UNCLOS obligates States to conduct EIA with respect to activities likely to cause significant transboundary harm to the marine environment, such as the harm caused by GHG.[[116]](#footnote-116) UNFSA, UNFCCC and Paris Agreement also require similar assessments with regard to fish stocks and climate change respectively.[[117]](#footnote-117) This obligation is also deemed customary international law.[[118]](#footnote-118) Furthermore, Article 205 of UNCLOS requires States to publish reports concerning the risks or effects of pollution as well as EIA.[[119]](#footnote-119)

In this case, Hagatana has already knew that its excessive GHG emissions are likely to cause significant transboundary harm.[[120]](#footnote-120) Nevertheless, it was only recently that Hagatana adopted legislation on EIA,[[121]](#footnote-121) which means that Hagatana had not previously fulfilled this obligation. Moreover, given that Hagatana failed to monitor its GHG emissions’ risks and effects and conduct EIA, it can be concluded that neither did Hagatana publish the required reports accordingly.

### Hagatana failed to cooperate at a regional level

As prescribed in UNCLOS, to prevent, reduce and control pollution of the marine environment, States shall endeavour to harmonize their policies at the appropriate regional level.[[122]](#footnote-122) Meanwhile, States are also required to endeavour to establish regional rules, standards and recommended practices and procedures.[[123]](#footnote-123) UNFCCC, Kyoto Protocol and Paris Agreement also prescribe cooperation in various aspects, especially with developing countries or at a regional level.[[124]](#footnote-124)

In this case, Hagatana has been consistently refusing to participate in bilateral or regional discussions to tackle climate change and related impacts on the marine ecosystem.[[125]](#footnote-125) This crushed the hope for harmonization of regional policies as well as the establishment of regional rules, standards and recommended practices and procedures. Therefore, Hagatana breached its obligation to cooperate at a regional level.

## Hagatana failed to protect and preserve ecosystems, habitats and highly migratory fish stocks, which breached Articles 64(1), 194(5) of UNCLOS and UNFSA

Article 194(5) of UNCLOS extends the scope of protected marine environment to rare or fragile ecosystems and habitats of depleted species.[[126]](#footnote-126) Such protection shall also apply to fish stocks.[[127]](#footnote-127) In this case, Hagatana has breached its obligation to [1] protect and preserve the fragile ecosystem and the habitat of depleted species, and [2] conserve highly migratory fish stocks.

### Hagatana failed to protect and preserve the fragile ecosystem and the habitat of depleted species, which breached Article 194(5) of UNCLOS

Article 194(5) of UNCLOS requires States to take necessary measures to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.[[128]](#footnote-128) In the context of climate change, coral reefs are particularly fragile ecosystems,[[129]](#footnote-129) while yellowfin tuna has been listed as decreasing species in the Red List of the International Union for Conservation of Nature[[130]](#footnote-130)

In this case, Hagatana’s excessive GHG emissions have aggravated the ocean warming and ocean acidification in the South Gentle Ocean,[[131]](#footnote-131) which is home to fragile coral reef ecosystems and the already depleted yellowfin tuna.[[132]](#footnote-132) Although Hagatana has established new marine protected areas,[[133]](#footnote-133) the proportion of its marine protected areas occupying jurisdictional waters (5%) is still far below the world average (13.3% in 2020),[[134]](#footnote-134) let alone the developed country average. Therefore, Hagatana breached its obligation under Article 194(5) of UNCLOS.

### Hagatana failed to conserve highly migratory fish stocks, which breached Article 64(1) of UNCLOS and UNFSA

Pursuant to Article 64(1) of UNCLOS and UNFSA, States are obliged to cooperate in the conservation of highly migratory species,[[135]](#footnote-135) which includes yellowfin tuna.[[136]](#footnote-136) In this case, Hagatana has declined all invitations from Tagan for bilateral and regional dialogues on climate change.[[137]](#footnote-137) Hence, it can be understood that Hagatana would also be reluctant to cooperate at a bilateral or regional level regarding yellowfin tuna conservation in the context of climate change. Therefore, Hagatana has failed to fulfill the obligation to cooperate in the conservation of yellowfin tuna.

## Hagatana failed to promote education, training and public awareness related to climate change, which breached UNFCCC, Kyoto Protocol and Paris Agreement

UNFCCC, Kyoto Protocol and Paris Agreement set out the obligation for States to promote education, training and public awareness related to climate change.[[138]](#footnote-138) But in this case, although Hagatana is a developed country with a long industrial history, its public environmental awareness emerged quite late and so far the environmental concerns have remained relatively timid.[[139]](#footnote-139) This reflects Hagatana’s weak public awareness and its long-term absence in promoting education, training and public awareness related to climate change. Therefore, this obligation has been breached.

## Hagatana failed to provide financial resources for Tagan, which breached UNFCCC, Kyoto Protocol and Paris Agreement

UNFCCC, Kyoto Protocol and Paris Agreement have constructed a framework whereby developed countries in Annex II shall provide financial resources for developing countries,[[140]](#footnote-140) in particular small island States,[[141]](#footnote-141) to combat climate change. Such financing can be conducted through bilateral, regional and other multilateral channels,[[142]](#footnote-142) among which bilateral financing occupies the largest share.[[143]](#footnote-143)

In this case, as a country listed in Annex II and the only developed country in this region,[[144]](#footnote-144) Hagatana was supposed to provide financial resources for Tagan, especially through bilateral channels considering Tagan’s desperate situation. Instead, it has consistently declined Tagan’s invitations to bilateral or regional dialogues regarding climate change.[[145]](#footnote-145) As a result, the Taganian government had no economic resources to tackle the consequences of sea-level rise in the Kapalua archipelago, and had no choice but to relocate its people.[[146]](#footnote-146) Therefore, it can be concluded that Hagatana has not been fulfilling its obligation to provide financial resources.

# Hagatana must Respect the Archipelagic Baselines and Maritime Limits of Tagan, and in that Connection, Hagatana Has Breached its Obligations under UNCLOS by Undertaking Data-collection Activities in the EEZ and on the Continental Shelf of Tagan

Hagatana must respect the archipelagic baselines and maritime limits of Tagan because [A] the outer limits of the continental shelf established by Tagan have a binding force upon Hagatana; [B] Tagan’s archipelagic baselines and maritime limits remain unaltered notwithstanding sea-level rise. In that connection, [C] Hagatana has breached its obligations by undertaking data-collection activities in the EEZ and on the continental shelf of Tagan.

## The outer limits of the continental shelf established by Tagan have a binding force upon Hagatana

The outer limits of the continental shelf established by Tagan have a binding force upon Hagatana because [1] Tagan has established its outer limits of the continental shelf in accordance with Article 76(8) of UNCLOS; [2] Tagan’s minor procedural defects shall not nullify the establishment of the outer limits of its continental shelf.

### Tagan has established its outer limits of the continental shelf in accordance with Article 76(8) of UNCLOS

Coastal States have inherent rights over their continental shelf,[[147]](#footnote-147) and have the ultimate right to establish their outer continental limits.[[148]](#footnote-148) Pursuant to Article 76(8) of UNCLOS, the outer limits of the continental shelf established by a coastal State on the basis of the CLCS’s recommendation shall be final and binding.[[149]](#footnote-149) The reference to “final” entails that the established outer limits shall not be subject to change but be fixed.[[150]](#footnote-150) The reference to “binding” implies other countries’ obligation to recognize the concerned outer limits.[[151]](#footnote-151)

In this case, Tagan has submitted to the CLCS information about its outer limits of the continental shelf,[[152]](#footnote-152) and the CLCS fully recommended the submission after extensive deliberations.[[153]](#footnote-153) Therefore, Tagan has established its outer limits of the continental shelf which have a binding force upon Hagatana despite Hagatana’s legal doubt.

### Tagan’s minor procedural defects shall not nullify the establishment of the outer limits of its continental shelf

Tagan’s minor procedural defects shall not nullify the establishment of the outer limits of its continental shelf because [a] the validity of the CLCS’s recommendations shall not be challenged by the absence of a voting procedure; [b] Tagan’s late submission for the outer limits of its continental shelf did not result in the failure of the establishment; [c] Tagan’s non-deposition to the ISA did not affect the due publicity to its establishment of the outer limits of the continental shelf.

#### The validity of the CLCS’s recommendations shall not be challenged by the absence of a voting procedure

There shall be no voting procedure before the CLCS has exhausted all efforts to reach a consensus on substantive matters.[[154]](#footnote-154) In other words, if the CLCS reaches a consensus to approve recommendations, voting becomes unnecessary.[[155]](#footnote-155)

In this case, the CLCS chose to fully recommend Tagan’s submission upon Tagan’s submission after extensive deliberations,[[156]](#footnote-156) thus signifying all efforts to achieve consensus have been exhausted. Therefore, the validity of the CLCS’s recommendations shall not be challenged by the absence of a voting procedure.

#### Tagan’s late submission for the outer limits of its continental shelf did not result in the failure of the establishment

States with the intention to establish outer continental shelf limits shall submit relevant particulars no later than 10 years of UNCLOS’ entry into force for them.[[157]](#footnote-157) For States for which UNCLOS entered into force before 1999, the ten-year time period shall commence in 1999.[[158]](#footnote-158) Among 51 submissions supposed to submit by 2009, only 7 have complied with the time requirement.[[159]](#footnote-159) However, failing to follow the 10-year rule will not result in any substantial consequences for the establishment.[[160]](#footnote-160)

Therefore, in this case, although UNCLOS entered into force for Tagan in 1991 and Tagan shall take a submission before 2009,[[161]](#footnote-161) the delay will not entail any effects.

#### Tagan’s non-deposition to the ISA did not affect the due publicity to its establishment of the outer limits of the continental shelf

Coastal states shall give due publicity to charts or lists of geographical coordinates.[[162]](#footnote-162) It requires notifying given information through appropriate authorities in a suitable manner,[[163]](#footnote-163) such as through the publication of the relevant laws and regulations.[[164]](#footnote-164) As the limits of the Area are the outer limits of the continental shelf,[[165]](#footnote-165) the function of depositing with the ISA Secretary-General is to give due publicity to help other States determine the boundaries between the Area and continental shelf under national jurisdiction.[[166]](#footnote-166) However, coastal States deposit relevant information with the Secretary-General of the UN identically with functions to describe the outer limits and ensure due publicity.[[167]](#footnote-167)

In this case, Tagan deposited with the UN Secretary-General under Article 76(9) and confirmed its maritime limits through domestic legislation.[[168]](#footnote-168) Thus, due publicity was given. Therefore, Tagan’s non-deposit with the ISA Secretary-General did not affect due publicity to the establishment of its outer limits of the continental shelf.

## Tagan’s archipelagic baselines and maritime limits remain unaltered notwithstanding the sea-level rise

Tagan’s archipelagic baselines and maritime limits remain unaltered notwithstanding sea-level rise because [1] archipelagic baselines and maritime limits shall be fixed to maintain legal stability; [2] it is imperative to apply the Equity Principle to maintain Tagan’s maritime limits under the circumstance of sea-level rise; [3] the principle of “the land dominates the sea” shall be excluded in the face of sea-level rise.

### Archipelagic baselines and maritime limits shall be fixed to maintain legal stability

Baselines serve as the criterion for determining the outer limits of various maritime zones.[[169]](#footnote-169) Maritime limits must be stable and definitive to ensure a peaceful relationship between the States in the long term.[[170]](#footnote-170) Even under the circumstance of sea-level rise, legal stability shall still be preserved.[[171]](#footnote-171) Re-delineation or re-delimitation will place a heavy burden on States and disturb the legal stability significantly.[[172]](#footnote-172) UN Member States have mutually agreed to adopt fixed baselines to maintain such stability.[[173]](#footnote-173)

Therefore, despite the coast being significantly impacted by the sea-level rise, Tagan’s archipelagic baselines and maritime limits shall be fixed to preserve legal stability.

### It is imperative to apply the Equity Principle to maintain Tagan’s maritime limits under the circumstance of sea-level rise

The Equity Principle means that judicial decisions must be just and achieve equitable results.[[174]](#footnote-174) Under the circumstance of sea-level rise, developing archipelagic countries contribute virtually nothing to climate change, while having been suffering from disproportionately inequitable loss of maritime entitlements and natural resources.[[175]](#footnote-175) Thus, challenging their existing maritime limits would be inequitable.[[176]](#footnote-176) Preserving maritime zones and rights is the most suitable and equitable approach to achieving that goal.[[177]](#footnote-177)

In this case, the detrimental effects of sea-level rise have washed away Tagan’s prosperous economy and people’s homes,[[178]](#footnote-178) while Tagan’s primary industries, fishing and tourism, make a marginal contribution to climate change.[[179]](#footnote-179) If Tagan’s existing baselines and maritime limits have been denied solely due to sea-level rise, Tagan’s centuries of history, maritime entitlements, and natural resources in Kapalua will be obliterated.[[180]](#footnote-180) Therefore, it is imperative to apply the Equity Principle to maintain Tagan’s maritime limits.

### The principle of “the land dominates the sea” shall be excluded in the face of sea-level rise

The “land dominates the sea” principle refers to that land confers maritime rights upon the coastal State.[[181]](#footnote-181) However, it is not absolute and not always applicable.[[182]](#footnote-182) When the principle that “land dominates the sea” contradicts the Equity Principle, the Equity Principle is given priority[[183]](#footnote-183) In the face of sea-level rise, fixing maritime limits and baselines is the most equitable approach for developing archipelagic states like Tagan.[[184]](#footnote-184) Therefore, the principle of “the land dominates the sea” shall be excluded.[[185]](#footnote-185)

## Hagatana has breached its obligations by undertaking data-collection activities in the EEZ and on the continental shelf of Tagan

Hagatana conducted data-collection activities by its flagged vessels in the EEZ and on the continental shelf of Tagan.[[186]](#footnote-186) Hagatana has breached obligations under UNCLOS because [1] its data-collection activities belong to MSR and need prior consent to be conducted in the EEZ and on the continental shelf; [2] such activities infringe Tagan’s exclusive sovereign rights in its EEZ and on its continental shelf.

### Hagatana’s data-collection activities belong to MSR and need prior consent to be conducted in the EEZ and on the continental shelf

MSR includes any study or related experimental work designed to increase knowledge of the marine environment.[[187]](#footnote-187) While “data-collection activities” is a much broader concept, including MSR.[[188]](#footnote-188) MSR in the other States’ EEZ or on the continental shelf shall seek the prior consent of the coastal State.[[189]](#footnote-189) Thus, in State practice, MSR is frequently disguised as hydrographic surveys or other activities to elude the coastal State’s prior jurisdiction,[[190]](#footnote-190) such as the UNSN Bowditch case in the Yellow Sea.[[191]](#footnote-191)

In this case, Hagatana’s data-collection activities are MSR in essence as Hagatana failed to give detailed explanations of nature and objectives as requested.[[192]](#footnote-192) And they were conducted in the EEZ and on the continental shelf of Tagan which remains the same despite sea-level rise. Therefore, Hagatana was obliged to seek prior consent from Tagan and has breached the obligation under Article 246(2) of UNCLOS.

### Hagatana’s data-collection activities infringe Tagan’s exclusive sovereign rights in its EEZ and on its continental shelf

Hydrographic data can be used to investigate mineral resources and serve as assistance in the exploitation of natural marine resources.[[193]](#footnote-193) Therefore, activities for collecting hydrographic data about marine mineral resources pertain to “other activities for the economic exploitation and exploration” under Art.56 (1) of UNCLOS.[[194]](#footnote-194) Coastal States have exclusive sovereign rights to natural resources in their EEZ and on their continental shelf.[[195]](#footnote-195)

In this case, Hagatana conducted data-collection activities throughout 2021 and 2022 around the areas where its state-owned company applied for exploration activities in 2023.[[196]](#footnote-196) Such activities are intended to pave the way for Hagatana’s later exploration and exploitation, and fall in the scope of activities mentioned in Article 56(1). Therefore, Hagatana’s such activities infringe Tagan’s exclusive sovereign rights to natural resources in its EEZ and on its continental shelf.

# Hagatana Must Withdraw its Sponsorship of the HHM Geological Survey because the Plan of Work Covers Part of the Continental Shelf of Tagan

Pursuant to Article 77(1) of UNCLOS, Tagan exercises sovereign rights over its continental shelf for the purpose of exploring it and exploiting its natural resources.[[197]](#footnote-197) [A] The plan of work proposed by the HHM is for the exploration and exploitation of natural resources. On this basis, [B] Hagatana has breached its international obligation to respect Tagan’s sovereign rights for exploration and exploitation on its continental shelf; [C] HHM’s plan of work shall be rejected for its high risk of serious harm to the marine environment of Tagan’s continental shelf. In consequence, [D] Withdrawing sponsorship shall be applied to protect Tagan’s sovereign rights.

## The plan of work proposed by HHM is for the exploration and exploitation of natural resources

Natural resources mainly refer to specific living organisms and non-living resources on the seabed,[[198]](#footnote-198) including polymetallic nodules.[[199]](#footnote-199) Pursuant to Regulations on Prospecting and Exploration for Polymetallic Nodules (**“Nodules Regulations”**), “exploration” means searching for deposits of polymetallic nodules and “exploitation” means the extraction of minerals with exclusive rights. [[200]](#footnote-200) In such a condition, the applicant shall request the ISA for approval of plans of work.[[201]](#footnote-201) However, “prospecting” refers to the search without involving any exclusive rights, and only requires notification before the ISA.[[202]](#footnote-202)

In this case, HHM submitted the plan of work to the ISA in accordance with Nodules Regulations. The plan of work was under consideration by the Legal and Technical Commission and the Council of the ISA.[[203]](#footnote-203) In this way, HHM’s application of the plan of work is consistent with what is required for exploration and exploitation. Therefore, the plan of work proposed is for the exploration and exploitation of natural resources.

## Hagatana has breached its international obligation to respect Tagan’s sovereign rights for exploration and exploitation on its continental shelf

[1] The limits of the continental shelf remain fixed despite sea-level rise. In such a condition, by submitting a plan of work which covers part of Tagan’s continental shelf, [2] Hagatana has shown no respect for Tagan’s sovereignty and derived sovereign rights; [3] Hagatana has violated the principle of sovereign equality of states. Further, [4] Hagatana has infringed Tagan’s exclusive rights for exploration and exploitation on its continental shelf.

### The limits of continental shelf remain fixed despite sea-level rise

The continental shelf of a coastal State constitutes a natural prolongation of the land territory into and under the sea.[[204]](#footnote-204) The natural prolongation grants coastal States sovereign rights as inherent rights.[[205]](#footnote-205) The rights to explore and exploit the natural resources of the seabed derive from such rights.[[206]](#footnote-206)

In this case, despite the sea-level rise, Tagan’s land domain did not change. Under this circumstance, the derived rights on the continental shelf shall also stay the same due to the principle of natural prolongation. [[207]](#footnote-207) Therefore, Tagan’s limits of continental shelf remain fixed and thus the plan of work covers part of the continental shelf of Tagan.

### Hagatana has shown no respect for Tagan’s sovereignty and derived sovereign rights

National sovereignty is sacred and inviolable over the State’s territory.[[208]](#footnote-208) Although covered with water, the continental shelf can be deemed to be part of the territory as a natural prolongation.[[209]](#footnote-209) The derived sovereign rights extend to the exploration and exploitation as well as the conservation and management of both living and non-living natural resources.[[210]](#footnote-210) In contrast, other entities can only apply for exploration in the Area.[[211]](#footnote-211)

In this case, the plan of work proposed by HHM directly infringed Tagan’s sovereign rights of exploration and exploitation on its continental shelf.[[212]](#footnote-212) Based on the essence of related provisions on exploration and exploitation of minerals, HHM cannot submit a plan of work covering even part of Tagan’s continental shelf due to Tagan’s inherent sovereign rights. This is a matter that the whole international community shall pay attention to, especially as more than 30% of the world’s seabed is under the special and limited sovereign rights of coastal States.[[213]](#footnote-213) Considering this, HHM should not have submitted a plan containing other State’s continental shelf from the very beginning. Nevertheless, HHM still submitted the plan of work recklessly with Hagatana standing behind by offering sponsorship.[[214]](#footnote-214) Therefore, Hagatana showed no respect for Tagan’s sovereignty and derived sovereign rights.

### Hagatana has violated the principle of sovereign equality of States

As international law is a legal system between equals, an infringement of a State’s sovereign rights in a seemingly legal way institutes a violation of the principle of sovereign equality of states.[[215]](#footnote-215) The principle mainly means that every State has the inherent right of full sovereignty and also has an obligation to respect the personality of other States.[[216]](#footnote-216)

In this case, Hagatana offered its sponsorship, which indicated Hagatana’s implied consent as a sponsoring State. Moreover, Hagatana denied Tagan’s continental shelf and even blatantly ignored Tagan’s firm protest before the ISA.[[217]](#footnote-217) In such a condition, it is quite within Tagan’s right to warn HHM to terminate the application and ask Hagatana to withdraw its sponsorship. If not, Hagatana will have to take the consequences for infringing Tagan’s sovereign rights on its continental shelf and violating the principle of sovereign equality of States.

### Hagatana has infringed Tagan’s exclusive rights for exploration and exploitation on its continental shelf

In accordance with Article 77 of UNCLOS, Tagan’s sovereign rights on the continental shelf are inherent.[[218]](#footnote-218) The exclusive rights to explore and exploit natural resources on the continental shelf derive from such sovereign rights.[[219]](#footnote-219) To be specific, such exclusiveness means that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.[[220]](#footnote-220)

In this case, Tagan has never explored natural resources on its continental shelf before. Moreover, Hagatana did not obtain any consent in advance and even knowingly dismissed Tagan’s firm protest afterward.[[221]](#footnote-221) Therefore, without express consent, Hagatana has infringed Tagan’s exclusive rights on its continental shelf under Article 77 of UNCLOS.

## HHM’s plan of work shall be rejected for its high risk of serious harm to the marine environment of Tagan’s continental shelf

States have the obligation to protect and preserve the marine environment.[[222]](#footnote-222) Pursuant to Regulation 21(4)(b) of Nodules Regulations, the Council of the ISA shall take the potential impact on the marine environment into consideration for approving applicants’ plan of work. [[223]](#footnote-223) Besides, States widely acknowledge the potential harm of exploration.[[224]](#footnote-224)

Further, researchers have found that biology is of high diversity in polymetallic-nodule zones, rather than the original thought of lifelessness when UNCLOS was crafted.[[225]](#footnote-225) Deep seabed mining will necessarily cause substantial destructive effects on the environment.[[226]](#footnote-226) To make matters worse, it will release a massive sediment plume that will impact much wider areas than anticipated.[[227]](#footnote-227)

In this case, HHM intends to explore and exploit polymetallic nodules on Tagan’s continental shelf. Its plan of work covers a relatively smaller area but much more blocks compared with approved plans in current States’ practice.[[228]](#footnote-228) In such a condition, it can result in greater devastation to the marine environment on Tagan’s continental shelf. Considering such devastation, HHM’s plan of work shall not be approved even if it were for exploration in the Area, let alone on Tagan’s continental shelf. Therefore, HHM’s plan of work shall be rejected.

## Withdrawing sponsorship shall be applied to protect Tagan’s sovereign rights

As aforementioned, Hagatana must immediately cease its application of the plan of work, and withdrawing Hagatana’s sponsorship shall be applied because [1] withdrawing sponsorship is a regulatory tool to reject the plan of work; [2] withdrawing sponsorship is an effective way to reject the plan of work.

### Withdrawing sponsorship is a regulatory tool to reject the plan of work

Withdrawing sponsorship is a regulatory way for the ISA to exercise control through the sponsoring States.[[229]](#footnote-229) It is widely stipulated that sponsoring States shall withdraw sponsorship where sponsored entities knowingly provide the ISA with false or misleading information,[[230]](#footnote-230) or where it is necessary to prevent serious risks to the marine environment.[[231]](#footnote-231)

In this case, the plan of work submitted to the ISA by HHM covered Tagan’s continental shelf, which was materially false. Besides, HHM’s activities can cause serious harm to the marine environment of Tagan’s continental shelf. Therefore, withdrawing sponsorship of HHM shall be applied.

### Withdrawing sponsorship is an effective way to reject the plan of work

Sponsorship is a necessary qualification for applicants for exploration activities in the Area.[[232]](#footnote-232) It shall be first ascertained to approve such applications.[[233]](#footnote-233) For state enterprises, their application for exploration activities in the Area can be approved only with sponsorship from their States.[[234]](#footnote-234)

In this case, HHM, as a state-owned company, shall obtain sponsorship from the Hagatanian government before submitting its plan of work.[[235]](#footnote-235) If Hagatana withdraws its sponsorship, HHM will not be qualified to apply accordingly and be deprived of the right to conduct exploration activities. Therefore, withdrawing sponsorship of HHM shall be applied.

Prayer for Relief

The Federated States of Tagan respectfully requests the Tribunal to adjudge and declare that:

**I.** Hagatana has at least a partial responsibility for the deleterious effects that result from climate change, including through ocean warming, sea-level rise, and ocean acidification in the South Gentle Ocean, which are caused by GHG emissions into the atmosphere.

**II.** Hagatana has breached its international commitments under the UNCLOS to protect and preserve the marine environment in relation to the impacts of climate change, including ocean warming, sea-level rise, and ocean acidification in the South Gentle Ocean.

**III.** Hagatana must respect the archipelagic baselines and maritime limits of Tagan, including around the Kapalua archipelago, and in that connection, Hagatana has breached its obligations under the UNCLOS by undertaking data-collection activities in the EEZ and on the continental shelf of Tagan.

**IV.** Hagatana must withdraw its sponsorship of the HHM Geological Survey because the plan of work covers part of the continental shelf of Tagan.

Respectfully Submitted,

Agents for Applicant

1. United Nations Convention on the Law of the Sea, 1833 UNTS 397 (1982) [**“UNCLOS”**], Art.287(1). [↑](#footnote-ref-1)
2. UNCLOS, Art.287(4). [↑](#footnote-ref-2)
3. Agreed Facts, ¶4. [↑](#footnote-ref-3)
4. *Ibid*, Annex 1. [↑](#footnote-ref-4)
5. Alexander Proelss et al., United Nations Convention on the Law of the Sea: A Commentary (2017) [**“Commentary 2017”**], p.1831. [↑](#footnote-ref-5)
6. Rüdiger Wolfrum, Das Streitbeilegungssystem des VN-Seerechtsübereinkommens, in: Wolfgang Graf Vitzthum (ed.), Handbuch des Seerechts (2006), p.468. [↑](#footnote-ref-6)
7. UNCLOS, Art.280. [↑](#footnote-ref-7)
8. The M/V “Louisa” Case (Saint Vincent and the Grenadines v. The Kingdom of Spain), Provisional Measures, Dissenting Opinion of Judge Treves, 2010 ITLOS Rep.87 [**“Louisa Case”**], ¶¶11, 75; MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order, 2001 ITLOS Rep.95, ¶60; Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan) [**“Bluefin Tuna”**], Provisional Measures, Order, 1999 ITLOS Rep.280, ¶60. [↑](#footnote-ref-8)
9. Third United Nations Conference on the Law of the Sea, Australia et al. Working Paper on the Settlement of Law of the Sea Disputes, UN Doc. A/CONF.62/L.7 (1974), p.90. [↑](#footnote-ref-9)
10. Agreed Facts, ¶¶23-24. [↑](#footnote-ref-10)
11. *Ibid*, ¶22. [↑](#footnote-ref-11)
12. UNCLOS, Art.283. [↑](#footnote-ref-12)
13. Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), Award, 2015 PCA, ¶382. [↑](#footnote-ref-13)
14. Louisa Case, ¶11. [↑](#footnote-ref-14)
15. Agreed Facts, ¶¶16, 22. [↑](#footnote-ref-15)
16. *Ibid*. [↑](#footnote-ref-16)
17. *Ibid*, ¶¶18, 21. [↑](#footnote-ref-17)
18. UNCLOS, Art.288(1). [↑](#footnote-ref-18)
19. Arbitration between Guyana and Suriname (Guyana v. Suriname), Award, 2007 PCA, ¶175. [↑](#footnote-ref-19)
20. UNCLOS, Art.288(2). [↑](#footnote-ref-20)
21. *Ibid*, Preamble. [↑](#footnote-ref-21)
22. Donald R Rothwell et al., The Oxford Handbook of the Law of the Sea (2015), p.783. [↑](#footnote-ref-22)
23. The 1995 Agreement for the Implementation of the Provisions of the UNCLOS of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 2167 UNTS 3 (1995) [**“UNFSA”**]; Commentary 2017, p.1861. [↑](#footnote-ref-23)
24. Agreed Facts, ¶¶7-8. [↑](#footnote-ref-24)
25. Agreed Facts, ¶6. [↑](#footnote-ref-25)
26. UNCLOS, Annex I. [↑](#footnote-ref-26)
27. Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2015 ITLOS Rep.4, ¶¶143-144. [↑](#footnote-ref-27)
28. ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, UN Doc. A/56/83 (2001) [**“ARSIWA Commentary”**]. [↑](#footnote-ref-28)
29. Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities, with Commentaries, UN Doc. A/61/10 (2006) [**“Transboundary Principles Commentary”**]. [↑](#footnote-ref-29)
30. ARSIWA, Art.1. [↑](#footnote-ref-30)
31. The M/V “Norstar” Case (Panama v. Italy), Judgment, 2019 ITLOS Rep.10, ¶317. [↑](#footnote-ref-31)
32. ARSIWA, Art.2. [↑](#footnote-ref-32)
33. *Ibid*, Art.8; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment. 1986 ICJ Rep.14, ¶115. [↑](#footnote-ref-33)
34. Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Separate opinion of Judge Shahabuddeen, 1992 ICJ Rep.240, p.281. [↑](#footnote-ref-34)
35. Agreed Facts, ¶3. [↑](#footnote-ref-35)
36. *Ibid*, ¶3. [↑](#footnote-ref-36)
37. ARSIWA, Art.11. [↑](#footnote-ref-37)
38. ARSIWA Commentary, Art.11, ¶6. [↑](#footnote-ref-38)
39. Agreed Facts, ¶8. [↑](#footnote-ref-39)
40. ARSIWA, Art.2; Frontier Petroleum Services LTD. v. The Czech Republic, Final Award, 2010 PCA, ¶223. [↑](#footnote-ref-40)
41. ARSIWA, Art.4; Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, 1999 ICJ Rep.62, ¶62. [↑](#footnote-ref-41)
42. Memorial for the Federated States of Tagan [**“Memorial”**], Pleading II. [↑](#footnote-ref-42)
43. *Ibid*. [↑](#footnote-ref-43)
44. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations, Judgment, 2022 ICJ Rep.13, ¶98; The Eurotunnel Arbitration, Partial Award, 2007 PCA, ¶174. [↑](#footnote-ref-44)
45. ARSIWA, Art.47(1); ARSIWA Commentary, Art.31, ¶12, Art.47, ¶8. [↑](#footnote-ref-45)
46. UN Office of Legal Affairs, Materials on the Responsibility of States for Internationally Wrongful Acts (2023), p.489; Sacchi et al. v. Argentina et al., Decision of 22 September 2021, Committee on the Rights of the Child, Communication Nos. 104/2019 (Argentina), 105/2019 (Brazil), 106/2019 (France), 107/2019 (Germany), 108/2019 (Turkey), ¶¶9.10, 10.10. [↑](#footnote-ref-46)
47. Urgenda Foundation v. the Netherlands, Judgment of 20 December 2019, Dutch Supreme Court, Case No. 19/00135, ECLI:NL:HR:2019:2006, ¶5.7.7. [↑](#footnote-ref-47)
48. Agreed Facts, ¶7. [↑](#footnote-ref-48)
49. Kevin R. Gray, Richard Tarasofsky, Cinnamon P. Carlarne, The Oxford Handbook of International Climate Change Law (2016), p.484. [↑](#footnote-ref-49)
50. Transboundary Principles, Principles 1, 4(1). [↑](#footnote-ref-50)
51. *Ibid*, Principle 4(2). [↑](#footnote-ref-51)
52. *Ibid*, Principle 2(c). [↑](#footnote-ref-52)
53. Hanqin Xue, Transboundary Damage in International Law (2003) [**“Transboundary Damage”**], p.4. [↑](#footnote-ref-53)
54. Transboundary Principles Commentary, Principle 4, ¶24. [↑](#footnote-ref-54)
55. ILC, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, UN Doc. A/56/10 (2001) [**“APTHHA Commentary”**], Art.1, ¶14. [↑](#footnote-ref-55)
56. Agreed Facts, ¶5; Clarifications, ¶2. [↑](#footnote-ref-56)
57. Agreed Facts, ¶7. [↑](#footnote-ref-57)
58. APTHHA Commentary, Art.1, ¶16. [↑](#footnote-ref-58)
59. *Ibid*, Art.2, ¶8. [↑](#footnote-ref-59)
60. Agreed Facts, ¶¶5-6. [↑](#footnote-ref-60)
61. *Ibid*. [↑](#footnote-ref-61)
62. *Ibid*, ¶9. [↑](#footnote-ref-62)
63. Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia), Judgment, 2022 ICJ [**“Silala”**], ¶85. [↑](#footnote-ref-63)
64. APTHHA Commentary, Art.2, ¶4. [↑](#footnote-ref-64)
65. Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, 2015 ICJ Rep.66, ¶202. [↑](#footnote-ref-65)
66. Trail Smelter Arbitration (United States v. Canada), Awards, 1938, 3 UNRIAA 1911 [**“Trail Smelter”**], p.1959. [↑](#footnote-ref-66)
67. Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, 2010 ICJ Rep.14 [“**Pulp Mills**”], ¶180; Convention on Environmental Impact Assessment in A Transboundary Context [**“Espoo Convention”**], 1989 UNTS 309 (1991), Appendix Ⅲ, Art.1. [↑](#footnote-ref-67)
68. Espoo Convention, Appendix III, Art.1(b). [↑](#footnote-ref-68)
69. *Ibid*, Appendix III, Art.1(c). [↑](#footnote-ref-69)
70. Agreed Facts, ¶¶5-6. [↑](#footnote-ref-70)
71. *Ibid*, ¶6. [↑](#footnote-ref-71)
72. *Ibid*, ¶2. [↑](#footnote-ref-72)
73. *Ibid*, ¶3. [↑](#footnote-ref-73)
74. *Ibid*, ¶¶9, 12. [↑](#footnote-ref-74)
75. APTHHA Commentary, Art.2, ¶9. [↑](#footnote-ref-75)
76. Agreed Facts, ¶3. [↑](#footnote-ref-76)
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