INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE (REQUEST BY THE UNITED NATIONS GENERAL ASSEMBLY FOR AN ADVISORY OPINION)

WRITTEN STATEMENT OF THE FEDERATED STATES OF MICRONESIA

15 MARCH 2024

TABLE OF CONTENTS

CHAPTER I

INTRODUCTION

1. In its Order dated 20 April 2023, the International Court of Justice ("Court") invited the United Nations and its Member States to submit written statements on the question referred to the Court by the United Nations General Assembly ("UNGA") in its resolution 77/276 of 29 March 2023. The Federated States of Micronesia welcomes the opportunity to provide its observations on the question to the Court.

2. The Federated States of Micronesia joined the consensus adoption of resolution 77/276 by the UNGA. This historic occurrence underscored the gravity of the question referred to the Court and the strong desire of the international community for clear and authoritative guidance on key legal questions pertaining to climate change from the pre-eminent judicial body under international law.

3. This Written Statement begins, in Chapter II, by identifying the advisory jurisdiction of the Court and presenting compelling reasons for why the Court must its discretion to provide the advisory opinion requested by the UNGA in resolution 77/276.

4. Chapter III of this Written Statement describes the lived reality of the Federated States of Micronesia and other small island developing States in this era of the climate crisis.

5. Chapter IV of this Written Statement presents the observations of the Federated States of Micronesia on the question referred to the Court by the UNGA in resolution 77/276, beginning with a discussion of the indivisible and unified nature of the question, particularly with respect to the links between the first part of the question on obligations of States under international law and the second part of the question on the legal consequences under these obligations for States; followed by a discussion of the chapeau of the question as presented in UNGA resolution 77/276; and concluding with an analysis of the two parts of the question presented.

6. Chapter V concludes this Written Statement.

7. The Federated States of Micronesia underscores that the present Written Statement is not necessarily an exhaustive accounting of the observations of the Federated States of Micronesia in the present advisory proceedings. The Federated States of Micronesia reserves the right to supplement, clarify, update, and provide all other additional observations in the present advisory proceedings as appropriate and as allowed by the Court.

CHAPTER II

JURISDICTION AND DISCRETION

8. This Chapter addresses the jurisdiction of the Court to issue the advisory opinion that has been requested by the UNGA in resolution 77/276 and demonstrates that there are no compelling reasons for the Court to decline to issue the advisory opinion on the matters contained in the request from the UNGA.

9. The Court's advisory jurisdiction stems from Article 65(1) of its Statute, which provides that "[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."[1]

10. The Court has explained that, in applying this provision of its Statute, "[i]t is . . . a precondition of the Court's competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, except in the case of the General Assembly or the Security Council, that question should be one arising within the scope of the activities of the requesting organ."[2]

11. There are therefore three requirements that must be satisfied in order for the Court to have jurisdiction to issue an advisory opinion: 1) the request for the advisory opinion was submitted by a body that is authorized to do so or in accordance with the Charter of the United Nations ("U.N. Charter"); 2) the request is for an advisory opinion on a legal question; and 3) the legal question should arise within the scope of the activities of the body requesting the advisory opinion, except that this is presumed to be the case if the request comes from the UNGA or the Security Council of the United Nations. The present request satisfies all three requirements, as demonstrated below.

12. First, the present request for an advisory opinion was submitted by a body authorized to do so, in accordance with the U.N. Charter. Article 96(1) of the U.N. Charter states that "[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question."[3] Additionally, paragraph 2 of the same Article 96 specifies that "[o]ther organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities."[4]

13. Article 96 of the U.N. Charter makes clear that the UNGA has a standing authority to request the Court to issue an advisory opinion on "any legal question," with the attendant corollary that a request from the UNGA to the Court for an advisory opinion enjoys a

[1] Statute of the International Court of Justice, art. 65(1) (hereinafter "ICJ Statute").
[2] *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal*, Advisory Opinion, I.C.J. Reports 1982, pp. 333-334, para. 21.
[3] U.N. Charter art. 96(1).
[4] Id., at art. 96(2).

presumption that the UNGA has exercised its power validly. There is no supplementary requirement that the legal question must arise within the scope of the activities of the UNGA (*contra* other organs of the United Nations and specialized agencies authorized by the UNGA, not including the Security Council). Indeed, the Court has explained that "[a] resolution of a properly constituted organ of the United Nations which is passed in accordance with that organ's rules of procedure, and is declared by its President to have been so passed, must be presumed to have been validly adopted."[5] Resolution 77/276 was adopted by the UNGA pursuant to its established rules of procedure without a vote.

14. Even if the UNGA does not enjoy the presumption that any validly adopted request from it to the Court for an advisory opinion is a valid exercise of the UNGA's authority, it is incontrovertible that the present request arises within the scope of the activities of the UNGA, including in connection with the U.N. Charter. The UNGA has addressed issues relating to anthropogenic emissions of greenhouse gases on numerous occasions, including through a long series of resolutions and decisions relating to the protection of the global climate for present and future generations of humankind;[6] as well as its resolution on the human right to a clean, healthy, and sustainable environment.[7]

15. Additionally, the Court has recognized that the competence of the UNGA is very broad, noting that "Article 10 of the [U.N.] Charter has conferred upon the General Assembly a competence relating to 'any questions or any matters' within the scope of the Charter, and that Article 11, paragraph 2, has specifically provided it with competence on 'questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations.'"[8] Thus, the present request for an advisory opinion was made by an "authorized" body – i.e., the UNGA – and arises within the scope of the activities of that body.

16. Second, the present request for an advisory opinion is on a legal question, in accordance with the requirement in Article 96 of the U.N. Charter authorizing the Court to issue an advisory opinion on a "legal question." The Court has determined that "a request from the [United Nations] General Assembly for an advisory opinion to examine a situation by reference to international law concerns a legal question."[9] The Court has also stressed that "questions . . . framed in terms of law and rais[ing] problems of international law . . . are by their very nature susceptible of a reply based on law"[10] and "therefore they appear . . . to be questions of a legal character."[11]

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[5] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971 (21 June 1971), p. 22, para. 20.

[6] See, e.g., G.A. Res. 77/165, U.N. Doc. A/RES/77/165 (Dec. 14, 2022), and G.A. Res. 78/153, U.N. Doc. A/RES/78/153 (Dec. 19, 2023).

[7] See G.A. Res. 76/300, U.N. Doc. A/RES/76/300 (July 28, 2022) (hereinafter "UNGA Healthy Environment Resolution").

[8] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004 (9 July 2004), para. 17 (hereinafter "Construction of a Wall").

[9] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ Reports 2019 (25 February 2019), para. 58.

[10] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports 2010 (22 July 2010), para. 25 (hereinafter "Declaration of Independence in Respect

17. The present request for an advisory opinion frames its central question in terms of law, raises problems of international law, and requires the Court to refer to international law in order to answer the question presented by the request. The first part of the question asks the Court to identify the "obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations"; and the second part of the question asks the Court to identify "legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment" with respect to particular contexts. Thus, the present request is for an advisory opinion on a "legal question."

18. The legal character of the question in the present request for an advisory opinion is not undermined by the possibility that the question might touch on issues of a political or non-legal nature. The Court has affirmed that "the political nature of the motives which may be said to have inspired the request and the political implications that the opinion might have are of no relevance in the establishment of its jurisdiction to give such an opinion."[12] Additionally, "[t]he Court cannot attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task. . . . It is not concerned with the motives which may have inspired this request."[13]

19. The Court has the discretion to decide not to issue an advisory opinion even if the abovementioned jurisdictional requirements are satisfied. Article 65(1) of the Court's Statute, in saying that the Court "may" issue an advisory opinion that is validly requested, implies a degree of discretion in the Court's decision to issue the requested advisory opinion once the Court has established its competence to do so.[14] However, the Court has stressed that, as the principal judicial organ of the United Nations, "its answer to a request for an advisory opinion [from an organ of the United Nations] 'represents its participation in the activities of the [United Nations], and, in principle, should not be refused.'"[15] The Court has also underscored that "only 'compelling reasons' should lead the Court to refuse its opinion in response to a request falling within its jurisdiction."[16]

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of Kosovo"), citing *Western Sahara*, Advisory Opinion, ICJ Reports 1975 (16 October 1975), p. 18, para. 15 (hereinafter "Western Sahara").

[11] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, pp. 233-234, para. 13 (hereinafter "Legality of the Threat or Use of Nuclear Weapons"), citing Western Sahara, *supra* note 10, at p. 18, para. 13.

[12] Id., at p. 234, para. 13. See also Construction of a Wall, *supra* note 8, at p. 155, para. 41; Declaration of Independence in Respect of Kosovo, *supra* note 10, at p. 415, para.27; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 87, para. 33.

[13] *Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter)*, Advisory Opinion, 1948, ICJ Reports 1947-1948, pp. 61-62.

[14] See Legality of the Threat or Use of Nuclear Weapons, *supra* note 11, at pp. 234-335, para.14. See also Construction of a Wall, *supra* note 8, at p. 156, para. 44, Declaration of Independence in Respect of Kosovo, *supra* note 12, at pp. 415-416, para. 29.

[15] Construction of a Wall, *supra* note 8, at, p. 156, para. 44. See also *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, 1951 ICJ, 15, p. 19 (May 28).

[16] Declaration of Independence in Respect of Kosovo, *supra* note 12, at p. 403, para. 30.

20. The Court has never established clear criteria for determining whether there are "compelling reasons" for it to exercise its discretion to refuse to issue a validly authorized and requested advisory opinion. Indeed, the Court has never refused to issue an advisory opinion where the Court had jurisdictional competence to issue an advisory opinion. For the present request, the Court might be pressed to refuse to issue the advisory opinion because of questionable motives of States in the UNGA,[17] or because the advisory opinion will not have any practical positive effect,[18] or because the Court might not be in a position to address the root causes and/or the effects of anthropogenic emissions of greenhouse gases. The Court has rejected similar arguments in the past.[19] Additionally, the present request asks the Court to identify obligations under international law and the legal consequences from breach of those obligations with respect to established science on the anthropogenic emissions of greenhouse gases and their harmful effects, as opposed to conducting a scientific assessment of the same. The Court can also appoint its own experts to examine the scientific issues raised in the present case, in accordance with Article 50 of the Statute of the Court as well as the Court's existing jurisprudence.[20]

21. While there is an absence of compelling reasons for the Court to refuse to issue the advisory opinion in the present request, there are numerous compelling reasons for the Court to exercise its jurisdiction to issue the requested advisory opinion. The preambular paragraphs of UNGA resolution 77/276 outline a litany of reasons why the UNGA was compelled to make the present request, as well as why the Court must exercise its discretion to issue the requested advisory opinion. The preambular paragraphs, *inter alia*:

> "[r]ecogniz[e] that climate change is an unprecedented challenge of civilizational proportions, and that the well-being of present and future generations of humankind depends on our immediate and urgent response to it";
>
> "[n]ot[e] with profound alarm that emissions of greenhouse gases continue to rise despite the fact that all countries, in particular developing countries, are vulnerable to the adverse effects of climate change and that those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, are already experiencing an increase in such effects";

[17] See, e.g., id., at para. 32 ("One argument, advanced by a number of participants in the present proceedings, concerns the motives behind the request. . . . According to those participants, . . . the opinion of the Court was being sought not in order to assist the General Assembly but rather to serve the interests of one State and that the Court should, therefore, decline to respond.").

[18] See, e.g., id., at para. 34 ("It was also suggested by some of those participating in the proceedings that [the request for an advisory opinion] gave no indication of the purpose for which the General Assembly needed the Court's opinion and that there was nothing to indicate that the opinion would have any useful legal effect. This argument cannot be accepted. The Court has consistently made clear that it is for the organ which requests the opinion, and not for the Court, to determine whether it needs the opinion for the proper performance of its functions").

[19] See, e.g., id., at paras. 32–35.

[20] ICJ Statute, *supra* note 1, at art. 50. See also, e.g., *Whaling in the Antarctic, Australia v Japan: New Zealand intervening*, Judgment, 31 March 2014, [2014] ICJ Rep 226.

"[n]ot[e] with utmost concern the scientific consensus, expressed inter alia in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouses gases are unequivocally the dominant cause of the global warming observed since the mid-20th century, that human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability, and that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected"; and

"[a]cknowledg[e] that as temperatures rise, impacts from climate and weather extremes, as well as slow onset events, will pose an ever-greater social, cultural, economic, and environmental threat."

22. The Court's issuance of an advisory opinion in accordance with the present request will provide invaluable and authoritative legal guidance to the UNGA in identifying the relevant obligations of States under international law pertaining to addressing the climate crisis, as outlined in the aforementioned preambular paragraphs from UNGA Resolution 77/276; as well as the legal consequences arising from the breach of those obligations, in the particular contexts outlined in the present request. The identification of these legal obligations and legal consequences for breaching those obligations will in turn provide the UNGA with critical tools for responding to the climate crisis with a greater degree of ambition and effectiveness than it has managed to date.

CHAPTER III

THE CLIMATE CRISIS AND THE FEDERATED STATES OF MICRONESIA

23. The Federated States of Micronesia is a small island developing State that has sovereignty, sovereign rights, and jurisdiction over nearly three million square kilometers of the Pacific Ocean, inclusive of the marine biological diversity and resources therein (living and non-living), but not necessarily including continental shelves beyond 200 nautical miles from the baselines from which the breadth of the baselines of the Federated States of Micronesia is measured and over whose natural resources the Federated States of Micronesia has sovereign rights.

24. For the Federated States of Micronesia, current projections see the Federated States of Micronesia experiencing up to 2.1 to 4 degrees Celsius of warming by 2090, with every year since 2000 having been warmer in the Federated States of Micronesia than the pre-industrial average for the same area and the temperature rising at a faster rate overall in recent decades in the Federated States of Micronesia region.[21] Sea-level rise in the Federated States of Micronesia region is projected to potentially be as high as 1.23 meters by the end of the 21st century,[22] putting at grave risk communities living on low-lying islands and atolls, as well as low-lying coastal areas in "high" volcanic islands, throughout the Federated States of Micronesia. While tropical cyclone / typhoon incidence might decrease as a total number in the Federated States of Micronesia region as the region warms, the incidence of *severe* (category 4 or 5) tropical cyclones / typhoons will likely increase, and so will the average *intensity* of the tropical cyclones / typhoons that do occur.[23] Due to Ocean acidification, it is projected that the Federated States of Micronesia region could experience severe coral bleaching on an annual basis by 2038.[24] Finally, the maximum fisheries catch potential for the Federated States of Micronesia region could decline by 50 percent by 2050.[25]

25. The Federated States of Micronesia is also part of a large political and legal grouping of Pacific Island countries and territories ("PICTs") controlling over 27 million square kilometers of the maritime space, or approximately eight percent of the global Ocean.[26]

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[21] 'NextGen' Projections for the Western Tropical Pacific: Current and Future Climate for Federated States of Micronesia. Final report to the Australia-Pacific Climate Partnership for the Next Generation Climate Projections for the Western Tropical Pacific project, p. 3. Commonwealth Scientific and Industrial Research Organization (CSIRO) and Secretariat of the Pacific Regional Environment Programme (SPREP) 2021, accessible at https://doi.org/10.25919/tjwo-j296.

[22] Id., at p. 21.

[23] Id., at p. 19.

[24] Pacific 'NextGen' Projections Digital Digest, p. 22, accessible at https://www.rccap.org/uploads/files/aaa60215-85fd-4020-891c-64c40cb9f0e7/NextGen%20Digital%20Digest_Updated.pdf.

[25] Id.

[26] There are 22 Pacific Island countries and territories ("PICTs") in this grouping. 14 of those PICTs are independent Pacific Island countries that traditionally coordinate as a group called the Pacific Small Island Developing States ("PSIDS") in various Ocean-related multilateral fora (e.g., the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity). Those fourteen PSIDS are: Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, the Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. The remaining 8 PICTs are: American Samoa,

While the various harmful effects of anthropogenic emissions of greenhouse gases referenced above for the Federated States of Micronesia apply in kind to the rest of the PICTs, Ocean acidification and other Ocean-related consequences of anthropogenic emissions of greenhouse gases deserve particular mention, given the impacts on marine biological diversity in the PICTs region as well as the ability of PICTs to exploit or otherwise manage and enjoy such biological diversity.

26. The region covered by the PICTs encompasses more than a quarter of the world's coral reefs, with 11 PICTs having at least twice as much coral reef coverage as land.[27] Nearly half of coral reef islands among the PICTs are considered threatened from various stressors, with a fifth of them classified as highly or very highly threatened.[28] The major stressors are primarily overfishing and coastal infrastructure development at present, but Ocean acidification is projected to worsen such stressors as well as contribute as its own stressor for PICTs. Specifically, by mid-century, the tropical Pacific will likely have less than 15 percent of coral reef area that is at least adequate for coral growth (i.e., aragonite saturation levels no lower than 3.5), with some parts of the region having no more than marginal prospects (i.e., aragonite saturation states less than 3).[29] In such weakened conditions, coral reefs will be particularly vulnerable to other stressors such as coral bleaching that are also caused by anthropogenic emissions of greenhouse gases.[30]

27. Ocean acidification weakens coral reef systems, which are the primary habitats of reef fish.[31] Additionally, Ocean acidification may disrupt olfactory cues used by reef fish to locate their habitats and avoid predators.[32] Relatedly, shellfish such as oysters and giant clams that are commercially viable in the Pacific are directly impacted by Ocean acidification due to poor conditions for shell production.[33]

Commonwealth of the Northern Mariana Islands, French Polynesia, Guam, New Caledonia, Pitcairn Islands, Tokelau, and Wallis and Futuna. These remaining PICTs are territories or are otherwise similarly classified as linked to (if not part of) other countries (i.e., the United States of America, France, New Zealand, and the United Kingdom), as opposed to being independent Pacific Island countries.

[27] Specifically, the PICTs are Cook Islands, Federated States of Micronesia, French Polynesia, Kiribati, Marshall Islands, Palau, Pitcairn Islands, Tokelau, Tonga, Tuvalu, and Wallis & Futuna. Johann Bell, et al., *Vulnerability of tropical Pacific fisheries and aquaculture to climate change: Summary for Pacific island countries and territories*, Secretariat of the Pacific Community (2011) (hereinafter Bell 2011).

[28] Lauretta Burke, Katie Reytar, Mark Spalding, and Allison Perry, *Reefs at risk revisited*, World Resources Institute (2011).

[29] Andrew Lenton, Kathleen Mcinnes, and Julian O'Grady, *Marine Projections of Warming and Ocean Acidification in the Australasian Region*, 65 AUSTRALIAN METEOROLOGICAL AND OCEANOGRAPHIC JOURNAL S1-S28 (2015).

[30] K. J. Meissner, T. Lippmann, and A. Sen Gupta, *Large-scale stress factors affecting coral reefs: Open ocean sea surface temperature and surface seawater aragonite saturation over the next 400 years*, 31 CORAL REEFS 309-319 (2012). *See also* Ruben van Hooidonk, Jeffrey Allen Maynard, Derek Manzello, and Serge Planes, *Opposite latitudinal gradients in projected ocean acidification and bleaching impacts on coral reefs*, 20 GLOBAL CHANGE BIOLOGY 103-112 (2014).

[31] Morgan S. Pratchett et al., *Vulnerability of coastal fisheries in the tropical Pacific to climate change*, *in* Bell 2011, *supra* note 27, at 493-576.

[32] Philip Munday et al., *Ocean acidification impairs olfactory discrimination and homing ability of a marine fish*, 106 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES 1848-1852 (2009) (hereinafter Munday); *see also* Danielle Dixson, Philip Munday, and Geoffrey Jones, *Ocean acidification disrupts the innate ability of fish to detect predator olfactory cues*, 13 ECOLOGY LETTERS 68-75 (2010).

[33] Kristy Kroeker et al., *Impacts of ocean acidification on marine organisms: quantifying sensitivities and interaction with warming*, 19 GLOBAL CHANGE BIOLOGY 1884-1896 (2013).

28. Fish and shellfish are essential for food security for PICTs. Fish provides anywhere from half to nearly all of animal protein for populations in PICTs, with fish consumption per person in some PICTs being at least three times greater than the global average.[34] In 17 PICTs, nearly half of all households earn their primary or secondary incomes from subsistence fishing.[35] Demersal (i.e., bottom-dwelling) fisheries make up approximately 50 to 60 percent of coastal fisheries among the PICTs. Demersal fisheries are strongly dependent on healthy coral reef systems and are considered to be particularly vulnerable to Ocean acidification.

29. Tuna fisheries are also of particular interest for PICTs, given how dependent the economies and food security of many PICTs are on their exploitation.[36] Ocean acidification will likely affect tuna fisheries by disrupting the food webs for tuna in a number of ways. Specifically, phytoplankton and zooplankton will find it more challenging to make use of aragonite in the Ocean to build their skeletons,[37] and the increased absorption of carbon dioxide by the Ocean will worsen oxygen levels in the Ocean and harm deep Ocean organisms that depend on oxygen (and on which tuna feeds).

30. Although scientific research remains relatively sparse, there are preliminary indications of direct effects of Ocean acidification on tuna, including the skipjack, yellowfin, bigeye, and albacore species of particular economic value for PICTs. Specifically, there are indications that declining Ocean pH may lead to major reductions in the survivability of yellowfin tuna larvae,[38] lower rates of tuna egg production,[39] and disruptions in the spatial orientation and hearing capabilities of tuna.[40]

31. The impacts of Ocean acidification, Ocean warming, and other consequences of anthropogenic emissions of greenhouse gases on the PICTs region as a whole have particular resonance for the Federated States of Micronesia. The Federated States of Micronesia's collective maritime area is one of the largest and most productive in the Western and Central Pacific Ocean. The Federated States of Micronesia depends heavily on its fisheries for income and food security; marine fisheries comprise 80% of the Federated States of Micronesia's total exports and provide approximately 110kg of protein consumption per capita in the Federated States of Micronesia, a remarkably high number compared to the consumption patterns of most other countries. Of particular

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[34] Johann Bell et al., *Planning the use of fish for food security in the Pacific*, 33 MARINE POLICY 64-76 (2009); *see also* Johann Bell et al., *Implications of climate change for contributions by fisheries and aquaculture to Pacific Island economics and communities*, *in* VULNERABILITY OF TROPICAL PACIFIC FISHERIES AND AQUACULTURE TO CLIMATE CHANGE (Johann Bell et al., eds., 2011).

[35] *Status report: Nearshore and reef fisheries and aquaculture*, Secretariat of the Pacific Community (2008), *available at* www.spc.int/DigitalLibrary/Doc/FAME/Reports/Anon_08_ FisheriesStatusReport.pdf.

[36] Johann Bell and Mary Taylor, *Building climate-resilient food systems for Pacific Islands*, WorldFish (2015).

[37] Victoria J. Fabry et al., *Impacts of ocean acidification on marine fauna and ecosystem processes*, 65 ICES JOURNAL OF MARINE SCIENCE 414-432 (2008).

[38] Don Bromhead et al., *The potential impact of ocean acidification upon eggs and larvae of yellowfin tuna* (Thunnus albacares), 113 DEEP SEA RESEARCH II 268-279 (2015).

[39] Hans Pörtner and Anthony Farrell, *Physiology and climate change*, 322 SCIENCE 690-692 (2008).

[40] Munday, *supra* note 32.

importance for the Federated States of Micronesia is the exploitation and management of tuna stocks in the Federated States of Micronesia's waters; the vast majority of the fisheries activities in the Federated States of Micronesia's waters target tuna, bringing in approximately 170,000 tonnes in annual catch.[41]

32. The impacts of anthropogenic emissions of greenhouse gases around the world will have harmful effects to the Federated States of Micronesia, the PICTs, and other small island developing States, including in the near-term and medium-term. The Greenland Ice Sheet is nearing a tipping point, with accelerated melting expected.[42] The melting Greenland Ice Sheet is already the largest single contributor to the rate of global sea-level rise. When all of Greenland melts, it will contribute 5–7 meters of sea-level rise.[43] While fully melting the Greenland Ice Sheet could take millennia, the rate of future melt, and hence rate of sea-level rise, depends "strongly on the magnitude and duration of the temperature overshoot" beyond 1.5 degrees Celsius.[44]

33. The Atlantic Meridional Overturning Circulation ("AMOC") is another irreversible tipping point that risks collapse beyond 1.5 degrees Celsius.[45] The AMOC is an ocean current that circulates life-sustaining warmth and nutrients to the North Atlantic.[46] Flows of freshwater from Arctic ice melt, including from the Greenland Ice Sheet, are expected to weaken this circulation,[47] and several early warning signals indicate that it is approaching its tipping point,[48] with collapse estimated as early as the 2050s.[49] AMOC collapse would shift weather patterns around the world, including in the Pacific Ocean,

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[41] See Annual Report on the Federated States of Micronesia to the Western and Central Pacific Fisheries Commission, Part 1: Information on Fisheries, Research, and Statistics, Scientific Committee, Eighteenth Regular Session, pg. 3, Aug. 2023, WCPFC-SC19-AR/CCM-06 (Rev. 01).

[42] Boers N. & Rypdal M. (2021) *Critical slowing down suggests that the western Greenland Ice Sheet is close to a tipping point*, PROC. NAT'L. ACAD. SCI. 118(21): 1–7, 1.

[43] Fox-Kemper B., *et al.* (2021) *Chapter 9: Ocean, Cryosphere and Sea Level Change*, *in* CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS, *Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Masson-Delmotte V., *et al.* (eds.), 1308–1309, 1302. *See also* Wang S., Foster A., Lenz E. A., Kessler J. D., Stroeve J. C., Anderson L. O., Turetsky M., Betts R., Zou S., Liu W., Boos W. R., & Hausfather Z. (2023) *Mechanisms and Impacts of Earth System Tipping Elements*, REV. GEOPHYS. 61: 1–81, 19–20.

[44] Robinson A., Calov R., & Ganopolski A. (2012) *Multistability and critical thresholds of the Greenland ice sheet*, NAT. CLIM. CHANGE 2(6): 429–432, 429.

[45] Armstrong McKay D. I., Staal A., Abrams J. F., Winkelmann R., Sakschewski B., Loriani S., Fetzer I., Cornell S. E., Rockström J., & Lenton T. M. (2022) *Exceeding 1.5°C global warming could trigger multiple climate tipping points*, SCIENCE 377(6611): 1–10, 8.

[46] National Oceanic and Atmospheric Administration, National Ocean Service (20 January 2023) *What is the Atlantic Meridional Overturning Circulation (AMOC)?*

[47] Haine T. W. N., Siddiqui A. H., & Jiang W. (2023) *Arctic freshwater impact on the Atlantic Meridional Overturning Circulation: status and prospects*, PHIL. TRANS. R. SOC. A. 381(2262): 1-18, 1.

[48] van Westen R. M., Kliphuis M., & Dijkstra H. A. (2024) *Physics-based early warning signal shows that AMOC is on tipping course*, SCI. ADV. 10(6): 1–11, 6. *See also* Boers N. & Rypdal M. (2021) *Critical slowing down suggests that the western Greenland Ice Sheet is close to a tipping point*, PROC. NAT'L. ACAD. SCI. 118(21): 1–7, 1; *and* Michel S. L. L., Swingedouw D., Ortega P., Gastineau G., Mignot J., McCarthy G., & Khodri M. (2022) *Early warning signal for a tipping point suggested by a millennial Atlantic Multidecadal Variability reconstruction*, NAT COMMUN 13(1): 1-14, 8.

[49] Ditlevsen P. & Ditlevsen S. (2023) *Warning of a forthcoming collapse of the Atlantic meridional overturning circulation*, NAT. COMMUN 14(4254): 1–12, 6–7.

with devastating consequences,[50] and could accelerate tipping of other vulnerable climate systems,[51] worsening climate impacts in the Federated States of Micronesia and other parts of the Pacific Ocean.

34. Self-perpetuating feedback loops are further accelerating warming. Loss of the Arctic's reflective snow and ice, which is being replaced with darker ocean and land that absorbs rather than reflects incoming solar radiation, contributes to "Arctic amplification," where the Arctic is warming at four times the global average.[52] The Arctic could be sea ice-free in September within 10 to 15 years.[53] In the extreme case when all Arctic sea ice is lost for the sunlit months, as could happen as early as mid-century,[54] it will add the equivalent of 25 years of current anthropogenic emissions of greenhouse gases.[55] Loss of land-based snow and ice could double this.[56]

35. It will not be possible for small island developing States like the Federated States of Micronesia and other PICTs to adapt to the tipping points, including in the near-term, which makes it imperative to slow warming in the near-term to keep the 1.5 degrees Celsius within reach with limited or no overshoot.

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[50] Orihuela-Pinto B., England M. H., & Taschetto A. S. (2022) *Interbasin and interhemispheric impacts of a collapsed Atlantic Overturning Circulation*, NAT. CLIM. CHANG. 12(6): 558–565, 558. *See also* Intergovernmental Panel on Climate Change (2023) AR6 SYNTHESIS REPORT: CLIMATE CHANGE 2023, *Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Arias P., Bustamante M., Elgizouli I., Flato G., Howden M., Méndez C., Pereira J., Pichs-Madruga R., Rose S. K., Saheb Y., Sánchez R., Ürge-Vorsatz D., Xiao C., & Yassaa N. (eds.), 43; *and* Wang S., Foster A., Lenz E. A., Kessler J. D., Stroeve J. C., Anderson L. O., Turetsky M., Betts R., Zou S., Liu W., Boos W. R., & Hausfather Z. (2023) *Mechanisms and Impacts of Earth System Tipping Elements*, REV. GEOPHYS. 61: 1–81, 5, 32–33.

[51] Wang S., Foster A., Lenz E. A., Kessler J. D., Stroeve J. C., Anderson L. O., Turetsky M., Betts R., Zou S., Liu W., Boos W. R., & Hausfather Z. (2023) *Mechanisms and Impacts of Earth System Tipping Elements*, REVIEWS OF GEOPHYSICS 61(1): 1-81, 9. *See also* Armstrong McKay D. I., Staal A., Abrams J. F., Winkelmann R., Sakschewski B., Loriani S., Fetzer I., Cornell S. E., Rockström J., & Lenton T. M. (2022) *Exceeding 1.5°C global warming could trigger multiple climate tipping points*, SCIENCE 377(6611): 1–10, 5.

[52] Rantanen M., Karpechko A. Y., Lipponen A., Nordling K., Hyvärinen O., Ruosteenoja K., Vihma T. & Laaksonen A. (2022) *The Arctic has warmed nearly four times faster than the globe since 1979*, COMMUN. EARTH ENVIRON. 3(168): 1–10, 3. *See also* Jacobs P., Lenssen N. J. L., Schmidt G. A., & Rohde R. A. (2021) *The Arctic Is Now Warming Four Times As Fast As the Rest of the Globe*, Presentation at the American Geophysical Union Fall Meeting, A13E-02; *and* Chylek P., Folland C., Klett J. D., Wang M., Hengartner N., Lesins G., & Dubey M. K. (2022) *Annual Mean Arctic Amplification 1970–2020: Observed and Simulated by CMIP6 Climate Models*, GEOPHYS. RES. LETT. 49(13): 1–8, 1.

[53] Kim Y.-H., Min S.-K., Gillett N. P., Notz D., & Malinina E. (2023) *Observationally-constrained projections of an ice-free Arctic even under a low emission scenario*, NAT. COMMUN. 14: 3139. *See also* Bonan D. B., Schneider T., Eisenman I., & Wills R. C. J. (2021) *Constraining the Date of a Seasonally Ice-Free Arctic Using a Simple Model*, GEOPHYS. RES. LETT. 48(18): 1–12, 1; Docquier D. & Koenigk T. (2021) *Observation-based selection of climate models projects Arctic ice-free summers around 2035*, COMMUN. EARTH ENVIRON. 2(144): 1–8, 4, 6; Peng G., Matthews J. L., Wang M., Vose R., & Sun L. (2020) *What Do Global Climate Models Tell Us about Future Arctic Sea Ice Coverage Changes?*, CLIMATE 8(15): 1–24, 17; *and* Overland J. E. & Wang M. (2013) *When will the summer Arctic be nearly sea ice free?*, GEOPHYS. RES. LETT. 40(10): 2097–2101, 2097.

[54] Bonan D. B., Schneider T., Eisenman I., & Wills R. C. J. (2021) *Constraining the Date of a Seasonally Ice-Free Arctic Using a Simple Model*, GEOPHYS. RES. LETT. 48(18): 1–12, 1.

[55] Pistone K., Eisenman I., & Ramanathan V. (2019) *Radiative Heating of an Ice-Free Arctic Ocean*, GEOPHYS. RES. LETT. 46(13): 7474–7480, 7477.

[56] Wadhams P. (2017) A FAREWELL TO ICE: A REPORT FROM THE ARCTIC, Oxford University Press, 107–108.

CHAPTER IV

OBSERVATIONS ON THE QUESTION PRESENTED

36. This Chapter begins with a discussion of the indivisible and unified nature of the question referred to the Court in the present request, particularly with respect to the links between the first part of the question on obligations of States under international law and the second part of the question on the legal consequences for States for breaching these obligations; followed by a discussion of the chapeau of the question as presented in UNGA resolution 77/276; and concluding with an analysis of the two parts of the question presented.

The UNGA referred a single legal question to the Court, with multiple parts

37. The UNGA, in its resolution 77/276, "[d]ecide[d], in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following **question**:

> 'Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,
>
> (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;
>
> (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
>
> (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
> (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?'"[57]

38. The use of the word "question," the use of a singular set of quotation marks encompassing the entirety of the "question" presented, and the use of a semi-colon

[57] G.A. Res. 77/276, U.N. Doc. A/RES/77/276 (Mar. 29, 2023) (hereinafter "UNGA Request") (emphasis added).

between sub-paragraphs (a) and (b) rather than a question mark indicate that there is a singular question presented to the Court, with multiple parts therein, including a chapeau (i.e., the section of the question directing the Court to have "particular regard" to a number of international legally binding instruments, human rights, and other rules and principles of international law when issuing the requested advisory opinion) and two parts requesting the Court to identify obligations of States under international law and legal consequences under these obligations for States that have breached these obligations in the particular context outlined in the question presented. If the Court is to issue the requested advisory opinion with full fidelity to UNGA resolution 77/276, then the Court must treat the request as containing a singular question, with multiple interlinked parts; as opposed to a request containing multiple questions, which the Court might choose to answer only in part.

39. The Federated States of Micronesia acknowledges that in his letter to the Court dated 12 April 2023, in which he informed the Court of the UNGA's adoption of resolution 77/276, United Nations Secretary-General António Guterres stated that the UNGA requested the Court to render an advisory opinion on the "questions" presented in that resolution.[58] This must not be taken by the Court as being dispositive as to whether there is a single question or multiple questions referred to the Court in the present request. Rather, it is the language in UNGA resolution 77/276 that is dispositive, including its use of the singular "question" rather than "questions."

40. It also bears mentioning that in each of two recent requests from the UNGA to the Court for advisory opinions – specifically, requests for advisory opinions on "Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965" and on "Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem" – the UNGA requested that the Court render an advisory opinion on "questions" presented in each request, with each request comprised of two distinct (albeit related) questions.[59] The fact that the UNGA, in the present case, requested the Court to issue an advisory opinion on a singular "question," even if broken up into multiple parts, compels the Court to be particularly careful of honoring the UNGA's request in this regard.

Chapeau of the legal question

41. The legal question at the heart of UNGA resolution 77/276 on which the UNGA requests the Court to issue an advisory opinion is prefaced by a chapeau that, among other things, lists a number of international legally binding instruments, human rights, and other rules and principles of international law to which the Court must have "particular regard." Specifically, the chapeau says:

[58] See Request for Advisory Opinion transmitted to the Court pursuant to General Assembly resolution 77/276 of 29 March 2023 (Apr. 12, 2023), General List No. 187.
[59] See G.A. Res. 71/292, U.N. Doc. A/RES/71/292 (June 22, 2017). See also G.A. Res. 77/247, U.N. Doc. A/RES/77/247, UNGA resolution 71/292 (Dec. 30, 2022), at para. 18.

> Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment

42. It is the view of the Federated States of Micronesia that the chapeau does not impose a closed universe of sources of international law from which the Court must draw in issuing its advisory opinion in the present request. The phrase "particular regard" instead indicates that the Court must pay close but not exclusive attention to the sources of international law listed in the chapeau. The UNGA has not asked the Court to ignore other sources of international law not explicitly mentioned in the chapeau. Indeed, the preambular paragraphs of UNGA resolution 77/276 list a number of sources of international law not explicitly referenced in the chapeau of the question, including the Convention on the Rights of the Child, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity, and the Kyoto Protocol.[60] Additionally, the sources of international law explicitly referenced in the chapeau of the question themselves contain a large number of rules and principles of international law that are not mentioned in the chapeau but which are also relevant for the present request.

43. It bears mentioning that in issuing the requested advisory opinion, the Court is required to apply categories of sources of international law identified in Article 38(1) of its Statute. Specifically:

> The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>
> (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
>
> (b) international custom, as evidence of a general practice accepted as law;
>
> (c) the general principles of law recognized by civilized nations;
>
> (d) subject to the provisions of Article 59 [of the Statute of the Court], judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.[61]

44. This Written Statement will thus refer to all relevant primary as well as subsidiary or secondary sources of international law – particularly, but not limited to, those sources identified in the chapeau to the legal question as well as the preambular paragraphs of UNGA resolution 77/276 – in addressing the legal question, in accordance with the approach outlined in Article 38(1) of the Statute of the Court. This includes, among other

[60] UNGA Request, *supra* note 57.
[61] ICJ Statute, *supra* note 1, at art. 38(1).

things, referring to treaties and other international legally binding instruments (which this Written Statement will sometimes call "treaty law" for the sake of brevity), customary international law, general principles of law, judicial decisions, and the writings of "the most highly qualified publicists" on international law.

45. The Federated States of Micronesia stresses that this Written Statement's discussion of specific citations from the above-mentioned sources of international law – i.e., specific treaty law, customary international law, general principles of law, judicial decisions, and writings of "the most highly qualified publicists" on international law – is not necessarily an exhaustive one and should not be interpreted by the Court as indicating that the Federated States of Micronesia does not consider other citations to be inapplicable.

First part of the legal question

46. This section of the Written Statement will discuss the first part of the legal question referred by the UNGA to the Court in the present request, mindful (as discussed above) that the legal question is a singular and indivisible one with two main parts (as well as a chapeau), and that both parts of the legal question must be answered by the Court; and mindful as well of the guidance provided by the chapeau to the legal question (as discussed above as well).

47. The first part of the legal question is as follows:

> What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

48. The positions of the Federated States of Micronesia with respect to the first part of the legal question are summarized below, followed by a discussion of specific sources of international law in support of the summarized positions of the Federated States of Micronesia. Specifically, the positions of the Federated States of Micronesia are the following:

    i. Each State has a general obligation under international law, owed to all other States as well as to present and future generations of humankind, to ensure the protection and stability of the climate system and other parts of the natural environment from the harmful effects of anthropogenic emissions of greenhouse gases.
    ii. This general obligation under international law is based on treaty law, customary international law, general principles of law, relevant judicial decisions, and a clear consensus among the writings of "the most highly qualified publicists" on international law. As a necessary corollary, this general obligation is not limited to the provisions of any particular source of international law (e.g., the United Nations Framework Convention on Climate Change), but is instead derived from multiple sources of international law of relevance to addressing anthropogenic emissions of

greenhouse gases and their harmful effects on the climate system and other parts of the natural environment.

iii. Protection of the climate system and other parts of the natural environment from the harmful effects of anthropogenic emissions of greenhouse gases for the benefit of present and future generations of humankind requires the application of sources of international law pertaining to obligations owed to individuals and groups of individuals, as distinct from obligations owed to States. Such obligations owed to individuals and groups of individuals include, but are not limited to, the protection of human rights and the collective rights of Indigenous Peoples that are affected by harms to the climate system and other parts of the natural environment due to anthropogenic emissions of greenhouse gases, as well as the taking into account of principles of intergenerational and intragenerational equity.

49. The positions of the Federated States of Micronesia summarized above are based on, among other things, the application of a range of relevant principles of international law – particularly, but not limited to, principles of international environmental law – many of which are derived from treaty law and customary international law and supported by relevant judicial decisions and the writings of "the most highly qualified publicists" on international law. The positions are also based on a canvassing of international human rights law and the collective rights of Indigenous Peoples, as pertaining to the negative impacts of anthropogenic emissions of greenhouse gases on the enjoyment of those canvassed rights. And, the positions are based on examinations of specific provisions in a number of relevant treaties.

50. This Written Statement takes an expansive view of the phrase "climate system and other parts of the environment" as referenced in the question presented in UNGA resolution 77/276. The Federated States of Micronesia follows the definition of "climate system" used by the Intergovernmental Panel on Climate Change ("IPCC"), which defines the "climate system" as:

> the highly complex system consisting of five major components: the atmosphere, the hydrosphere, the cryosphere, the lithosphere and the biosphere and the interactions between them. The climate system evolves in time under the influence of its own internal dynamics and because of external forcings such as volcanic eruptions, solar variations and anthropogenic forcings such as the changing composition of the atmosphere and land-use change.[62]

51. The question in the present request references "other parts of the environment" relative to the "climate system." This implies that "climate system" is not the sole object of the impacts of anthropogenic emissions of greenhouse gases, even though the definition used by the IPCC is an expansive one. This also implies that "other parts of the environment" should be related to the "climate system." In this respect, for the Federated States of Micronesia, in the interest of full clarity, "other parts of the environment" should be

[62] See "Annex II - Glossary - Intergovernmental Panel on Climate Change" (ipcc.ch2018), accessible at https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-AnnexII_FINAL.pdf (last accessed on March 15, 2024).

understood by the Court to mean other parts of the ***natural*** environment (as opposed to, for example, the economic environment), given that the "climate system" is comprised of at least five major ***environmental*** components (i.e., the atmosphere, the hydrosphere, the cryosphere, the lithosphere, and the biosphere, and the interactions between them).

52. This part of the Written Statement will first consider the relevant principles of international law, followed by international human rights law and the collective rights of Indigenous Peoples, and concluding with specific provisions in particular treaties. There is no clear-cut delineation between these three elements, however, as each one element has links to one or both of the other elements.

Transboundary harm

53. Under international law, the principle of transboundary harm requires that States ensure that the activities carried out within their national jurisdictions do not harm the natural environment and territory of other States and other areas beyond each State's national jurisdiction.[63]

54. The principle of transboundary harm is found in multiple treaties and other international legally binding instruments, including the preambles of the United Nations Framework Convention on Climate Change ("UNFCCC"),[64] the Convention on Long-range Transboundary Air Pollution,[65] and the 1985 Vienna Convention for the Protection of the Ozone Layer;[66] Article 3 of the Convention on Biological Diversity;[67] and the 1982 United Nations Convention on the Law of the Sea ("UNCLOS").[68]

55. The principle of transboundary harm is captured in Principle 2 of the Rio Declaration on Environment and Development. The principle has arguably attained the status of being a general principle of law. As explicated in Principle 2:

> States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not

[63] See *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, PCA Case No. 2013-19, Award (12 July 2016), para. 941 (hereinafter "South China Sea") ("The corpus of international law relating to the environment . . . requires that States 'ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control.'").
[64] United Nations Framework Convention on Climate Change preamble, May 9, 1992, 1771 U.N.T.S. 107 (hereinafter "UNFCCC").
[65] Convention on Long-range Transboundary Air Pollution preamble, Nov. 13, 1979, 1302 U.N.T.S. 217.
[66] Vienna Convention for the Protection of the Ozone Layer preamble, Mar. 22, 1985, 1513 U.N.T.S. 293.
[67] Convention on Biological Diversity art. 3, June 5, 1992, 1760 U.N.T.S. 79 (hereinafter "CBD").
[68] See, e.g., United Nations Convention on the Law of the Sea art. 194 and other articles in Part XI, Dec. 10, 1982, 1833 U.N.T.S. 397 (hereinafter "UNCLOS").

> cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.[69]

56. As Principle 2 indicates, the principle of transboundary harm applies to damage to the environment of not just "other States," but also to the environment "of areas beyond the limits of national jurisdiction." In the view of the Federated States of Micronesia, this applies to, among others, the high seas and the international seabed Area (as defined under the UNCLOS) as well as to the planetary atmosphere beyond the limits of national jurisdiction.

57. The duty of States to avoid transboundary harm from activities within their national jurisdiction is an obligation of due diligence.[70] The exercise of such due diligence, in the view of the Federated States of Micronesia, must be evaluated in accordance with a progressively strict and restrictive standard the higher the magnitude of the transboundary harm at issue, especially if established by strong evidence. In other words, the greater the threat of the transboundary harm to the natural environment of another State or of areas beyond national jurisdiction, the greater the degree to which the harmful State must act to anticipate, prevent, and/or mitigate that harm.

58. In support of this progressively strict and restrictive standard, as the arbitral tribunal in the *Trail Smelter Case (United States v. Canada)* held:

> Under the principles of international law, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.[71]

59. As part of a State's discharge of its duty to prevent transboundary harm from activities within its national jurisdiction, the State is obligated under international law to conduct environmental impact assessments ("EIAs") for such activities prior to deciding whether to authorize those activities to proceed in some form. Principle 17 of the Rio Declaration on Environment and Development provides the classic articulation of the duty to conduct an EIA under international law, as follows:

> Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.[72]

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[69] United Nations Conference on Environment and Development, Rio de Janiero, Braz., June 3-14, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex I (Aug. 12, 1992), principle 2 (hereinafter "Rio Declaration").
[70] See South China Sea, *supra* note 63, at para. 944.
[71] *Trail Smelter Case (United States, Canada)*, Awards, Reports on International Arbitral Awards Vol. III (16 April 1938 and 11 March 1941), pp. 1905–82.
[72] Rio Declaration, *supra* note 69, principle 17.

60. The Court has incorporated and expanded on Principle 17 in several of its Cases, including on the Gabčíkovo-Nagymaros Project[73] and on the Pulp Mills on the River Uruguay.[74] In the Pulp Mills Case, the Court stated that the obligation to carry out an EIA where there is a risk that a proposed activity within the national jurisdiction of a State may cause transboundary harm is "a requirement under general international law."[75] Among other things, the Court's treatment of Principle 17 has been to establish that EIAs must be conducted before a State allows an activity within its national jurisdiction to proceed if such an activity may have a particular degree of harm on the natural environment of not just that State, but also of other States as well as other areas beyond the national jurisdiction of any State.

61. As another part of a State's discharge of its duty to prevent transboundary harm from activities within its national jurisdiction, the State has a duty of notification, wherein the State must consult and negotiate with the other State(s) potentially affected by such transboundary harm. Principle 19 of the Rio Declaration on Environment and Development articulates this duty, as follows:

> States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.[76]

62. In the context of anthropogenic emissions of greenhouse gases, the principle of transboundary harm clearly applies. Such emissions mainly originate from the activities within the national jurisdictions of States, and they primarily (although not exclusively) harm the natural environments and human populations of other States (as well as the overall climate system). The due diligence obligation of a State to prevent transboundary harm from activities within its national jurisdiction applies to anthropogenic emissions of greenhouse gases from such activities, inclusive of requirements to conduct EIAs for such activities and consult and negotiate in good faith with the affected State(s) before deciding whether to proceed with such activities.

Precautionary principle

63. Under international law, the precautionary principle mandates that the lack of full scientific certainty must not used as an excuse to postpone or otherwise put off appropriate measures to prevent environmental harm. The principle was originally articulated in Principle 15 of the Rio Declaration on Environment and Development, as follows:

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[73] See *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Vice-President Weeramantry Separate Opinion, ICJ Reports 1997 (25 September 1997), pp. 111–112 (hereinafter "Gabčíkovo-Nagymaros Project").
[74] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, ICJ Reports 2010 (20 April 2010).
[75] Id., at para. 101.
[76] Rio Declaration, *supra* note 69, principle 19.

> In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.[77]

64. The principle has been incorporated in various forms in over 60 treaties.[78] The International Tribunal for the Law of the Sea has also applied the principle – albeit in the form of a "precautionary approach" – in a number of contentious and advisory cases.[79] The Court has never explicitly adopted the view that the precautionary principle is a principle of international law. However, with respect to anthropogenic emissions of greenhouse gases, the present request represents a significant opportunity for the Court to adopt such a view – specifically, that the threats of harms caused by such emissions are so serious and irreversible that all appropriate measures must be taken by States to prevent such harms, even if there is less-than-full scientific certainty about, for example, attributing particular harms to the particular emissions from activities within the national jurisdictions of particular States.

Duty to cooperate

65. Under international law, the duty to cooperate is foundational, particularly with respect to multilateral treaties addressing environmental harms. In the absence of cooperation between States, the ability of the international community to address major issues of global import in a meaningful and effective manner – including, in particular, the harmful effects of anthropogenic emissions of greenhouse gases – is weakened to a significant degree. As discussed above, this duty to cooperate is articulated in a number of ways, including with respect to the conducting of EIAs for activities that could cause transboundary harm as well as with respect to the duty of consultation, notification, and negotiation.

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[77] Id., principle 15.

[78] See, e.g., Convention on the Protection of the Marine Environment of the North-East Atlantic, Sept. 22, 1992, 2354 U.N.T.S. 67; the Convention on the Protection of the Marine Environment of the Baltic Sea, Sept. 4, 1992, 2009 U.N.T.S. 197; the UNFCCC, *supra* note 64; the Convention of the Protection and Use of Transboundary Watercourses and International Lakes, Mar. 17, 1992, 1936 U.N.T.S. 269; the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, Apr. 8, 1995, 2167 U.N.T.S. 3; the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 2226 U.N.T.S. 208; and the Stockholm Convention on Persistent Organic Pollutants, May 22, 2001, 2256 U.N.T.S. 119. See also the preamble of the CBD, *supra* note 67 ("Where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat").

[79] See, e.g., *Southern Bluefin Tuna (New Zealand v. France; Australia v. Japan)*, Provisional Measures, Order, ITLOS Case No. 3 (1999), 38 ILM 1624, ICGJ 337 (ITLOS 1999) (27 August 1999); *MOX Plant (Ireland v. United Kingdom)*, Provisional Measures Order, ITLOS Reports 2001 (3 December 2001); *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion, Seabed Disputes Chamber, Case No. 17, ITLOS Reports 2011 (1 February 2011) (hereinafter "SDC Advisory Opinion on Activities in the Area").

66. However, it is the view of the Federated States of Micronesia that the duty to cooperate does not take precedence over or supplant other principles of international law that are relevant to addressing the anthropogenic emissions of greenhouse gases, including the principle to prevent transboundary harm as well as the precautionary principle. Put differently, when activities within the national jurisdiction, control, or authority of a State threaten to cause harm to the natural environments and populations of one or more other States or to areas beyond national jurisdiction (inclusive of the climate system), that State cannot be excused under international law from taking all appropriate measures to prevent such harm merely because that State is unable to agree on a cooperative approach to the matter with one or more other relevant States. The duty to cooperate must not be used as justification for taking inadequate measures that represent the least common denominator.

Principle of common but differentiated responsibilities and respective capabilities

67. Under international law, with respect to addressing global environmental harm, the principle of common but differentiated responsibilities and respective capabilities ("CBDR") has two main elements: all States have a common responsibility to protect the natural environments of the planet from anthropogenic harms, but each State's share of that responsibility is qualified by its historical contribution to the harm and its degree of development.

68. Originally articulated in Principle 7 of the Rio Declaration on Environment and Development, the principle of CBDR has been recognized in numerous major treaties pertaining to the protection of the natural environment, including the UNFCCC, its Kyoto Protocol, and the Paris Agreement.[80] In the context of anthropogenic emissions of greenhouse gases, the principle of CBDR has traditionally obligated developed countries to shoulder the lion's share of the common responsibility and take the lead in addressing the harms from such emissions, due to their historical contributions to such emissions and their greater degree of economic development compared to developing countries. The discharge of this obligation by developed countries includes not just the undertaking of significant economy-wide absolute reduction targets for anthropogenic emissions of greenhouse gases, but also the provision by developed countries of finance and other means of implementation to developing countries to assist the latter in addressing harms from such emissions.

Equity

69. Under international law, equity is a general principle of international law that is particularly relevant to addressing potential harms of anthropogenic emissions of greenhouse gases on present and future generations of humankind (as distinct from the potential harms of such emissions on States).

[80] See, e.g., UNFCCC, *supra* note 64, at art. 3(1) (Parties should "protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.").

70. The Court has recognized that "the legal concept of equity is a general principle directly applicable as law" and which the Court must apply when interpreting relevant sources of international law.[81] Equity is reflected in numerous treaties and other instruments pertaining to the protection of the natural environment from anthropogenic harms, including in connection with the principle of CBDR in the UNFCCC, its Kyoto Protocol, and the Paris Agreement (as discussed above) as well as in a number of relevant declarations by the international community.[82] These citations establish that justice and fairness must be key elements in the application and interpretation of obligations in the cited instruments, recognizing differing degrees of contributions by different States to the environmental harms at issue as well as differing degrees of the economic development of the States involved in the matter. This is of particular interest to small island developing States like the Federated States of Micronesia, which are among the least contributors to anthropogenic emissions of greenhouse gases and are among the least developed of States, but which are disproportionately harmed by such emissions.

71. Closely associated with the principle of equity are the principles of intragenerational and intergenerational equity. Intragenerational and intergenerational equity recognize that the planet is shared by all individuals from present and future generations of humankind, and States are obligated to ensure that present and future generations of humankind are able to meet their needs from, and otherwise continue to enjoy, the resources of the planet in perpetuity.

72. International law has not explicitly defined intergenerational equity. However, the concept is discussed in instruments with influence on the development and codification of international law, as well as in the writings of respected international law jurists and scholars, particularly in the context of sustainable development, cultural preservation, and the natural environment.

73. For sustainable development, there is a tradition of international instruments referring to the needs and interests of future generations when implementing development agendas in the present. The Stockholm Declaration adopted by the 1972 United Nations Conference on the Human Environment asserts that the "natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management."[83] The World Commission on Environment and Development, in its 1987 report "Our Common Future," builds on the Principles of the Stockholm Declaration by defining sustainable development as "meeting the needs of the present without compromising the ability of future generations to meet their own

[81] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, ICJ Reports 1982, p. 18, para. 71.
[82] See, e.g., UNFCCC, *supra* note 64, at art. 3; Paris Agreement preamble, art. 2(1), art. 2(2), and art.4, Dec. 12, 2015, 3156 U.N.T.S. 1 (hereinafter "Paris Agreement"); CBD, *supra* note 67, at preamble; United Nations Conference on the Human Environment, Stockholm, Swed., June 16, 1972, Declaration of the United Nations Conference on the Human Environment principles 1 and 12, U.N. Doc. A/CONF.48/14/Rev.1 (hereinafter "Stockholm Declaration"); Rio Declaration, *supra* note 69, principles 3 and 6.
[83] Stockholm Declaration, id., principles 1 and 2.

needs."[84] The 1992 Rio Declaration on Environment and Development, echoing "Our Common Report" and revisiting the 1972 Stockholm Declaration, confirms that the "right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."[85] Finally, in "The Future We Want," the outcome document of the 2012 United Nations Conference on Sustainable Development, States "renew [their] commitment to sustainable development and to ensuring the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations."[86] In the same outcome document, States further acknowledge that "some countries recognize the rights of nature in the context of the promotion of sustainable development" and proclaim their conviction that "in order to achieve a just balance among the economic, social and environmental needs of present and future generations, it is necessary to promote harmony with nature."[87]

74. In the context of cultural resources and preservation, on the matter of intragenerational and intergenerational equity, attention is owed to the 2007 United Nations Declaration on the Rights of Indigenous Peoples, which proclaims the right of Indigenous Peoples "to maintain, protect and develop the past, present and future manifestations of their cultures"[88]; as well as "to maintain and strengthen their distinctive spiritual relationships with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."[89]

75. The concept of intergenerational equity has also long enjoyed substantive representation in a number of treaties of relevance to the climate system and other parts of the natural environment. The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage—which, among other things, is responsible for populating a World Heritage List with sites of cultural significance, including environmental locations—confers upon States Parties the "duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage" inscribed in the World Heritage List.[90] The 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora recognizes that "wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to

[84] World Commission on Environment and Development, *Our Common Future*, ¶ 8, Annex, U.N. Doc. A/42/427 (Aug. 4, 1987).
[85] Rio Declaration, *supra* note 69, principle 3.
[86] United Nations Conference on Sustainable Development, Rio de Janeiro, Brazil, June 20-22, 2012, *The future we want*, para/ 1, U.N. Doc. A/CONF.216/16 (June 22, 2012).
[87] Id., at para. 39; see also id., at para. 86 ("promoting intergenerational solidarity for the achievement of sustainable development") and para/ 158 (committing to "protect, and restore, the health, productivity and resilience of oceans and marine ecosystems, to maintain their biodiversity, enabling their conservation and sustainable use for present and future generations").
[88] United Nations Declaration on the Rights of Indigenous Peoples art. 11(1), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (hereinafter "UNDRIP").
[89] Id., at art. 25.
[90] Convention Concerning the Protection of the World and Cultural Heritage art. 4, Nov. 23, 1972, 1037 U.N.T.S. 151.

come."[91] The 1992 Convention on Biological Diversity expresses the determination of its Contracting Parties to "conserve and sustainably use biological diversity for the benefit of present and future generations,"[92] with "sustainabl[e] use" defined as the use of components of biodiversity "at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations."[93] The 1996 Protocol to the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter expresses the conviction of its States Parties that international action to protect and preserve the marine environment by preventing, reducing, and possibly eliminating maritime pollution is crucial to "meet the needs of present and future generations."[94] And, the UNFCCC commits its Parties "to protect the climate system for the benefit of present and future generations of humankind."[95]

76. International courts and other tribunals have addressed intergenerational equity on a number of occasions. The Court, in its advisory opinion on the Legality of the Threat or Use of Nuclear Weapons, explicitly asserted that "it is the imperative for the Court to take account of the unique characteristics of nuclear weapons, and in particular their ability to cause damage to generations to come."[96] The Court also stressed the great significance it attached to respect for the environment, noting that "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn."[97] In a separate opinion in the 1993 Norway v. Denmark Case regarding maritime delimitation, Judge Weeramantry surveyws the notions of reasonableness and fairness in the customary law of traditional societies around the world and identified various examples "of equit[able principles] broad-based upon global jurisprudence" that emerge from those societies, including "the sacrosanct nature of earth resources, harmony of human activity with the environment, respect for the rights of future generations, and the custody of earth resources with the standard of due diligence expected of a trustee."[98] And, at a regional level, the Inter-American Court of Human Rights discussed intergenerational equity in the Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case, wherein the main decision recognized the relationship of

[91] Convention on International Trade in Endangered Species of Wild Fauna and Flora preamble para. 1, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243.
[92] CBD *supra* note 67, at preamble para. 23.
[93] Id., at art. 2.
[94] 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter preamble para. 8, Nov. 11, 1996, 36 I.L.M. 1 ("BEING CONVINCED that further international action to prevent, reduce and where practicable eliminate pollution of the sea caused by dumping can and must be taken without delay to protect and preserve the marine environment and to manage human activities in such a manner that the marine ecosystem will continue to sustain the legitimate uses of the sea and will continue to meet the needs of present and future generations").
[95] UNFCCC, *supra* note 64, at art. 31.
[96] Legality of the Threat or Use of Nuclear Weapons, *supra* note 11, at para. 36.
[97] Id., at para. 29. see also Gabcikovo-Nagymaros Project, *supra* note 73., at para. 53 ("The Court recalls that it has recently had occasion to stress, in the following terms, the great significance that it attaches to respect for the environment, not only for States but also for the whole of mankind . . . 'including generations unborn'").
[98] Maritime Delimitation in the Area between Greenland and Jan Mayen (Den. v. Nor.), 1993 I.C.J. 211, 276 (June 14) (separate opinion of Judge Weeramantry).

the indigenous community of the Awas Tingni to their ancestral land as critical to "preserve their cultural legal and transmit it to future generations."[99]

77. The relevance of the principles of intragenerational and (especially) intergenerational equity to the present request is clear. They underscore that States have an obligation to consider and address the potential harmful impacts of anthropogenic emissions of greenhouse gases on the ability of present and future generations of humankind to enjoy the environmental resources of the planet for perpetuity.

Human rights and the collective rights of Indigenous Peoples

78. Any examination of the obligations of States to prevent, minimize, mitigate, or otherwise address the harmful effects of anthropogenic emissions of greenhouse gases on the climate system and other parts of the natural environment for other States and for present and future generations of humankind must pay particular attention to the adoption of the UNGA on 28 July 2022 of resolution 76/300, which recognizes the right to a clean, healthy, and sustainable environment as a human right.[100] The resolution notes that "the right to a clean, healthy and sustainable environment is related to other rights and existing international law,"[101] affirms "that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law,"[102] and calls on States and international organizations (among others) to "adopt policies, to enhance international cooperation . . . and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all."[103]

79. The failure by States to discharge all relevant obligations to prevent, minimize, mitigate, or otherwise address the harmful effects of anthropogenic emissions of greenhouse gases on the climate system and other parts of the natural environment, is a violation of the human right to a clean, healthy, and sustainable environment that all members of the international community are obligated to uphold.

80. Even if, assuming *arguendo*, there is some lingering doubt as to whether there actually exists a human right to a clean, healthy, and sustainable environment under international law, despite the adoption of UNGA resolution 76/300, there are multiple other human rights under international law that are long-recognized and well-established, and that are violated by a failure to prevent, minimize, mitigate, or otherwise address the harmful effects of anthropogenic emissions of greenhouse gases on the climate system and other parts of the natural environment. Specifically, a person who is unable to enjoy a healthy climate system and/or other parts of the natural environment will face significant (and legally unacceptable) challenges to their ability to enjoy a range of core human rights

[99] The *Mayagna (Sumo) Indigenous Community of Awas Tingni v Nicaragua*, 2001 Inter-Am. Ct. H.R. (Ser. C) No. 68, at 149 (Aug. 16, 2000) (hereinafter "Mayagna").
[100] UNGA Healthy Environment Resolution, *supra* note 7, at para. 1.
[101] Id., at para. 2.
[102] Id., at para. 3.
[103] Id., at para. 4.

contained in a large number of international and regional human rights instruments, including: the rights to life,[104] adequate food,[105] water,[106] health,[107] an adequate standard of living (including adequate housing),[108] the productive use and enjoyment of property,[109] cultural practices and traditions,[110] and self-determination.[111] International

[104] See, e.g., Universal Declaration of Human Rights art. 3, G.A. Res. 217A, UN GAOR, 3d Sess., 1st plen. mtg., UN Doc. A/810 at 71 (Dec. 12, 1948); International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171 (hereinafter "ICCPR"); Convention on the Rights of the Child art. 6, Nov. 20, 1989, 1577 U.N.T.S. 3 (hereinafter "CRC"); American Convention on Human Rights art. 4, Nov. 21 1969, 1144 U.N.T.S. 143 (hereinafter "ACHR"); European Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4 1950, 213 U.N.T.S. 221; African Charter on Human and Peoples' Rights art. 4, June 27 1981, 1520 U.N.T.S. 217. A natural environment prone to more severe storms/cyclones, droughts, or frequent algal blooms, for example, poses mortal dangers to human populations, thus threatening their right to life.

[105] See, e.g., International Covenant on Economic, Social and Cultural Rights art. 11, Dec. 11 1966, 993 U.N.T.S. 3 (hereinafter "ICESCR"); CRC, *supra* note 104, at art. 24(c); International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities art. 25(f) and art. 28(1), G.A. Res. 61/106, Annex I, UN GAOR, 61st Sess., Supp. No. 49, at 65, UN Doc. A/61/49 (Dec. 13 2006) (hereinafter "CRPD"); Convention on the Elimination of All Forms of Discrimination against Women art. 14(2)(h), Dec. 18 1979, 1249 U.N.T.S. 13 (hereinafter "CEDAW"); International Convention on the Elimination of All Forms of Racial Discrimination art. 5(e), Mar. 7, 1966, 660 U.N.T.S. 195 (hereinafter "ICERD"). Anthropogenic emissions of greenhouse gases undermine subsistence agriculture and fisheries, among other activities, and raise the potential for widespread food shortages, especially for people from regions whose fish intake are major components of their diet and with limited arable land for agricultural development.

[106] See, e.g., CEDAW, *supra* note 105; CRPD, *supra* note 105, at art. 2(2)(a); CRC, *supra* note 104, at art. 24(2)(c). Ocean acidification weakens coral reef systems, a key element of coastal protection, which in turn increases the likelihood of leaking of saltwater into coastal water wells in low-lying islands and atolls, thereby undermining the right to water. Climate change-related sea-level rise presents the same threat to water lenses, particularly in coastal States.

[107] See, e.g., ICESCR, *supra* note 105, at art. 12; CEDAW, *supra* note 105, at art. 12; ICERD, *supra* note 105, at art. 5(e)(iv); CRC, *supra* note 104, at art. 24; CRPD, *supra* note 105, at art. 16(4); European Social Charter art. 11, Oct. 18, 1961, 529 U.N.T.S. 89. Anthropogenic emissions of greenhouse gases, by weakening coastal protections such as coral reef systems and mangrove forests and aggravating environmental conditions conducive to the spread of vector-borne diseases (among other ailments), imperil water security in freshwater wells as well as food plantations (such as taro) located near-shore and endanger the health of resident populations, thereby diminishing health standards for those affected.

[108] See, e.g., ICESCR, *supra* note 105, at art. 11; ICERD, *supra* note 105, at art. 5(e)(iii); CEDAW, *supra* note 105, at art. 14(2); CRC, *supra* note 104, at art. 27(3). Anthropogenic emissions of greenhouse gases, by weakening coastal protections such as coral reef systems and mangrove forests, threaten coastal settlements, particularly in low-lying islands and atolls where populations have little choice but to establish settlements on or near the coasts.

[109] See, e.g., Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 1, Mar. 20, 1952, E.T.S. 9; ACHR, *supra* note 104, at art. 21. In a typical Pacific Island population such as those in the Federated States of Micronesia, marine environments are the source of property holdings as well as resources for fashioning new properties (e.g., coral reefs for foundations, seabed sand for construction), so the destruction of those marine environments—including from anthropogenic emissions of greenhouse gases—will hinder the enjoyment of those properties. The same applies to forest areas that are the source of building materials for many such populations.

[110] See, e.g., ICCPR, *supra* note 104, at art. 27. Cultural and traditional practices that are connected to the natural environment are undermined by anthropogenic greenhouse has emissions, which threaten totemic and clan-centric marine life (e.g., sharks, whales, certain reef fish) and key elements of cultural/traditional activities (e.g., reef fisheries, which are often communal activities done to perpetuate cultural norms and maintain traditional power alliances; traditional medicine gathering from forests).

[111] See, e.g., U.N. Charter art. 1(2); ICESCR, *supra* note 105, at art. 1; ICCPR, *supra* note 104, at art. 1. The right to self-determination is undermined if anthropogenic emissions of greenhouse gases threaten a population's permanent sovereignty over natural resources, i.e., the right "for their own ends, [to] freely dispose of the [] natural wealth and resources" within their respective territories, which is a core element of the right of peoples to self-determination.

and human rights courts have also identified the right to a healthy environment, or at least to the resources therein, pursuant to sustainable development as well as with respect to the collective rights of Indigenous Peoples.[112]

81. The collective rights of Indigenous Peoples under international law, as well as the identification of Indigenous Peoples as collective rights-holders under international law, deserve careful and particular attention by the Court, in light of the second part of the question in the present request addressing "***Peoples and individuals*** of the present and future generations affected by the adverse effects of climate change" (emphasis added). In this respect, international law makes a distinction between the human rights of individuals on the one hand, and the collective rights of groups like Indigenous Peoples on the other hand. The enjoyment of both sets of rights is negatively impacted by anthropogenic emissions of greenhouse gases.

82. The International Covenant on Civil and Political Rights ("ICCPR") states that "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural environment . . . [and] may, for their own ends, freely dispose of their natural wealth and resources."[113] This is best understood as a grant of collective rights to "all peoples" as opposed to the granting of human rights to individuals. The ICCPR also recognizes the right of "persons belonging" to "ethnic, religious or linguistic minorities . . . in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."[114] These provisions are of relevance to Indigenous Peoples, who have collective rights to, among other things, freely dispose of their own natural resources as an exercise of self-determination as well as to enjoy and practice their own cultures and religions, including those relating to elements of the natural environment, and whose exercise of those collective rights would be negatively impacted by the anthropogenic emissions of greenhouse gases.

83. The Committee on the Elimination of Racial Discrimination, in applying the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"), stated in its General Recommendation No. 23 on Indigenous Peoples that CERD applies to Indigenous Peoples,[115] and called on States Parties to CERD to, *inter alia*, "[p]rovide [I]ndigenous [P]eoples with conditions allowing for a sustainable economic and social

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See also G.A. Res. 1803 (XVII), Permanent Sovereignty over Natural Resources (Dec. 14, 1962) (establishing rights and restrictions for national sovereignty over natural resources).

[112] See, e.g., Gabcikovo-Nagymaros Project, *supra* note 73, at pg. 91 (separate opinion of Judge Weeramantry) ("The protection of the environment is . . . a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself"); Mayagna, *supra* note 99, at para. 149 (Aug. 16, 2000) (affirming the collective rights of the Awas Tingni indigenous peoples to enjoy and utilize their environment and its resources); *Port Hope Environmental Group v. Canada*, Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, UN Communication CCPR/C/17/D/67/1980 (recognizing environmental harms as potentially violating the right to life, as established in the ICCPR).

[113] ICCPR, *supra* note 104, at art. 1(1-2).

[114] Id., at. art. 27.

[115] Committee on the Elimination of Racial Discrimination, General Recommendation No. 23: Indigenous Peoples, Aug. 18, 1997, U.N. Doc. A/52/18, annex V, para. 2.

development compatible with their cultural characteristics"[116] and "[e]nsure that [I]ndigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs and to preserve and to practice their languages."[117] Anthropogenic emissions of greenhouse gases undermine the ability of Indigenous Peoples to enjoy their collective rights under CERD as identified above and arguably equate to racial discrimination by offending States Parties against those Indigenous Peoples, including with respect to the ability of those Indigenous Peoples achieve socio-economic development in reliance on, and enjoy and practice their cultural traditions and customs associated with, their natural resources and other parts of their natural environments that are negatively impacted by such anthropogenic emissions.

84. The Committee on Economic, Social and Cultural Rights ("CESCR"), in applying the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), stated in its General Comment No. 21 that, *inter alia*, under ICESCR, "the right of everyone to take part in cultural life"[118] applies to Indigenous Peoples and includes the right of Indigenous Peoples "to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United nations, the Universal Declaration of Human Rights and international human rights law, as well as the United Nations Declaration on the Rights of Indigenous Peoples."[119] The CESCR also underscored that:

> Indigenous [P]eoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, ***seeds, medicines, knowledge of the properties of fauna and flora***, oral traditions, literature, designs, sports and traditional games, and visual and performing arts. States parties [to ICESCR] should respect the principle of free, prior and informed consent of [I]ndigenous [P]eoples in all matters covered by their specific rights.[120]

85. Anthropogenic emissions of greenhouse gases impact elements of the natural environment on which the cultural heritage, traditional knowledge, traditional cultural expressions, and manifestations of the sciences, technologies, and cultures of Indigenous Peoples are based, including those pertaining to seeds, medicine, and knowledge about the properties of fauna and flora. States Parties to ICESCR are therefore obligated to take actions that avoid the undermining of the enjoyment of Indigenous Peoples of their collective rights under ICESCR, including the right of free, prior, and informed consent of Indigenous Peoples for any activities by the States Parties that could undermine the enjoyment of Indigenous Peoples of those collective rights.

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[116] Id., at para. 4(c).
[117] Id., at para. 4(e).
[118] ICESCR, *supra* note 105, at art. 15(1)(a).
[119] Committee on Economic, Social and Cultural Rights, General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a)), U.N. Doc. E/C.12/GC/21 (2009), para. 7
[120] Id., at. para. 37 (emphasis added).

86. The International Labor Organization ("ILO"), through Convention No. 169, colloquially called the Indigenous and Tribal Peoples Convention, obligates ILO Members to adopt "[s]pecial measures . . . as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the [Indigenous and Tribal] peoples concerned"[121], as well as "take measures, in co-operation with the [Indigenous and Tribal] peoples concerned, to protect and preserve the environment of the territories they inhabit."[122]

87. The United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") consolidates a wide range of collective rights for Indigenous Peoples that, *inter alia*, are dependent on a healthy natural environment, including their collective rights to practice their cultures[123] and religious and spiritual traditions,[124] as well as to own, use, develop, and control the lands, territories, and resources under traditional ownership, occupation, or use.[125] UNDRIP also recognizes the collective right of Indigenous Peoples "to the conservation and protection of the environment and the productive capacity of their lands of territories and resources."[126] All these collective rights would be undermined by the negative impacts of anthropogenic emissions of greenhouse gases, particularly on the natural environments inhabited and utilized by those Indigenous Peoples in connection with the exercise of their collective rights.

88. In the context of the present request, States are obligated to take all reasonable, necessary, and appropriate steps, in a vigilant manner, to ensure compliance by those States with all of the obligations pertaining to human rights and rights of Indigenous Peoples enumerated above, including by adopting and implementing measures at the global/international, regional, subregional, and domestic levels that regulate anthropogenic emissions of greenhouse gases to avoid harmful effects on the climate system and other parts of the national environment, with a view to enabling the enjoyment of various core human rights and collective rights of Indigenous Peoples that are dependent at least in part on a clean, healthy, and sustainable natural environment.

The UNFCCC and the Paris Agreement

89. The UNFCCC and the Paris Agreement are critical elements of the international legal order for addressing the harmful effects of anthropogenic emissions of greenhouse gases on the climate system and other parts of the natural environment. In particular, the Paris Agreement enshrines the commitment of its Parties to hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels.[127] The Paris Agreement also has, as a key goal, the global peaking of anthropogenic emissions of greenhouse gases as soon as possible and the rapid reductions

[121] International Labour Organization Convention (No. 169) concerning indigenous and tribal peoples in independent countries art. 4(1), June 27, 1989, 1650 U.N.T.S. 383.
[122] Id., at art. 7(4).
[123] UNDRIP, *supra* note 88, at art. 11(1).
[124] Id., at art. 12(1).
[125] Id., at art. 26(2).
[126] Id., at art. 29(1).
[127] Paris Agreement *supra* note 82, at art. 2(1).

of such emissions thereafter, in order achieve a balance between such emissions by sources and removals of such emissions by sinks in the second half of the current century.[128] This has colloquially been described as the Paris Agreement's "net-zero mid-century" goal.

90. The Paris Agreement was adopted under the UNFCCC and arguably maintains all relevant obligations and principles under the UNFCCC unless explicitly rewritten in the Paris Agreement. This includes obligations under the UNFCCC pertaining to developed countries taking the lead with respect to economy-wide absolute caps for and reductions of anthropogenic emissions of greenhouse gases, as well as the obligation of developed countries' obligations to provide finance and other means of implementation to developing countries to assist the latter with the implementation of the UNFCCC and the Paris Agreement.

91. A core legal obligation under the Paris Agreement is each Party's preparation, communication, and maintenance of successive nationally determined contributions that the Party intends to achieve, as well as the Party's pursuit of domestic mitigation measures in order to achieve the objectives of such contributions.[129] Each Party's successive nationally determination contribution "will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition," while also reflecting the application of CBDR.[130]

The 1982 United Nations Convention on the Law of the Sea

92. As discussed above, the UNFCCC and the Paris Agreement are not the sole sources of international law pertaining to addressing States' obligations with respect to the harmful impacts of anthropogenic emissions of greenhouse gases on the climate system and other parts of the natural environment. There are numerous standalone principles of international law – particularly principles of international environmental law – as well as human rights instruments and principles that inform the obligations of States in this matter, with respect to other States as well as to present and future generations of humankind. Such principles and rights are reflected in many treaties and other international instruments beyond the UNFCCC and the Paris Agreement, as discussed above. The Court will do well to not limit its advisory opinion in any significant manner to considerations of the UNFCCC and the Paris Agreement.

93. One treaty meriting particular attention by the Court is the UNCLOS, particularly its provisions on the protection and preservation of the marine environment. This part of the Written Statement will address the UNCLOS in some depth.

94. Article 1(1)(4) of the UNCLOS defines "pollution of the marine environment" for purposes of the UNCLOS as:

[128] Id., at art. 4(1).
[129] Id., at art. 4(2).
[130] Id., at art. 4(3).

> the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities[131]

95. Although not explicitly referenced, anthropogenic emissions of greenhouse gases qualify as "pollution of the marine environment" under the definition in the UNCLOS. Specifically, anthropogenic emissions of greenhouse gases – e.g., carbon dioxide – are "source[s]" of "substances" or "energy" that are "introduced by man, directly or indirectly . . . into the marine environment." Such emissions, including those released through humanity's burning of fossil fuels (on land, at sea by vessels, and in the air by aircraft) and the conducting of certain industrial and agricultural processes (e.g., cement factory production and land-clearing for mono-cropping, respectively), trap heat energy in the Earth's atmosphere through the greenhouse effect, which in turn redirects much of that heat energy into the marine environment in particular. Additionally, carbon dioxide emissions also make their way directly into the marine environment, separate from the heat energy thermal transfer. Thus, the actions of humanity lead at least indirectly to the introduction of heat energy into the marine environment as well as directly to the infusion of carbon dioxide into the same marine environment.

96. Furthermore, such introduction of heat energy and carbon dioxide into the marine environment "results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities." Anthropogenic emissions of greenhouse gases are at the very least ***likely*** to produce harmful effects to living resources and marine life, such as through Ocean acidification, coral bleaching, the stunting of the growth of various fish species, disruptions in the life cycles of various shellfish, loss of marine species and habitats due to Ocean warming, and destruction of marine habitats through severe tropical cyclones / typhoons.

97. Additionally, sea-level rise – as a consequence of anthropogenic emissions of greenhouse gases – poses hazards to the health of human communities in coastal areas that are inundated by rising seas, imperiling food and water sources and living spaces therein. Sea-level rise also inundates coastal wetlands situated in and/or contiguous to estuaries, which are explicitly referenced as elements of the marine environment being polluted in article 1(1)(4) of the UNCLOS.

98. Furthermore, anthropogenic emissions of greenhouse gases hinder a number of marine activities of importance to coastal communities (among others), including those of the Federated States of Micronesia and other small island developing States, such as commercial and subsistence fisheries (with key fish stocks moving away from their normal grounds due to warming Ocean currents/spaces, as well as reduced coral coverage

[131] UNCLOS, *supra* note 68, at art. 1(1)(4).

for feed), aquaculture (which is dependent on stable pH levels in the Ocean and the presence of certain marine life as feed stocks), and ecotourism (such as recreational snorkeling, undermined by coral bleaching and lower levels of reef fish, as well as whale spotting, undermined by warming Ocean currents shifting migratory patterns).

99. Part XII of the UNCLOS addresses, in a fairly comprehensive manner, obligations pertaining to the protection and preservation of the marine environment. Article 192 of the UNCLOS codifies the general duty of States under international law in relation to the marine environment, stating that "States have the obligation to protect and preserve the marine environment."[132]

100. With particular regard to the pollution of the marine environment, Part XII of the UNCLOS addresses this to a significant (but non-exclusive) degree in article 194 of the UNCLOS, which states in relevant parts:

> 1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to ***prevent, reduce and control pollution of the marine environment from any source***, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.
>
> 2. States shall take all measures necessary to ensure that ***activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment,*** and that pollution arising from incidents or activities under their jurisdiction or control ***does not spread beyond the areas where they exercise sovereign rights*** in accordance with this Convention.
>
> 3. The measures taken pursuant to [Part XII of UNCLOS] shall deal with ***all sources of pollution of the marine environment***. These measures shall include, *inter alia*, those designed to minimize to the fullest possible extent:
>
> (a) the release of toxic, harmful or noxious substances, especially those which are persistent, ***from land-based sources, from or through the atmosphere*** or by dumping;
>
> (b) ***pollution from vessels***, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing international and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;
>
> (c) ***pollution from installations and devices used in exploration or exploitation of the nature resources of the seabed and subsoil***, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;
>
> (d) ***pollution from other installations and devices operating in the marine environment***, in particular measures for preventing accidents and

[132] Id., at art. 192.

> dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.
>
> 4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.
>
> 5. The measures taken in accordance with this Part shall include those ***necessary 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***.[133]

101. Article 195 of the UNCLOS requires that when States take measures to prevent, reduce and control pollution of the marine environment, those States "shall act so as not to transfer directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another."[134]

102. Article 196 of the UNCLOS obligates States, in part, to take all measures necessary to prevent, reduce and control pollution of the marine environment "resulting from the use of technologies under their jurisdiction or control."[135]

103. Articles 207, 208, 209, 211, 212, 217, 218, 220, and 222 of the UNCLOS, among others, expand on the overarching obligations in article 194 of the UNCLOS with respect to pollution of the marine environment from or through land-based sources, seabed activities within national jurisdiction, activities in the international seabed Area, vessels at sea, and the atmosphere, including enforcement actions by flag States, port States, and coastal States, as appropriate. Several of these provisions – including articles 207(1), 207(4), 208(3), 208(5), 211(1), 211(2), 212(1), and 212(3) – make clear that in order to discharge such obligations, States must not only implement domestic laws, regulations, and other measures, but also take into account and/or adopt laws, regulations, and other measures that are no less effective than existing internationally agreed rules, standards, and recommended practices and procedures; as well as work through competent international organizations or treaty-making processes (i.e., diplomatic conference) to establish new global and regional rules, standards, and recommended practices and procedures to prevent, reduce, and control pollution of the marine environment.

104. In addition to imposing general substantive obligations on States with respect to preventing, reducing, and controlling pollution of the marine environment, Part XII of the UNCLOS contains a number of provisions imposing what are essentially procedural obligations on States. For example, article 198 of the UNCLOS imposes a duty of immediate notification by a State to other States when the marine environment "is in

[133] Id., at art. 194 (emphases added).
[134] Id., at art. 195.
[135] Id., at art. 196.

imminent danger of being damaged or has been damaged by pollution."[136] Article 199 of the UNCLOS obligates States to "jointly develop and promote contingency plans for responding to pollution incidents in the marine environment."[137] Article 200 of the UNCLOS requires States to, *inter alia*, cooperate in "promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment."[138]

105. Articles 204, 205, and 206 of the UNCLOS straddle the spheres of substantive and procedural obligations. The three articles address, *inter alia*, the monitoring by States of the risks or effects of pollution of the marine environment;[139] the publication by States of reports on the results of such monitoring;[140] and the conducting of assessments by States of the potential effects of planned activities under the jurisdiction or control of such States that may cause "substantial pollution" to the marine environment (essentially, conduct environmental impact assessments), along with the communication of reports on the results of such assessments.[141] The obligation to monitor the risks or effects of pollution of the marine environment, as well as the obligation to conduct assessments of the potential effects of planned activities that may cause "substantial pollution" to the marine environment, are substantive obligations imposed on States by the UNCLOS; whereas the obligation to publish or otherwise communicate relevant reports on the monitoring of effects as well as the results of assessments is a procedural obligation.

106. The abovementioned provisions from Part XII of the UNCLOS, taken together and as a whole, establish an obligation of due diligence for States Parties to the UNCLOS to prevent, reduce, and control pollution of the marine environment. To the extent that such pollution of the marine environment includes anthropogenic emissions of greenhouse gases, that same obligation of due diligence applies with respect to efforts by States Parties to the UNCLOS to prevent, reduce, and control anthropogenic emissions of greenhouse gases that result in pollution of the marine environment. This includes anthropogenic emissions of greenhouse gases from and/or through, *inter alia*, land-based sources (e.g., power plants, industrial factory production, motor vehicle transportation), seabed activities within national jurisdiction (e.g., disturbance of greenhouse gas deposits in the seabed such as methane and carbon dioxide), activities in the international seabed Area (similar concerns about disturbance of greenhouse gas deposits in the seabed as with seabed activities within national jurisdiction), vessels at sea (e.g., cargo transport, cruise liners), and the atmosphere (e.g., commercial aircraft, satellites and their launch vehicles).

107. The International Tribunal for the Law of the Sea ("ITLOS") has fleshed out the concept of due diligence in connection with the law of the sea. The Seabed Disputes Chamber of ITLOS, in its advisory opinion in Case No. 17 (*Responsibilities and*

[136] Id., at art. 198.
[137] Id., at art. 199.
[138] Id., at art. 200.
[139] Id., at art. 204.
[140] Id., at art. 205.
[141] Id., at art. 206.

obligations of States sponsoring persons and entities with respect to activities in the Area), determined that States Parties to the UNCLOS that sponsor contractors to explore and exploit the international seabed Area have an "obligation to ensure compliance by sponsored contractors with the terms of the contract [to explore and exploit the Area] and the obligations set out in the Convention and related instruments."[142] To comply with this obligation, the sponsoring State must "make best possible efforts to secure compliance by the sponsored contractors,"[143] including the adoption of "measures within its legal system [that are] 'reasonably appropriate.'"[144] The Seabed Disputes Chamber clarified that the obligation of due diligence "is an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result. . . . [T]his obligation may be characterized as an obligation 'of conduct' and not 'of result.'"[145] The Seabed Disputes Chamber further noted that the content of due diligence obligations "may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge."[146]

108. It bears mentioning that ITLOS, sitting as a full tribunal in its Case No. 21, echoed and adopted in its advisory opinion the description of the normative content of due diligence obligations that the Seabed Disputes Chamber of ITLOS utilized, as discussed above.[147] It also bears mentioning that ITLOS applied the notion of due diligence obligations not just to States (e.g., flag States) but also to international organizations independent of the obligations of the States that are members of those international organizations (at least with respect to fisheries, the subject matter of Case No. 21 of ITLOS).[148]

109. As discussed above, States Parties to the UNCLOS have a series of substantive obligations with respect to preventing, reducing, and controlling pollution of the marine environment from multiple activities and sources – indeed, from "any source"[149] – as well as various procedural obligations in connection with the discharge of such substantive obligations. By virtue of the definition of "pollution of the marine environment" in article 1(1)(4) of the UNCLOS, States Parties to the UNCLOS assume the same set of substantive and procedural obligations with respect to preventing, reducing, and controlling pollution of the marine environment caused by anthropogenic emissions of greenhouse gases, particularly Ocean acidification, Ocean warming, and related impacts of the climate crisis. As also discussed above, States Parties to the UNCLOS have an obligation of due diligence to ensure that such substantive and procedural obligations are met with respect to preventing, reducing, and controlling pollution of the marine

[142] SDC Advisory Opinion on Activities in the Area, *supra* note 79, at para. 242(3).
[143] Id.
[144] Id.
[145] Id., at para. 110.
[146] Id., at para. 117.
[147] *Request for Advisory Opinion Submitted by the Sub-Regional Fisheries Commission*, Advisory Opinion, Case No. 21, April 2, 2015, ITLOS Reports 2015, at paras. 131-132.
[148] Id., at para. 173.
[149] See UNCLOS, *supra* note 68, at art. 194(1).

environment caused by such anthropogenic emissions of greenhouse gases, including in the form of Ocean acidification, Ocean warming, and coral bleaching.

110. In order to discharge this obligation of due diligence, as discussed above, States Parties to the UNCLOS are required to not only implement domestic laws, regulations, and other measures, but also take into account and/or adopt laws, regulations, and other measures that are no less effective than existing internationally agreed rules, standards, and recommended practices and procedures; as well as work through competent international organizations or treaty-making processes (i.e., diplomatic conference) to establish new global and regional rules, standards, and recommended practices and procedures to prevent, reduce, and control pollution of the marine environment. With respect to anthropogenic emissions of greenhouse gases, in the absence of language in UNCLOS explicitly mentioning such emissions or its impacts on the Ocean, as well as in the absence of future efforts under the UNCLOS to directly address such emissions, recourse must be sought to "external" internationally agreed rules, standards, and recommended practices and procedures, whether existing or the subject of possible development through competent international organizations or treaty-making processes, in line with the provisions of the UNCLOS cited above. Recourse to such external sources is required not just by the provisions of the UNCLOS referring to such rules, standards, practices, and procedures, as discussed above; but also with norms of treaty interpretation in international law, particularly as codified in article 31(3)(c) of the Vienna Convention on the Law of the Treaties, which underscores that the interpretation of a treaty shall take into account, among other things, "any relevant rules of international law applicable in the relations between the parties" to the treaty.[150]

111. Several intergovernmental processes and multilateral agreements provide relevant sources of internationally agreed rules, standards, and recommended practices and procedures and/or allow for the formulation of such rules, standards, practices, and procedures as pertaining to the prevention, reduction, and control of pollution of the marine environment by anthropogenic emissions of greenhouse gases. As discussed above, the UNFCCC, its Kyoto Protocol, and the Paris Agreement, along with the intergovernmental bodies and related institutions established under and/or serving those instruments, are key fora for the international community to address anthropogenic emissions of greenhouse gases from multiple sources, including industry, agriculture, land-based transportation, and power generation. The International Civil Aviation Organization and the International Maritime Organization, along with their constituent instruments and subsequent regulatory promulgations, address anthropogenic emissions of greenhouse gases from aviation and shipping, respectively, which the UNFCCC, its Kyoto Protocol, and the Paris Agreement do not directly address. The Vienna Convention for the Protection of the Ozone Layer and – particularly – its Montreal Protocol on Substances that Deplete the Ozone Layer and attendant Kigali Amendment play important roles in regulating so-called short-lived climate pollutants such as hydrochlorofluorocarbons and hydrofluorocarbons that have significant greenhouse effects on the atmosphere of several orders of magnitude greater than carbon dioxide (and whose phase-down/phase-out can lead to the avoidance of up to half a degree Celsius of

[150] Vienna Convention on the Law of Treaties art. 31(3)(c), May 23, 1969, 1155 U.N.T.S. 331.

global warming). The Conference of the Parties to the Convention on Biological Diversity has undertaken important work in connection to anthropogenic emissions of greenhouse gases, including in the Kunming-Montreal Global Biodiversity Framework adopted in December 2022, which, *inter alia*, contains a Target 8 on minimizing the impacts of anthropogenic emissions of greenhouse gases on on biological diversity;[151] as well as a Target 11 on restoring, maintaining, and enhancing nature's contributions to people, including ecosystem functions and services, through, *inter alia*, regulation of anthropogenic emissions of greenhouse gases.[152] Thus, to the extent that pollution of the marine environment under the UNCLOS encompasses anthropogenic emissions of greenhouse gases, the identification of obligations of States Parties to the UNCLOS to prevent, reduce, and control such pollution depends at least in part on the identification of obligations of those same States under the treaties and related intergovernmental processes, organizations, institutions referenced in this paragraph, insofar as those treaties, processes, organizations, and institutions impose obligations pertaining to the prevention, reduction, and control of anthropogenic emissions of greenhouse gases.

112. While the UNCLOS does not explicitly reference anthropogenic emissions of greenhouse gases, several normative processes under UNCLOS since the adoption of UNCLOS allow for the consideration of such matters. The negotiations on legally binding exploitation regulations for the Mining Code of the International Seabed Authority have relevance to anthropogenic emissions of greenhouse gases, insofar as activities in the international seabed Area could potentially disturb greenhouse gases – e.g., methane, carbon dioxide – stored in the seabed and subsoil of the Area, leading to possible leakage into the broader marine environment as well as the atmosphere (which, in turn, will impact the marine environment via the processes referenced above). Additionally, the adoption of the Agreement under the UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction could lead to the establishment of area-based management tools in areas beyond national jurisdiction that, *inter alia*, minimize ship vessel transit through certain such areas (which might impact the level of greenhouse gas emissions from such vessels), influence the regulation of activities in the international seabed Area (which might minimize the disruption of stores of greenhouse gases in the Area), protect certain marine creatures from over-exploitation (which might enhance their capacities as carbon storage, such as whales and other cetaceans that store carbon through their lifetimes and sequester them in the deep seabed upon natural death), and safeguard marine areas that are critical to the regulation of the climate system (such as sargassum seagrass acting as carbon sinks); as well as lead to the requirement to conduct environmental impact assessments that address the impacts on areas beyond national jurisdiction by anthropogenic emissions of greenhouse gases from planned activities, including planned activities on land (such as power generation) as well as at sea (such as ship vessel transit).

113. Following the identification of the relevant internationally agreed rules, standards, and recommended practices and procedures pertaining to the prevention, reduction, and

[151] Kunming-Montreal Global Biodiversity Framework target 8, Decision adopted by the Parties to the Convention on Biological Diversity, CBD/COP/DEC/15/4, Dec. 19, 2022.
[152] Id., at target 11.

control of anthropogenic emissions of greenhouse gases, it is clear that in order to discharge their obligation of due diligence in this regard, States Parties to the UNCLOS must take all reasonable, necessary, and appropriate steps, in a vigilant manner, to ensure compliance by those States Parties, including private actors within their jurisdiction and control, with all such rules, standards, practices, and procedures, with the ultimate aim of preventing, reducing, and controlling the pollution of the marine environment caused by anthropogenic emissions of greenhouse gases.

114. Particular attention must also be paid to a certain element of sea-level rise with respect to its characterization as a form of pollution of the marine environment under the UNCLOS, insofar as such sea-level rise is the result of anthropogenic emissions of greenhouse gases. As discussed above, the definition of "pollution of the marine environment" under the UNCLOS refers to a number of "deleterious effects" that include, *inter alia*, "hindrance to marine activities, including fishing and other legitimate uses of the sea, . . . and reduction of amenities." According to the so-called ambulatory theory of baselines, when a coastal State experiences sea-level rise, one result is the landward shift of the coastal State's maritime zones due to the landward shifting of the low-water line along the State's coastline used to establish the coastal State's maritime baselines (and the attendant maritime zones) under the UNCLOS. As a consequence, under the ambulatory theory of baselines, this could reduce or otherwise impair the rights and entitlements of that coastal State to the uses of its maritime zones and the resources therein, insofar as a landward shift of those maritime zones removes certain maritime areas and the resources therein from the sovereignty, sovereign rights, or jurisdiction of that coastal State. This would essentially constitute a "hindrance to marine activities, including fishing and other legitimate uses of the sea," as well as a "reduction of amenities" deriving from the affected maritime zones and resources therein.

115. It is the view of the Federated States of Micronesia and much of the rest of the international community, however, that the UNCLOS does not require adherence to an ambulatory theory of baselines. The Federated States of Micronesia draws the attention of the Court to the ongoing work of the International Law Commission on the topic of sea-level rise in relation to international law, particularly the International Law Commission's work on the law of the sea aspects of the topic, which, *inter alia*, has discussed with growing internal consensus the assertion that the UNCLOS does not impose an obligation on coastal States Parties to keep their maritime baselines and outer limits of their maritime zones under review nor to update charts or lists of geographical coordinates of points once deposited with the Secretary-General of the United Nations.[153] The Federated States of Micronesia also draws the attention of the Court to the August 2021 Pacific Islands Forum Leaders' Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, which, *inter alia*, echoes the abovementioned assertion arising out of the work of the International Law Commission

[153] For the latest encapsulation of the discussions in the International Law Commission as well as feedback from the Members of the United Nations General Assembly and the international community overall, see Sea-level rise in relation to international law, Additional paper to the first issues paper (2020), by Bogdan Aurescu and Nilufer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law paras. 83-98, Feb. 13, 2023, International Law Commission, A/CN.4/761.

and "[p]roclaim[s] that [the] maritime zones [of members of the Pacific Islands Forum], as established and notified to the Secretary-General of the United Nations in accordance with the Convention, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise;"[154] as well as the September 2021 Declaration of the Leaders of the Alliance of Small Island States, whose paragraph 41 "[a]ffirms that there is no obligation under the United Nations Convention on the Law of the Sea to keep baselines and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates once deposited with the Secretary-General of the United Nations, and that such maritime zones and the rights and entitlements that flow from them shall continue to apply without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise."[155] As a member of the Pacific Islands Forum and the Alliance of Small Island States, the Federated States of Micronesia fully subscribes to the above-cited provisions from their respective Declarations, as well as to the consensus emerging in the International Law Commission on the matter.

116. The Federated States of Micronesia has incorporated the core legal elements of the above-mentioned Declarations of the Leaders of the Pacific Islands Forum and of the Alliance of Small Island States in the domestic law of the Federated States of Micronesia. Specifically, the Federated States of Micronesia has promulgated a regulation stating that the baselines and outer limits of the maritime zones of the Federated States of Micronesia are permanent once declared.[156] Under the laws of the Federated States of Micronesia, a regulation once promulgated has the force and effect of law.

117. In that respect, the Federated States of Micronesia urges the Court to refrain from concluding in its advisory opinion in the present request that one of the "deleterious effects" caused by sea-level rise as a result of anthropogenic emissions of greenhouse gases is the landward shifting of maritime zones and the concomitant undermining of rights and entitlements to marine activities and other lawful uses of the sea in the maritime areas, as well as enjoyment of amenities, that are supposedly "lost" for coastal States as a result of that landward shifting. That is, while the physical phenomenon of climate change-related sea-level rise will likely cause significant harmful consequences for coastal communities of a coastal State due to inundation and other physical impacts on coastal areas, it does not also necessarily follow under the UNCLOS that climate change-related sea-level rise has the legal effect of shifting maritime baselines and the outer limits of maritime zones of a coastal State landward and/or diminishing or otherwise undermining the rights and entitlements of the coastal State to those maritime zones and the resources therein. On the contrary, if the Court is to opine on this particular issue, then the Court should find that the international community as a whole – and particularly States that are major anthropogenic emitters of greenhouse gases – has

[154] Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, accessible at https://www.forumsec.org/2021/08/11/declaration-on-preserving-maritime-zones-in-the-face-of-climate-change-related-sea-level-rise/.
[155] See https://www.aosis.org/launch-of-the-alliance-of-small-island-states-leaders-declaration/.
[156] See *Permanent Regulation on the Maritime Boundaries and Maritime Zones of the Federated States of Micronesia Pursuant to 18 F.S.M.C. §§101, 102, 104, 105a, And 107, As Amended by Public Law No. 19-172.*

an obligation to support the above-mentioned Declarations by the Pacific Islands Forum and Alliance of Small Island States as accurate reflections of the UNCLOS. The preservation of maritime baselines, the outer limits of maritime zones, and the rights and entitlements thereunder will, among other things, ward off the sort of "deleterious effects" that an ambulatory theory of maritime baselines poses in the context of anthropogenic emissions of greenhouse gases.

Second part of the legal question

118. This section of the Written Statement will discuss the second part of the legal question referred by the UNGA to the Court in the present request, mindful (as discussed above) that the legal question is a singular and indivisible one with two main parts (as well as a chapeau), and that both parts of the legal question must be answered by the Court; and mindful as well of the guidance provided by the chapeau to the legal question (as discussed above as well).

119. The second part of the legal question is as follows:

> What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
>
> (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
>
> (ii) (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

120. The positions of the Federated States of Micronesia with respect to the second part of the legal question are summarized below, followed by a discussion of specific sources of international law in support of the summarized positions of the Federated States of Micronesia. Specifically, the positions of the Federated States of Micronesia are the following:

i. Under international law, the primary legal consequence for a State that does not uphold its international law obligations is State responsibility. Each internationally wrongful act of a State entails its State responsibility under international law. Such an internationally wrongful act occurs when an act or an omission is attributable to the State and constitutes a breach of an international legal obligation owed by that State.

ii. Once State responsibility is established for an internationally wrongful act, that State is required to cease such a wrongful act and must provide reparations to address the harm caused by such

an act. Such reparations could include compensation, satisfaction, and restitution, among other options.

iii. The causation of significant harm to the climate system and other parts of the natural environment by a State, through its acts and/or omissions, as a result of anthropogenic emissions of greenhouse gases from activities under its national jurisdiction or control is an internationally wrongful act for which that State incurs State responsibility. This internationally wrongful act occurs when the significant harm is felt by States and/or by peoples and individuals from present and future generations of humankind.

iv. A State that, through its acts and/or omissions, causes significant harm to the climate system and other parts of the natural environment as a result of anthropogenic emissions of greenhouse gases from activities under its national jurisdiction or control must cease such acts and/or reverse its omissions, and must also provide reparations to States, peoples, and/or individuals harmed by such emissions, including, but not necessarily limited to, compensation, restitution, and satisfaction.

v. Reparations owed by a State that has incurred State responsibility for the above-mentioned acts and/or omissions apply not just to redress for harms to the climate system and other parts of the nature environment, but also for violations of human rights that are dependent on a clean, healthy, and sustainable natural environment.

vi. Both States as well as peoples and individuals negatively impacted by the significant harms to the climate system and other parts of the natural environment as a result of the above-mentioned acts and/or omissions of a State are entitled under international law to seek reparations from that State in connection with the anthropogenic emissions of greenhouse gases by activities under that State's jurisdiction or control.

121. The responsibility of States for internationally wrongful acts is a central element of international law and the broader international legal order. Such responsibility of States applies not just to violations of obligations under treaty law, but also to violations of customary international law as well as general principles of international law, including the principles discussed above in this Written Statement.

122. The International Law Commission has adopted Articles on the Responsibility of States for Internationally Wrongful Acts ("ARSIWA"), which represent an authoritative codification of, among other things, how to attribute internationally wrongful conduct to a particular State as well as what the legal consequences are for that particular State in light of that attribution and subsequent triggering of State responsibility for that State.[157] Broadly speaking, an internationally wrongful act can be attributed to a State if an entity

[157] See, generally, the Articles on the Responsibility of States for Internationally Wrongful Acts, International Law Commission, 53rd Session, 2001 (hereinafter "ARISWA").

or person is acting under the jurisdiction, control, or some other authority of that State.[158] That particular act is deemed to be internationally wrongful if it is not in conformity with an obligation of that State under international law.[159]

123. The Court has affirmed this principle of State responsibility for internationally wrongful acts,[160] and in the context of environmental harms, the Court has found that damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law.[161]

124. A group of States that have all been injured by a particular internationally wrongful act can invoke jointly and/or individually the State responsibility of the State to whom such an act is attributed and seek redress from that responsible State.[162]

125. Additionally, in cases involving harm from an internationally wrongful act to the international community as a whole, a State that might not be specifically harmed (at least not to the extent of the overall harm to the international community as a whole) can invoke the State responsibility of the State to whom such an act is attributed and seek redress from that responsible State for the benefit of the international community as a whole.[163] This arises in a situation where a State owes an obligation to the international community as a whole, also known as an obligation *erga omnes*, which the Court first defined in its Barcelona Traction Case.[164] This arguably applies to the matter of anthropogenic emissions of greenhouse gases, for which each State owes an obligation to the international community as a whole to address in order to prevent significant harm to the climate system and other parts of the natural environment.

126. While the rules on State responsibility for internationally wrongful acts normally address the right of an injured *State* to seek redress for its injury from the State that committed an internationally wrongful act against it, peoples and individuals do have recourse to their own legal tools to compel redress from such a State, including through proceedings before human rights treaty bodies as well as before certain international tribunals that accept complaints from individuals and peoples.

127. As detailed in ARSIWA, when a State is found to have committed an internationally wrongful act, such a wrongful act entails that the State incurs responsibility, from which a number of legal consequences flow. First, that State must cease acting in a manner that further perpetuates that internationally wrongful act – effectively, the State must cease its breach of the relevant obligation whose breach

[158] Id., at arts. 4, 5, 6, 8, 9, 10, 11.
[159] Id., at art. 12.
[160] See, e.g., Gabčíkovo-Nagymaros Project, *supra* note 73, at pg.7, para. 47.
[161] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, ICJ Reports 2018, p. 15, at para. 42.
[162] ARISWA, *supra* note 157, arts. 46-47.
[163] Id., at arts. 42(b) and 48.
[164] For the definition of obligations *erga omnes*, see *Barcelona Traction, Light and Power Company, Limited*, Judgment, ICJ Reports 1970, pg. 3, paras. 33-34

resulted in the attribution of such an internationally wrongful act to that State.[165] Second, that State must provide reparations for the harm caused by that internationally wrongful act[166] as well as guarantee the non-repetition of the breach that caused the harm.[167]

128. As further detailed in ARSIWA, reparations by a State for the harm caused by an internationally wrongful act attributed to that State can be made in three ways: restitution, compensation, and/or satisfaction, with the combination of two or three of those ways being possible, depending on the circumstances.[168]

129. Restitution, in the context of harms to the climate system and other parts of the natural environment, involves restoring the harmed elements to their original and unaffected states, including, as appropriate, through habitat restoration, wildlife protection, and the rehabilitation of areas harmed by anthropogenic emissions of greenhouse gases.

130. Compensation, in the context of harms to the climate system and other parts of the natural environment, involves the provision of monetary payments by the State with State responsibility to those who suffer such harms, including compensation for financial damage (e.g., steep insurance payouts, loss of business profits, damage to economic infrastructure) as a result of anthropogenic emissions of greenhouse gases. Compensation includes not just that for tangible financial losses, but also for intangible losses associated with, for example, emotional pain and suffering, which are increasingly prevalent in the current era of a climate crisis. Compensation is a secondary form of reparations, which applies only if restitution – as the primary form of reparations – is inadequate in whole or in part.

131. Satisfaction, in the context of harms to the climate system and other parts of the natural environment, applies when neither restitution nor compensation are sufficient to provide redress those harms. Satisfaction could include the enforcement of disciplinary actions against individuals and entities by the State under whose authority those individuals/entities committed acts that breached the State's international legal obligations and led to the attribution to that state of the relevant internationally wrongful acts. In the context of anthropogenic emissions of greenhouse gases, this could include penal and/or other disciplinary actions against industrial sectors that impermissibly spew greenhouse gases into the atmosphere, or against government officials who do not protect or otherwise uphold the human rights of peoples and individuals that are affected by the harms caused by such emissions.

132. It bears mentioning that while all States (as well as all peoples and individuals) can invoke State responsibility for internationally wrongful acts and seek reparations thereto, small island developing States like the Federated States of Micronesia that are specially affected by the adverse effects of anthropogenic emissions of greenhouse gases

[165] ARISWA, *supra* note 157, at art. 41.
[166] Id., at art. 34.
[167] Id., at art. 30.
[168] Id., at art. 34.

enjoy particular consideration under international law. The disproportionate effects of such emissions on small island developing States require the Court and other relevant international tribunals to give prominent weight to the views of such States, including with respect to the scope of legal obligations whose breaches trigger State responsibility for anthropogenic emissions of greenhouse gases that are harmful to the climate system and other parts of the natural environment; as well as with respect to the legal consequences arising from that State responsibility, including the provision of reparations to small island developing States by the responsible State(s).

133. It also bears mentioning that Indigenous Peoples, whether individually or as a collective, can invoke State responsibility for internationally wrongful acts and seek reparations thereto, particularly in connection with harmful impacts of anthropogenic emissions of greenhouse gases on the individual and collective rights of those Indigenous Peoples, including those rights whose enjoyment are dependent at least in part on a clean and healthy natural environment.

134. Of particular note in connection with the collective rights of Indigenous Peoples in the context of anthropogenic emissions of greenhouse gases is the decision of the Human Rights Committee ("Committee") – as the main supervisory body for the ICCPR – in *Daniel Billy and others v Australia (Torres Strait Islands Petition).* The Committee found that the Australian Government violated its obligations pertaining to the protecting and safeguarding of the rights of eight Torres Strait Islanders ("Islanders") – Indigenous inhabitants of Australia – and their six children as a result of the inadequate actions of the Australian Government pertaining to anthropogenic emissions of greenhouse gases. The Islanders, in their complaint to the Committee, argued that the inadequacy of the climate policies of the Australian Government violated the rights of the Islanders under Articles 2, 6, 17, 24(1), and 27 of the ICCPR, as pertaining to their enjoyment of all rights under the ICCPR; as well as their rights to life; to be free from arbitrary interference with their privacy, family, and home; to protective measures for children; and to culture, respectively.[169] The Islanders asserted that anthropogenic emissions of greenhouse gases severely impact their communities and the natural ecosystems of their islands, including through rising sea levels, Ocean warming, coral bleaching, and Ocean acidification, and in turn impact their enjoyment of the above-mentioned rights due to their dependence on a clean and healthy natural environment for full enjoyment.[170] The Islanders accused the Australian Government of failing to mitigate the harmful impacts of the anthropogenic emissions of greenhouse gases under the Government's jurisdiction, control, or other authority, given that Australia's per capita greenhouse gas emissions were the second highest in the world in 2017 while ranking forty-third among 45 developed countries in reducing their greenhouse gas emissions between 1990 and 2016, as evidenced by the Government's active pursuit of "policies that have increased emissions by promoting the extraction and use of fossil fuels, in particular thermal coal for electricity generation."[171]

[169] *Daniel Billy and others v Australia (Torres Strait Islanders Petition)* (United Nations Human Rights Committee Case CCPR/C/135/D/3624/2019, 2022), para. 1.1.
[170] Id., at para. 2.6.
[171] Id., at para. 2.8.

135. The Committee determined that the Australian Government's inadequate climate policies violated the collective rights of the Islanders under the ICCPR to enjoy their culture[172] and be free from arbitrary interference with their private life, family, and home.[173] The Committee stressed that "[i]t is uncontested that the [Islanders'] lives and cultures are highly dependent on the availability of the limited natural resources to which they have access, and on the predictability of the natural phenomena that surround them."[174] The Committee further determined that in accordance with article 2(3)(a) of the ICCPR, the Australian Government, as a State Party to the ICCPR, is required to provide the Islanders with an effective remedy. Consequently, the Committee determined that the Australian Government is, in connection with the Islanders (i.e., the "authors" of the complaint to the Committee):

> obliged, inter alia, to ***provide adequate compensation*** to the authors for the harm that they have suffered; engage in ***meaningful consultations*** with the authors' communities in order to conduct needs assessments; ***continue its implementation*** of measures necessary to secure the communities' continued safe existence on their respective islands; and ***monitor and review*** the effectiveness of the measures implemented and ***resolve any deficiencies*** as soon as practicable. The State party is also under an obligation to take steps to ***prevent similar violations from occurring in the future***.[175]

136. The decision of the Committee, particularly with respect to the remedy owed to the Islanders by the Australian Government, reflected the main types of reparations for internationally wrongful acts as codified in ARSIWA, including compensation, satisfaction, and (to some extent) restitution, as well as ensuring that the harm(s) no longer persist(s). The decision provides a useful model for identifying and imposing legal consequences for "States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment", particularly with respect to "Peoples and individuals of the present and future generations affected by the adverse effects of climate change."

[172] Id., at para. 8.14.
[173] Id., at para. 8.12.
[174] Id., at para. 8.6.
[175] Id., at para. 11 (emphases added).

CHAPTER V

CONCLUSION

137. The Federated States of Micronesia underscores the vital role that the Court can play in providing authoritative and comprehensive guidance to the international community as a whole with respect to the obligations of States under international law to prevent significant harm to the climate system and other parts of the natural environment as a result of anthropogenic emissions of greenhouse gases from activities under their national jurisdiction, control, or other form of authority; as well as with respect to the legal consequences for those States when they breach one or more of those obligations.

138. In the current era of a climate crisis, all tools under international law must be utilized to the fullest extent possible. Slavish, exclusive, and misplaced adherence to the UNFCCC regime has brought the globe to the brink of breaching the 1.5-degrees Celsius threshold in the Paris Agreement, with attendant environmental harms already unfolding at an alarming intensity and frequency around the world. The Federated States of Micronesia exhorts the Court to be comprehensive, ambitious, and bold in its issuance of the advisory opinion in the present request.

15 March 2024

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