INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE (REQUEST FOR ADVISORY OPINION)

WRITTEN STATEMENT OF SOLOMON ISLANDS

22 MARCH 2024

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EXECUTIVE SUMMARY

1. Solomon Islands respectfully makes the following submissions in response to Question (a) of the Request by the United Nations General Assembly for an advisory opinion on the obligations of States in respect of climate change:

   1.1 the obligations of States set out in the United Nations Framework Convention on Climate Change, the Paris Agreement, and other relevant sources of international law require the exercise of due diligence and must represent progression over time;

   1.2 the principle of common but differentiated responsibilities and respective capabilities informs States' obligations under international law in the context of climate change. This principle requires developed States to, inter alia, provide technical assistance, finance, and capacity-building to developing States to assist in climate mitigation and adaptation initiatives;

   1.3 States have a duty to cooperate in implementing their obligations under international environmental law, and the mitigation and adaptation measures under the UNFCCC and the Paris Agreement;

   1.4 States are obligated under international law to protect the climate system and the environment for the benefit of present and future generations;

   1.5 the precautionary principle requires States to protect the climate system and the environment under customary international law;

   1.6 States have a general obligation to prevent transboundary harm from causing significant damage to the environment of another State. States must comply with the prevention principle and the duty to notify and consult States affected by transboundary harm;

   1.7 in the context of climate change, all States are under an obligation to respect, protect, and fulfil the internationally recognised human rights of present and future generations. This includes the rights to life, private and family life, the rights of children and women, the right to live with dignity in a clean, healthy, and sustainable environment, and the right to self-determination and its related rights

to health, water, food, housing and culture. Where human rights are infringed, States must guarantee an effective remedy for breach of those rights;

1.8 under the law of the sea, States have an obligation to protect and preserve the marine environment from the adverse effects of climate change. States must therefore prevent, reduce, and control pollution from greenhouse gas emissions; and

1.9 internal and external displacement of peoples due to climate change has profound impacts on human rights, culture, indigenous and local knowledge, access to services, and socio-economic conditions. People displaced by climate change should therefore be afforded protection under the 1951 Convention relating to the Status of Refugees.

2. In response to Question (b) relating to State responsibility for harm to States and individuals, Solomons Islands respectfully makes the following submissions:

2.1 under the law on State responsibility, States that commit internationally wrongful acts against the climate system and other States must make full reparations to States that endure climate change-induced harm. State responsibility must be assessed in accordance with the principle of common but differentiated responsibilities and respective capabilities;

2.2 under customary international law and international human rights law, States that cause significant harm to the climate system, and other States and individuals by their acts or omissions, must make full reparations to States, individuals, and communities of present and future generations; and

2.3 where States commit internationally wrongful acts against the climate system and other States, they must cease all internationally wrongful acts and guarantee non-repetition.

CHAPTER I. INTRODUCTION

3. On 29 March 2023, Resolution 77/276 was adopted by consensus by the United Nations General Assembly ("**UNGA**"), requesting the International Court of Justice ("**ICJ**") to render an advisory opinion on the obligations of States in respect of climate change, specifically:

> "*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?*"[1] ("**Request**")

4. By letters dated 17 April 2023, the Deputy-Registrar gave notice of the Request to all States entitled to appear before the Court, pursuant to Article 66(1) of the Statute of the ICJ ("**ICJ Statute**").

5. In its Order of 20 April 2023, the Court decided that "*the United Nations and its Member States are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion and may do so within the time-limits fixed in this Order*", and fixed 20 October 2023 as the time-limit within which written statements on the question could be presented to the Court.

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[1] *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, GA Res 77/276, UN GAOR, 77th sess, 64th plen mtg, UN Doc A/77/PV.64 (29 March 2023) ('*Request*').

6. In its Order of 4 August 2023, the Court extended:

6.1 to 22 January 2024 "*the time-limit within which all written statements on the questions may be presented to the Court in accordance with Article 66, paragraph 2, of the Statute*"; and

6.2 to 22 April 2024 "*the time-limit within which States and organizations having presented written statements may submit written comments on the other written submission in accordance with Article 66, paragraph 4, of the Statute*".

7. In its Order of 15 December 2023, the Court extended:

7.1 to 22 March 2024 "*the time-limit within which all written statements on the questions may be presented to the Court in accordance with Article 66, paragraph 2, of the Statute*"; and

7.2 to 24 June 2024 "*the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements in accordance with Article 66, paragraph 4, of the Statute*".

8. Solomon Islands ("**Solomons**") submits this written statement in accordance with the Order of 15 December 2023.

9. Solomons confirms that this written statement is without prejudice to its rights under international law, unrelated to the current Request.

10. Solomons' statement proceeds as follows:

10.1 **Chapter II** addresses the Court's jurisdiction to reply to the Request;

10.2 **Chapter III** provides an overview of climate, environmental, and social factors relevant to Solomons;

10.3 **Chapter IV** details the effects of anthropogenic greenhouse gas emissions on Solomons;

10.4 **Chapter V** presents Solomons approach towards the law applicable to the Request;

10.5 **Chapter VI** sets out States' obligations under international law by reference to the legal principles relevant to the Request for an advisory opinion;

10.6 **Chapter VII** describes States' obligations to protect the climate system and the environment under international human rights law;

10.7 **Chapter VIII** details the legal impacts of climate change-related sea-level rise on States' maritime entitlements under UNCLOS, and the associated impacts on statehood;

10.8 **Chapter IX** outlines the impacts of climate change on Solomons in relation to the displacement of people, and the applicability of UNCLOS, the 1951 Convention Relating to the Status of Refugees ("**Refugee Convention**"), and human rights to that situation;

10.9 **Chapter X** considers State responsibility flowing from breaches of States' climate change obligations; and

10.10 **Chapter XI** briefly concludes.

CHAPTER II. JURISDICTION

11. Solomons submits that the Court has the jurisdiction to render an advisory opinion pursuant to Article 96(1) of the Charter of the United Nations ("**Charter**"), and Article 65(1) of the Statute. The UNGA may request an advisory opinion on "*any legal question*",[2] and the Court may give an advisory opinion following the request of an authorised body in accordance with the Charter.[3] In seeking to clarify States' obligations under international law in respect of climate change, the UNGA has a clear and direct interest in the Request.[4] Climate change is an important focus of the UNGA's functions and agenda.[5] Further, the Request concerns matters which, by their nature, impact all States. There are

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2 *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter) (Advisory Opinion)* [1962] ICJ Rep 151, 155 ('*Certain Expenses of the United Nations*').

3 *Statute of the International Court of Justice,* article 65(1).

4 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, *(Advisory Opinion)* [2019] ICJ Rep 95, 112 [58] ('*Chagos*'); *Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226 [13] ('*Nuclear Weapons Advisory Opinion*'); *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, (Advisory Opinion)* [1973] ICJ Rep 166, 172 [14].

5 See for example, *Protection of global climate for present and future generations of mankind*, GA Res 43/53, UN Doc A/Res/43/53 (27 January 1989, adopted 6 December 1988); *Protection of global climate for present and future generations*, GA Res 63/32, UN Doc A/Res/63/32 (26 November 2008); *Protection of global climate for present and future generations of humankind*, GA Res 69/220 UN Doc A/Res/69/220 (19 December 2014); *Protection of global climate for present and future generations*, GA Res 77/165 UN Doc A/Res/77/165 (14 December 2022); *Oceans and the law of the sea,* GA Res 77/248 UN Doc A/Res/77/248 (30 December 2022); see also *Chagos* (n 4) [76]; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, (Advisory Opinion)* [2004] ICJ Rep 136 [62] ('*Construction of a Wall*').

no "compelling reasons" for the Court to decline to render the opinion sought.[6] As such, Solomons submits the Court has jurisdiction to render the advisory opinion sought.

PART A

12. This section responds to Part A of the question put to the Court, namely:

> ***(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?***

CHAPTER III. BACKGROUND TO SOLOMON ISLANDS

13. Solomon Islands is an archipelago in the southwest Pacific Ocean. It comprises approximately 1,000 islands covering an area of approximately 461,000 square kilometres (249,000 square nautical miles) and a land area of 28,446 square kilometres.[7] The nation is made up of six major islands – Choiseul, Guadalcanal, Malaita, Makira, New Georgia, and Isabel – and approximately 992 small islands, atolls, and reefs. More than 300 of the islands are inhabited,[8] including by customary owners. Islands without permanent populations continue to have strong cultural and ecological importance to their customary owners.

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6 *Certain Expenses of the United Nations* (n 2) 155; *Judgment of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO (Advisory Opinion)* [1956] ICJ Rep 77, 86.

7 Government of the Solomon Islands, *Solomon Islands First Nationally Determined Contribution* (2021) <https://unfccc.int/sites/default/files/NDC/2022-06/NDC%20Report%202021%20Final%20Solomon%20Islands%20%281%29.pdf> p. 3 ('*NDC Solomon Islands 2021*').

8 Ibid 3.

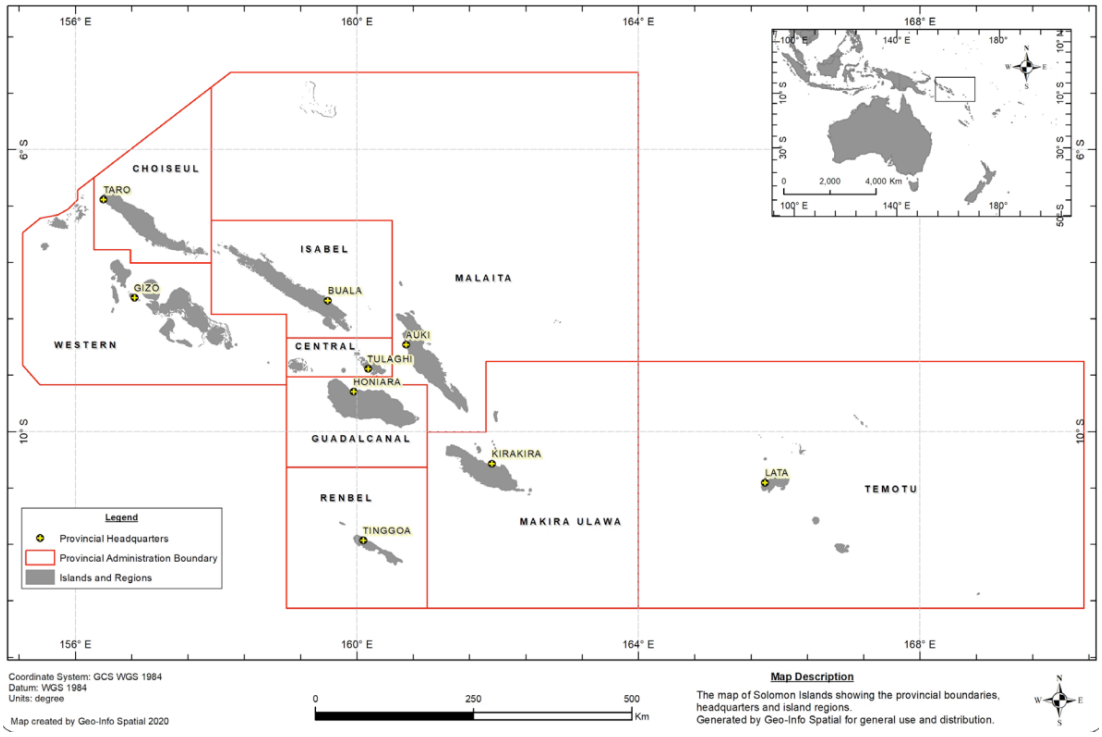

Figure 1 Map of the Solomon Islands Archipelago

14. The terrestrial habitats comprise a wide variety of environments, from forested mountains, low-lying grasslands, saltwater lagoons, low-lying coral atolls, and artificial islands made of coral and soil. Solomons also has some of the world's richest marine diversity, including more than 75 percent all known coral species, 30 percent of the world's coral reefs, and 40 percent of coral reef fish species.[9]

15. Solomons has a population of approximately 760,000 people[10] which makes it the third largest of all Pacific Island countries (excluding Australia and New Zealand). The population is growing at a rate of approximately 2.6 percent year-on-year and more than two-thirds of its population are under the age of 34.[11] Solomon Islanders are descendants from a mixture of Melanesian, Polynesian, and Micronesian settlers that archaeological and linguistic evidence suggest have occupied the islands for approximately 30,000 years.

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9 Permanent Mission of Solomon Islands to the United Nations, *Solomon Islands National Submission on Climate Change and Possible Security Implications. Submission to the 64th Session of the UN General Assembly* (Web Page, 2009) <https://sustainabledevelopment.un.org/content/dsd/resources/res_pdfs/ga-64/cc-inputs/Solomon_Island_CCIS.pdf>.

10 Solomon Islands National Statistics Office, *Population Projections for the period mid-year 2020-2064* (Web Page, 4 October 2023) <https://www.statistics.gov.sb/press-releases>. Note, census and survey data may be unreliable as many people continue to live customary lifestyles in many of Solomon Islands provinces.

11 Solomon Islands National Statistics Office, *2019 National Population and Housing Census Report* (Web Page, 4 October 2023) <https://solomons.gov.sb/wp-content/uploads/2023/09/Solomon-Islands-2019-Census-Report-Vol-2_Basic-Tables_Operations.pdf> ('*Population and Housing Census*').

16. Solomons is classified as both a Least Developed Country ("**LDC**") and a Small Island Developing State ("**SIDS**").[12] LDCs and SIDS are among the most exposed to the adverse impacts of climate change yet, on average, contribute the least to anthropogenic greenhouse gas emissions.[13] Solomons high vulnerability to climate change is reflected in its ranking of 148th out of 182 countries in the world in the 2020 ND-GAIN Index.[14]

17. Most of Solomons' current energy is generated using imported fossil fuels, which creates a significant financial burden. Solomons has the highest electricity costs in the world, which is not sustainable for most of the population.

18. Despite being a nation which is experiencing the most damaging effects of climate change, Solomons is taking steps to be a global leader in the energy transition away from fossil fuels. With appropriate international assistance, Solomons has ambitious goals to transition to 100 percent renewable energy by 2050 and is already on that journey. One example of this commitment is the Tina River Hydro Project which, once complete in 2026, is projected to supply 68 percent of the electricity for Honiara (Solomons capital, which has a population of 100,000) with renewable energy. Coupled with a rise in small scale solar grids, this project will help Honiara reduce its reliance on diesel and reduce greenhouse gas emissions by 49,500 tonnes of CO_2 per year.

19. It is widely accepted that a warming climate exacerbates meteorological and oceanographic phenomena and events which adversely impact SIDS. The effects of climate change on SIDS are further exacerbated due to physical, geographic, and cultural factors.[15]

20. The Intergovernmental Panel on Climate Change assessments ("**IPCC**") have identified that over the next century, Pacific island nations face, to a greater extent than other countries, environmental threats ranging from increased ocean acidification, sea-level rise and intensification of tropical cyclones.[16] Solomons has the second longest coastline and

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12 United Nations Conference on Trade and Development, *UN List of least developed countries* (Web Page, 2021) <https://unctad.org/topic/least-developed-countries/list>.

13 Intergovernmental Panel on Climate Change, 'Summary for Policy Makers' in *Climate Change 2022: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022) [A.1.5] ('*Summary for Policymakers*').

14 Notre Dame Global Adaption Initiative, *ND-Gain Country Index* (Web Page, 2021) <https://gain.nd.edu/our-work/country-index/rankings/>.

15 3) *Climate Research* 211.

16 Intergovernmental Panel on Climate Change, 'Regional fact sheet – Small Islands' in *Climate Change 2022: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022).

the second largest Exclusive Economic Zone ("**EEZ**") in the Pacific (estimated at 1.34 million square kilometres).[17] The vast distance of land and sea that Solomons covers, coupled with its equatorial location, means it is exposed to a variety of climate induced hazards, the effects of which have been aggravated in intensity due to a rapidly warming climate.

21. Typically, temperatures in Solomons are relatively constant throughout the year with only very small changes from season to season. The country has two distinct seasons, a wet season (November to April), and a dry season (May to October). Temperatures and weather patterns are strongly tied to changes in the surrounding ocean temperature. Analyses conducted by both Solomons' government and external bodies have shown that across Solomons the average surface temperatures between 1962 to 2012 increased at a rate of approximately 0.14 degrees to 0.17 degrees every ten years.[18] These studies indicate that the rate of warming has accelerated since 1990.[19] Increasing oceanic temperatures have inevitably intensified natural hazards occurring in the Pacific Region, including in Solomons, evidence of which, both empiric and anecdotal, is described further below.

22. The 2018 *Pacific Marine Climate Change Report Card*, published by the Commonwealth Marine Economies Program, states that Solomons is likely to experience more intense rain events, more noticeable submergence of low-lying habitats and greater environmental damage as a result of ocean acidification, compared to other Pacific nations.[20] The severe impacts of climate change are already felt acutely by Solomon Islanders including through displacement, forced relocation and migration due to submergent coastal environments, more extreme weather events, food insecurity due to a decline in marine resource stocks, and destruction of vital mangrove environments.

23. In Solomons culture, the concept of storytelling or '*tok stori'* as a mode of conveying history and meaning associated with the environments is central to local *kastom*.[21] Understanding the importance of how first-hand accounts complement empirical evidence about changes

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17 *NDC Solomon Islands 2021* (n 7) 3.

18 World Bank, 'Climate Risk Country Profile: Solomon Islands' (Web Page, 2021) <https://climateknowledgeportal.worldbank.org/sites/default/files/country-profiles/15822-WB_Solomon%20Islands%20Country%20Profile-WEB.pdf> ('*World Bank Climate Risk Profile*').

19 Ibid.

20 Penehuro Lefale, et. al, 'Pacific Marine Climate Change Report Card' *Commonwealth Marine Economies Programme* (Web Page, 2018) <https://pacific-data.spre.org/system/files/cefas-pacific-islands-report-card.pdf.>.

21 '*Kastom*' means customary aspects of culture, law, history, and religion that informs every part of life for Solomon Islanders.

in climate patterns or ocean behaviour is crucial to providing a complete picture. Accordingly, in keeping with *kastom*, the below descriptions of climate change impacts experienced by Solomon Islanders weaves personal accounts from impacted individuals into the established science on the impacts of climate change.

24. Such stories are particularly important where there is limited data to draw on. This is, in part, due to a lack of technical and financial assistance available to Solomons to measure, monitor, and report on such climate change impacts. The critical need for developed States to provide such assistance in to developing States like Solomons is discussed further at **Chapter VI, Part D**.

CHAPTER IV. THE EFFECTS OF ANTHROPOGENIC GREENHOUSE GAS EMISSIONS ON SOLOMON ISLANDS

Sea-level rise

25. Sea-level rise is an increase in the level of the ocean due to the effects of global warming, a phenomenon of climate change.[22] Rising sea-levels are an existential threat for Pacific States including Solomons.[23] Estimates show sea-levels have risen on average eight to 10 millimetres per year for the western Pacific between 1993 and 2010 compared to a global average rate of around 3.4 millimetres per year.[24] Solomons has one of the highest rates of sea-level rise experienced by any Pacific island nation.[25]

26. The common threats of sea-level rise include coastal flooding, destruction of reef and mangrove environments, saltwater intrusion and associated salination of water supply, exacerbated beach erosion and impacts on low-lying infrastructure and coastal communities.[26]

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22 Nobuo Mimura, 'Sea-level rise caused by climate change and its implications for society' (2013) 89(7) *Proceedings of the Japan Academy, Series B Physical and Biological Sciences* 281.

23 Secretariat of the Pacific Regional Environment Programme, 'Vulnerability and Adaptation (V&A) Assessment for Ontong Java Atoll, Solomon Islands: Pacific Coral Reef Action Plan 2021-2030' (Report, 2014) <http://www.sprep.org/attachments/Publications/CC/PACCTechRep4.pdf>.

24 *World Bank Climate Risk Profile* (n 18).

25 Ibid 11.

26 Charlotte Moritz et. al, 'Status and Trends of Coral Reefs of the Pacific. Global Coral Reef Monitoring Network' (Report, 2018) <https://solomonislands-data.sprep.org/system/files/status-coral-reefs-pacific.pdf>.

27. Throughout the next century, these threats will lead to severe economic and human impacts for small island States in the Pacific.[27] Given the sheer scale of Solomons' exposure to ocean forces, the country is at heightened risk of rising sea-levels caused by climate change. More than 80 percent of Solomons population reside in vulnerable low-lying coastal rural areas, within 1.5 kilometres of the coastline.[28]

28. In the most severe cases, sea-level rise can cause complete inundation of landmass and low-lying islands disappear. This landmass inundation is prevalent in Solomons and has already claimed at least five islands in the archipelago.[29] For example, Kale Island in Isabel Province and Walande Island in Malaita Province have been completely submerged. Many other low-lying islands are at risk. These submerged islands are believed to be the first reported cases in the world.[30]

29. The changes in coastal living caused by sea-level rise and other extreme weather events that Solomon Islanders are experiencing are described below:

    29.1 (**Ambu Village Case Study**) In the village of Ambu near the provincial town of Auki in Malaita Province, Mr Alfred Didi described how sea-level rise is causing high tides that push water into the village and the road, polluting the community with salt water. This has not only damaged physical infrastructure in his community, but compounds ecological impacts of climate change for the community through the salination of arable soil. This is a grave concern for a community that is heavily dependent on agricultural practices.

    29.2 (**Kombe Village Case Study**) At the village of Kombe in Northeast Ngella, Central Province, Mr Daniel Duru witnessed sea-level rise washing away coastal areas. Seawalls were built by the community to resist the unusually high tides but these measures have done little to protect the community from continued coastal flooding. The increased rainfall in Mr Duru's village has also damaged his crops and affected his livelihood. The experience in Kombe Village demonstrates how

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27 Rebekah Ramsay, et. al. 'Local Responses to Climate Change and Disaster-Related Migration in Solomon Islands' (2023) *Social Dimensions of Climate Change: Pacific Series*, Research Paper 2, <https://documents1.worldbank.org/curated/en/099456503152328382/pdf/IDU044b0d6c907cc80473b0bc3a04ac1c84b115a.pdf>.

28 *World Bank Climate Risk Profile* (n 18).

29 Ibid.

30 Simon Albert et. al. 'Interactions between sea-level rise and wave exposure on reef island dynamics in the Solomon Islands' (2016) *Environmental Research Letters* 11.

the economic, social and physical cost of adapting to climate change is being borne by local communities.

29.3 (**Haleta Village Case Study**) In the village of Haleta, Ngella Central Province, Ms Ethel Loku describes how the increasing sea-level is threatening the local school buildings and teachers' houses. The ocean now reaches the school infrastructure, creating significant structural risks and leaving the future of the school in the village uncertain. Ms Loku's description demonstrates how climate change is directly affecting educational outcomes for vulnerable children in this community.

29.4 (**Kale Island Case Study**) Ms Gladys Habu, a climate change activist from Isabel Province, describes how her tribal land of Kale in Isabel Province disappeared in less than a decade. Between 2009 and 2014, she documented the loss of Kale Island, noting how on each of her annual visits she saw less and less of the island. On her last visit in 2014, the island had been completely submerged underwater.[31] In addition to the loss of her tribal lands, Ms Habu has lost her tribe's cultural heritage and identity. For Solomon Islanders whose identity is closely tied to customary land ownership, this is a profound cultural loss for her, her tribe, and her community.

29.5 (**Ontong Java Case Study**) The low-lying atolls of Ontong Java, 250 kilometres north of the nearest Solomons' landmass and surrounded by the forces of the Pacific Ocean, have been identified as particularly vulnerable to climate change. The community that lives on these atolls is isolated and removed from any urban centres on mainland islands. They have witnessed sea-level rise, high tides, and extreme weather events which threaten their delicate food systems and access to water.[32] The threat to communities living on these islands is existential, and forced

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[31] ITV News, 'No More Laughter on the Beach: One Woman's Emotional Return to the Small Islands Now Under Water' *ITV News* (Online, 2019) <https://www.itv.com/news/2019-09-25/no-more-laughter-on-the-beach-one-woman-s-emotional-return-to-the-small-islands-now-under-water>; Gladys Habu, 'Engulfed by the Sea: Loss and Damage from Climate Change' *IIED* (Online, 18 November 2020) <https://www.iied.org/engulfed-sea-loss-damage-climate-change>; C Roina and I Rodie, 'Shocking Pictures Show How Island Communities Are Vanishing Due to Climate Change' *The Mirror* (Online, 11 August 2021) <https://www.mirror.co.uk/news/world-news/shocking-pictures-shows-how-island-24685120>.

[32] SPREP, 'Vulnerability and Adaptation (V&A) Assessment for Ontong Java Atoll, Solomon Islands' (SPREP, Pacific Coral Reef Action Plan 2021-2030, June 2014), 1 <https://www.sprep.org/attachments/Publications/CC/PACCTechRep4.pdf>.

relocation of such communities from their homes is likely due to the impacts of climate change.[33]

29.6 (**Sikaiana Island Case Study**) On the Island of Sikaiana in the Malaita outer islands, the impact of climate change continues to affect the local community through sea-level rise. On 22 January 2024, high sea swells hit Sikaiana Island. Flooding swept through the community and damaged houses and other dwellings with six civilians injured. Critical food crops and water wells were submerged by the high waves, impacting the availability of food and fresh water for the community.[34]

29.7 (**Pileni Island Case Study**) Pileni Island is an offshore low-lying island of the remote Temotu Province in Solomons. By virtue of its geography, it is highly vulnerable to high tides, swells, and coastal erosion which are caused or exacerbated by sea-level rise. The Pileni community has witnessed the ongoing sea-level rise and coastal erosion of their island. Based on the current rate of coastal erosion that has been documented on Pileni over a four-year period, the island may be uninhabitable in 20 years. The Pileni community have tried to adapt to these impacts by building sea walls, but some in the community believe that relocation may be the only option left.[35]

29.8 (**Rendova Island Case Study**) Rendova Island is nestled in Western Province located in the Western part of Solomons. Ms Mary Kose, a local mother from Rendova, described how she has observed irregular weather patterns affecting the produce from her garden. Mary explained that the increased recurrence of rainfall damages her crops before their usual harvest time which, not only does this rainfall impact Mary's income, but her children are also affected. The extreme rainfall causes the rivers to flood which prevents her children from attending school as they cannot reach it. In Mary's home village of Reno, she has also witnessed the

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33 Ramsay (n 27).

34 National Disaster Counsel, 'National Situational Report 01' (Report, 12 November 2023, NSR01-11/23) <https://solomons.gov.sb/34189-2/>.

35 Ramsay (n 27).

impacts of sea-level rise. The area where her boat shed and canoe house once stood is now submerged.[36]

30. For these Solomon Islanders rising sea-levels and extreme tidal events are not just sporadic phenomenon, they are day-to-day threats, the impacts of which are both creeping and swift. They pose a very real danger to the longevity of communities and their way of life, especially because for many of the affected communities, there is nowhere they can relocate to.

Increases in Extreme Weather Events

31. Solomons was ranked as the second highest disaster risk country in the world in the UN Office for Disaster Risk Reduction Status Update of 2023.[37] Being located in the 10-15 degrees latitude where conditions are favourable for the formation of cyclones, Solomons already experiences the impacts of extreme weather events.

32. Meteorologists have identified that Solomons will experience an increase in extreme weather patterns, with increases in floods, droughts, cyclones, and increased temperatures. These impacts will become more severe with every increment of increased warming.[38] Over a 31-year period (1986-2016) the maximum average intensity of tropical cyclones in Solomons' EEZ has increased.[39] The onset of tropical cyclones has resulted in considerable damage to life, agriculture, and infrastructure in provinces such as Guadalcanal, Malaita, Makira, and Santa Isabel.[40] Core government services are also struggling, with the country's main National Referral Hospital positioned on the shore of the Solomon Sea, placing it at high risk of damage from storm surges caused by weather events like cyclones.

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36 Climate Change and Children's Rights in the Solomon Islands (Briefing Notes, February 2024).

37 UN Office for Disaster Risk Reduction, 'Disaster Risk Reduction in the Solomon Islands,' (Report, 2023) <https://www.preventionweb.net/media/86899/download?startDownload=true> ('*UNDRR*').

38 World Health Organisation and United Nations Framework Convention Climate Change, 'Health & Climate Change Country Profile 2020 Small Island Developing Profile 2020,' (Report, WHO and UNFCCC, 2020) <https://cdn.who.int/media/docs/default-source/climate-change/cc-health-climate-change-2019-solomon-islands.pdf?sfvrsn=8ee90395_3&download=true>.

39 Edward Maru, Taiga Shibata & Kosuke Ito, 'Statistical Analysis of Tropical Cyclones in the Solomon Islands', (2018) 9(6) *Atmosphere* 227.

40 Australian Bureau of Meteorology and Commonwealth Scientific and Industrial Research Organization (CSIRO), 'Climate Variability, Extremes and Change in the Western Tropical Pacific: New Science and Updated Country Reports 2014' (Report, CSIRO, 2014), chapter 13 "Solomon Islands" <https://www.pacificclimatechangescience.org/wp-content/uploads/2013/09/Solomon-Islands.pdf>.

33. Between 2010 and 2015, increased flooding impacted an estimated 10,000 to 100,000 Solomon Islanders,[41] and caused considerable loss of life and livelihoods.[42] The damage bill alone from the 2014 flash floods was USD 108 million,[43] a significant burden for a LDC like Solomons.

34. The expected increase in temperature due to the emissions of anthropogenic greenhouse gases will also see increases in droughts, especially for outlying islands such as Rennell and Bellona Province and Ontong Java which are prone to water shortages. Droughts will cause increased food insecurity and the transmission of tropical diseases. It is also predicted that Solomons will experience increased heat waves.[44] The risk of climate-related displacement is also growing as a result of exposure to severe weather-related shocks.[45]

Damage to marine ecosystems

35. Studies have attributed the increase of ocean temperatures and carbon dioxide in the ocean to the continual emission of anthropogenic greenhouse gas in the climatic atmosphere, which increasingly degrades marine ecosystems.[46] Impacts of climate change on marine ecosystems include sea-level rise, marine heat waves and dead zones from ocean acidification, coral bleaching, and reduction in overall aquatic biodiversity in marine environments.[47] Climate change accounts for 60 percent in the overall total degradation of the world's marine ecosystems.[48]

36. Supporting its rich array of marine diversity, Solomons has an extensive range of marine ecosystems, consisting of mangroves, sea grasses, and coral reef systems.[49] These

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41 'Climate Change Knowledge Portal for Development Practitioners and Policy Maker, Solomon Islands,' (Online, United Nations, 2021) <https://climateknowledgeportal.worldbank.org/country/solomon-islands/vulnerability>.

42 Ramsay (n 27).

43 United Nations Office for the Coordination of Humanitarian Affairs, 'Solomon Islands Flash Floods,' (2014, Web Page) <https://us6.campaign-archive.com/?u=26049feba1&id=78067c9b63&e=5f4e1b6b13>.

44 *World Bank Climate Risk Profile* (n 18).

45 UNDRR (n 37).

46 Intergovernmental Panel on Climate Change, 'Changing Ocean, Marine Ecosystems, and Dependent Communities' in *Special Report on the Ocean and Cryosphere in a Changing Climate: Changing Ocean, Marine Ecosystems and Dependent Communities* (Cambridge University Press, 2016).

47 Ibid.

48 United Nations, 'How is climate change impacting the world's ocean,' (Web Page) <https://www.un.org/en/climatechange/science/climate-issues/ocean-impacts>.

49 Stacy Jupiter, et. al. 'Solomon Islands: Coastal and Marine Ecosystems' chapter 39 in C Sheppard (ed) *World Seas: an Environmental Evaluation* (2nd Edition, Academic Press, 2019) 855 <https://www.sciencedirect.com/science/article/pii/B9780081008539000439>.

ecosystems are supported by unique systems of tenure, use, and customary ownership which are centuries old.[50]

37. Mangroves, in particular, play an important role in the country's marine ecosystems, supporting production in the fisheries sector, coastline protection, water quality control, and a nursery for fish and other marine life.[51] Further, mangroves play a vital role in the food security and livelihoods of many Solomons' communities providing fruit, shells, and crab, as well as timber for firewood and construction. Coastal sea grass which often adjoins mangroves are equally important to the health of marine ecosystems by absorbing carbon dioxide from the atmosphere and cleaning the surrounding waters. Coral reefs are also crucially important for food and subsistence livelihoods in Solomons.[52]

38. Marine ecosystems in Solomons are critically important and offer cultural, physical and economic benefits to local communities.[53] Like many of its Pacific neighbours, Solomons is heavily reliant on its fisheries sector, focusing on the EEZ, with the export of fisheries, and marine resources being the second largest source of economy after forestry.[54]

39. Marine ecosystems in Solomons are already being impacted by climate change resulting in depletion of fish stocks and devastation to mangroves, river estuaries, and coral reefs caused by the anthropogenic-induced increases in oceanic temperature, and carbon dioxide. The fisheries sector contributes in the range of three to five percent to the country's gross domestic product per capita.[55] Yet is estimated that the continual emission of anthropogenic greenhouse gas causing rises in oceanic temperatures will, by 2050, force tuna stocks out of Solomons' waters into the Western Pacific.[56] Such a decrease in fish stocks would be detrimental to Solomons' economy, potentially causing a 50 percent

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50 *World Bank Climate Risk Profile* (n 18).

51 Reuben Sulu, et. al, 'The status of Solomon Islands coral reefs,' in *Coral Reefs in the Pacific; Status and monitoring, resources and management,* (Volume special, Institut de recherche pour le development, 2002) 249 <https://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers14-11/010032222.pdf>.

52 Jan Van der Ploeg, et. al, 'Coral reef conservation in Solomon Islands: Overcoming the policy implementation gap,' (Report, 2020) <https://programs.wcs.org/Portals/213/Program%20Report_2020-39_Coral%20Reef%20Conservation%20in%20Solomon%20Islands%20Report_FA_Lowres.pdf?ver=2021-03-29-072113-457#:~:text=Coral%20reefs%20are%20of%20crucial,detrimental%20effect%20on%20water%20quality>.

53 Marco Arena, 'National Marine Eco System Service Valuation' *Marine and Coastal Biodiversity Management in Pacific Island Countries* (Report, 2015) <https://macbio-pacific.info/wp-content/uploads/2017/07/Solomons-MESV-Summary-Digital-LowRes.pdf>.

54 Ministry of Fisheries, and Marine Resources, 'Solomon Islands Fisheries Policy 2019-2029' (Policy, 2019) <https://www.fisheries.gov.sb/mfmr-docs/mfmr-national-fisheries-policy-2019.pdf>.

55 *World Bank Climate Risk Profile* (n 18).

56 Johann D. Bell, et al. 'Pathways to sustaining tuna-dependent Pacific Island economies during climate change' (2023) 4 *Nature Sustainability* 900–910.

decrease in economic output.[57] Local communities are also catching less fish and harvesting fewer invertebrates in traditional fishing grounds, impacting their livelihoods, food scarcity, and poverty.[58]

Social and cultural impacts

40. The numerous impacts of climate change have directly impacted Solomons' society and pose threats to agriculture, health, water and sanitation, culture and traditions.

41. As set out above at **paragraphs 29.2 and 29.3**, Daniel Duru and Ethel Loku have spoken of increased rain affecting food planting seasons and harvesting times. About 80 percent of Solomon Islanders rely on subsistence agriculture for food and to support livelihoods by selling excess products in local markets.[59] Increases in rainfall not only leads to interruption of typical cropping seasons, but in recent years, has also resulted in flooding which destroys entire crops and cropping areas.[60]

42. Studies suggest that climate change has also worsened the health of Solomon Islanders. The health impacts are both direct and indirect. Direct impacts include deaths, injuries, illness, and discomfort caused by change in average temperature, thermal extremes and more intense cyclones, storms, and floods.[61] Indirect impacts include increased incidence rates of vector borne diseases (such as malaria and dengue fever), water borne diseases (such as viral and bacterial diarrhoea), and diseases related to toxic algae (such as ciguatera fish poisoning), respiratory illness, and a variety of other disorders.[62] A 2016 study concluded there were a range of climate-related health risks for Solomons, including the health impacts of extreme weather events, heat-related illness, water security and safety,

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57 Ibid.

58 *World Bank Climate Risk Profile* (n 18).

59 South Pacific Community, 'Pacific Agriculture Policy Project' (Web Page) <https://pafpnet.spc.int/solomon-islands>.

60 George Baragamu, 'Climate Change, Solomon Islands Red Cross, Preparedness for Climate Change Background Document' (2008, Web Page) <https://ctk.climatecentre.org/downloads/modules/training_downloads/1a%20National%20Climate%20Risk%20assessment%20Solomon%20Islands%20Red%20Cross.pdf> 21.

61 John Hay and Nobuo Mimura, 'Supporting climate change vulnerability and adaptation assessments in the Asia-Pacific region: an example of sustainability science' (2006) *Sustainable Science* 1, 23, 32.

62 Ibid 32; Napoli et al. 'Tracking the impacts of climate change on human health via indicators: lessons from the Lancet Countdown' (2022) 22 *BMC Public Health* 663. See also Lachlan, et al. 'Health Impacts of Climate Change in Pacific Island Countries: A Regional Assessment of Vulnerabilities and Adaptation Priorities' (2016) 124(11) *Environmental Health Perspectives* 1707–1714.

food security and malnutrition, vector-borne diseases, respiratory illnesses, non-communicable diseases, and a variety of other disorders.[63]

43. Solomons is also exposed to unique water related disasters.[64] For example, low-lying river delta regions are vulnerable to inundation and saline intrusions, low-lying atolls with groundwater supplies are vulnerable to saltwater contamination, and rivers threaten fluvial flooding.[65] With only two thirds of Solomons' population having access to basic water supply,[66] these challenges are exacerbated by climate change putting further strain on safe drinking water, food production, health, and water irrigation for agriculture. Sikaiana Island is just one example of a community that continues to face limited access to fresh water due to the saltwater contamination of their wells (see also **paragraph 29.6**).[67]

44. For thousands of years, traditional knowledge has been used to pass down important information from one generation to the other.[68] Climate change, however, is causing confusion within these traditional knowledge systems and is, in itself, crucial evidence of the lived experienced of climate change by Solomon Islanders.[69] The changing traditional practices of the Sogabiri tribe demonstrates this very issue. The Sogabiri tribe in the Western Province can predict weather patterns known as *Komburu* (westerly winds) which usually starts in December to May each year.[70] The tribe's pagan priest can predict when the *Komburu* will start and end by the observation of the fall of nuts. The tribesmen can also predict the intensity and duration of the *Komburu* by observing the fallen leaves of the *Rarapo* tree. For example, if the leaves fall under the tree, the wind will last three days but if the leaves fall inland of the island, the *Komburu* will last for eight days. However, with climate change, the *Komburu* winds are no longer predictable. This creates difficulty for the Sogabiri tribe to rely on their traditional knowledge and practices that have served them well for thousands of years.

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64 *World Bank Climate Risk Profile* (n 18).

65 Ibid.

66 Minister Hon. Bradley Tovosia, Minister of Mines, Energy and Rural Electrification, Solomon Islands Government, (Speech, United Nations Water Conference, 24 March 2023) <https://sdgs.un.org/sites/default/files/2023-03/Solomon%20Islands%20%28E%29.pdf>.

67 Milton Ragaruma, 'Sea level rise is real for Lord Howe Islands', *The Island Sun* (Online, 11 September 2018) <https://theislandsun.com.sb/sea-level-rise-is-real-for-lord-howe-islands/>.

68 Baragamu (n 60).

69 Ibid.

70 Ibid.

45. Finally with 80 percent of the population living in coastal areas,[71] Solomon Islanders are at risk of "*temporary and permanent involuntary displacement and migration*".[72] Since 2008, weather-related events in Solomons have triggered around 26,000 displacements.[73] In particular, Cyclone Uli in 2010 and flash flooding in Honiara in 2014 displaced 15,000 people. Modelling by the Internal Displacement Monitoring Centre indicates that sudden-onset hazards – including both climate-linked shocks as well as other events – could displace 4,028 Solomon Islanders on average per year, with a single cyclonic event potentially displacing up to 68,000 people.[74] As described by Gladys Habu above at **paragraph 29.4**, such displacement has profound effects on identity and cultural loss.

46. The climate impacts described above are occurring at today's 1.2 °C of warming above preindustrial temperatures;[75] they are largely linear impacts that worsen proportionally with warming.

47. However, 1.2 °C of warming may also be triggering non-linear, abrupt, and potentially irreversible tipping points. Exceeding 1.5 °C, which based on current rates may occur by the 2030s, increases the likelihood of triggering six self-perpetuating climate tipping points, including the loss of the Greenland Ice Sheet and the West Antarctic Ice Sheet,[76] which will accelerate sea-level rise.

48. The Greenland Ice Sheet is nearing a tipping point, with accelerated melting expected.[77] The melting Greenland Ice Sheet is already the largest single contributor to the rate of global sea-level rise.[78] If all of Greenland melts, it would contribute five to seven meters of sea-level rise.[79] While fully melting the Greenland Ice Sheet could take millennia, the

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71 *NDC Solomon Islands 2021* (n 7).

72 *World Bank Climate Risk Profile* (n 18).

73 Internal Displacement Monitoring Centre, 'Global Report on Internal Displacement: Part 2 – Internal displacement in a changing climate' (Report, 2021) 9 ('*Global Report on Internal Displacement*').

74 World Bank, 'Social Dimension of Climate Change: Pacific Series: Local Responses to Climate Change and Disaster-Related Migration in Solomon Islands' (Web Page, 30 March 2023) 9 <https://www.worldbank.org/en/country/pacificislands/brief/social-dimensions-of-climate-change-in-solomon-islands> ('*World Bank Social Dimensions of Climate Change*').

75 Piers M Forster et. al., 'Indicators of Global Climate Change 2022: Annual Update of Large-scale Indicators of the State of the Climate System and Human Influence' (2023) 15(6) *Earth System Science Data* 2295, 2296.

76 David I Armstrong McKay et al., 'Exceeding 1.5°C global warming could trigger multiple climate tipping points' (2022) 377(6611) *Science* 1, 7; Timothy M Lenton et al., 'Climate tipping points—too risky to bet against' (2019) 575(7784) *Nature* 592, 594.

77 Niklas Boers and Martin Rypdal 'Critical slowing down suggests that the western Greenland Ice Sheet is close to a tipping point' (2021) 118(21) *Proceedings of the National Academy of Science,* 1, 1.

78 Intergovernmental Panel on Climate Change, 'Ocean, Cryosphere and Sea Level Change' in *Climate Change 2022: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022) 1211, 1302; Seaver Wang et al., 'Mechanisms and Impacts of Earth System Tipping Elements' (2023) 61 *Reviews of Geophysics* 1, 19-20.

79 Ibid.

rate of future melt, and hence rate of sea-level rise, depends "*strongly on the magnitude and duration of the temperature overshoo*t" beyond 1.5 °C.[80]

49. The Atlantic Meridional Overturning Circulation ("**AMOC**") is another irreversible tipping point that risks collapse beyond 1.5 °C.[81] The AMOC is an ocean current that circulates life-sustaining warmth and nutrients to the North Atlantic.[82] Flows of freshwater from Arctic ice melt, including from the Greenland Ice Sheet, are expected to weaken this circulation[83] and several early warning signals indicate that it is approaching its tipping point,[84] with collapse estimated as early as the 2050s.[85] AMOC collapse would shift weather patterns around the world, with devastating consequences[86] and could accelerate tipping of other vulnerable climate systems,[87] significantly worsening climate impacts in Solomons.

50. 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.[88] The Arctic could be sea ice-free in September within 10 to 15 years.[89] In the extreme case when all Arctic sea ice is lost for the sunlit months, as could happen as early as mid-century,[90] it will add the equivalent of

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80 Alexander Robinson, Reinhard Calov and Andrey Ganopolski, 'Multistability and critical thresholds of the Greenland ice sheet' (2012) 2(6) *Nature Climate Change* 429, 429.

81 Armstrong McKay (n 76).

82 National Oceanic and Atmospheric Administration, National Ocean Service, *What is the Atlantic Meridional Overturning Circulation (AMOC)?* (20 January 2023) <https://oceanservice.noaa.gov/facts/amoc.html>.

83 Thomas WN Haine, Ali H Siddiqui, and Wenrui Jiang 'Arctic freshwater impact on the Atlantic Meridional Overturning Circulation: status and prospects' (2023) 381(2262) *Philosophical Transactions of the Royal Society*, 1, 1.

84 Rene M van Westen, Michael Kliphuis, and Henk A Dijkstra 'Physics-based early warning signal shows that AMOC is on tipping course' (2024) 10(6) *Science Advances* 1, 6; Boers (n 77) 1.

85 Peter Ditlevsen and Susanne Ditlevsen 'Warning of a forthcoming collapse of the Atlantic meridional overturning circulation' (2023) 14(4254) *Nature Communications* 1, 6-7.

86 Bryam Orihuela-Pinto, Matthew England, and Andrea S Taschetto 'Interbasin and interhemispheric impacts of a collapsed Atlantic Overturning Circulation' (2022) 12(6) *Nature Climate Change* 558, 558; Intergovernmental Panel on Climate Change, 'Synthesis Report' in *Climate Change 2022: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022) 43 ('*Synthesis Report*').

87 Wang (n 78) 9; Armstrong McKay (n 76) 5.

88 Mika Rantanen et al. 'The Arctic has warmed nearly four times faster than the globe since 1979' (2022) 3(168) *Communications Earth & Environment* 1–10, 3; Petr Chylek et al. 'Annual Mean Arctic Amplification 1970–2020: Observed and Simulated by CMIP6 Climate Models' (2022) 49(13) *Geophysical Research Letters* 1, 1.

89 Yeon-Hee Kim et al., 'Observationally-constrained projections of an ice-free Arctic even under a low emission scenario' (2023) 14(3139) *Nature Communications*; David B Bonan, et al., 'Constraining the Date of a Seasonally Ice-Free Arctic Using a Simple Model' (2021) 48(1) *Geophysical Research Letters* 1, 1; David Docquier and Torben Koenigk, 'Observation-based selection of climate models projects Arctic ice-free summers around 2035' (2021) 2(144) *Community Earth & Environment* 1, 4, 6.

90 Bonan (n 89) 1.

25 years of current climate emissions.[91] Loss of land-based snow and ice could double this.[92]

51. Given the scale of harm, it will not be possible for Solomons to adapt to all the impacts from tipping points, which makes it imperative to slow warming in the near-term to keep the 1.5 °C target within reach.

CHAPTER V. APPLICABLE LAW AND RULES OF INTERPRETATION

52. This Chapter explains Solomons' approach to the legal framework that should guide the Court in answering the questions in the Request.

53. The preamble to the Request identifies multiple sources of law that are relevant to States' legal obligations regarding climate change. The preamble refers to the Charter, as well as human rights law (the International Covenant on Civil and Political Rights ("**ICCPR**"), the International Covenant on Economic, Social and Cultural Rights ("**ICESCR**") and the Universal Declaration of Human Rights ("**UDHR**")), the UNFCCC and the Paris Agreement, the United Nations Convention on the Law of the Sea ("**UNCLOS**"), and relevant legal principles to take into account, namely the duty of due diligence, the principle of prevention of significant harm to the environment, the duty to protect and preserve the marine environment, and the obligation to protect, respect, and fulfil human rights. The duties of due diligence and prevention of significant harm to the environment are reflected in numerous treaties and recognised by the ICJ as components of customary international law.[93] The duty to protect and preserve the marine environment is reflected in UNCLOS which has been ratified by 167 States.[94]

54. The legal principles and agreements set out above do not form an exhaustive list, and the Court, and participating States and international organisations, may refer to sources of law beyond this list.

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91 Kristina Pistone, Ian Eisenman, and Veerabhadran Ramanathan 'Radiative Heating of an Ice-Free Arctic Ocean' (2019) 46(13) *Geophysical Research Letters* 7474, 7477.

92 Peter Wadhams, *A Farewell to Ice: A Report from the Arctic* (Oxford University Press, 2017) 107–108.

93 *Nuclear Weapons Advisory Opinion* (n 4).

94 *United Nations Convention on the Law of the Sea* (opened for signature 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397, art 193 ('*UNCLOS*').

55. In answering the Request, the ICJ will use the applicable law clause set out in Article 38 of the ICJ Statute which requires the Court to apply treaty law, customary international law, general principles of law, judicial precedent, and academic scholarship. Climate change law is a broad and complex topic reflected among several treaties, principles, and legal opinions. The environmental and human rights obligations of States are therefore rooted in treaties, general principles of law, and international custom. It is under this broader framework that the UNFCCC and the Paris Agreement should be interpreted: they do not limit the obligations of States under general international law and international human rights law, including in relation to climate change. The UNFCCC and the Paris Agreement therefore inform and complement States' concurrent obligations under other bodies of international law, such as the prevention of transboundary harm and the protection of human rights.[95]

56. In interpreting States' obligations under the multiple sources of law set out above, the Court will be guided by Articles 31 to 33 of the Vienna Convention on the Law of Treaties ("**VCLT**").[96] Article 31(3)(c) relevantly requires that when interpreting a treaty, "*any relevant rules of international law applicable in the relations between the parties*" shall be taken into account, together with its context.[97] In other words, treaties should be interpreted in light of existing obligations emerging not only from that particular treaty regime, but from international law as a whole. This includes other treaties, customary international law, and general principles of international law.

57. This approach is known as "systematic integration" or "harmonious interpretation".[98] The principle is important in contexts such as climate change, where different legal regimes operating in isolation from one another could give rise to conflicting legal standards and

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95 *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994) preamble ('*UNFCCC*') ("*Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, … the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*"); *Paris Agreement*, opened for signature 22 April 2016, 1155 UNTS 146 (entered into force 4 November 2016) ('*Paris Agreement*').

96 *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) ('*VCLT*'); see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (Judgment)* [2007] ICJ Rep 43, 110 [160]; *Responsibilities and obligations of States with respect to activities in the Area (Advisory Opinion) (1 February 2011)* [2011] ITLOS Rep 10, 27 [57] ('*Area Advisory Opinion*').

97 *VCLT* (n 96) art 31(3).

98 The principle is also sometimes referred to by other names, such as "*principe d'integration*"; "systemic interpretation"; "systemic harmonisation"; and "systemic interpretation". See Panos Merkouris, 'Principle of Systemic Integration', in *Max Planck Encyclopedia of Public International Law* (Oxford University Press) (Web Page) <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e2866.013.2866/law-mpeipro-e2866>; International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, 58th sess, Agenda Item 11, UN Doc A/CN.4/L.682 (13 April 2006) 178.

obligations. Given then breadth of the ICJ's jurisdiction, these proceedings are an important opportunity for the Court to harmonise a wide range of these obligations.

58. Derived from the sources of law that the Court is empowered to utilise in answering the Request, the following universally applicable customary rules and general principles are relevant:

58.1 the principles of intergenerational equity, intragenerational equity, and the precautionary principle;

58.2 the principle of equity under international environmental law, which forms part of customary international law;

58.3 the principle of common but differentiated responsibilities and respective capabilities ("**CBDR-RC**");

58.4 the principle of prevention of transboundary harm, which entails the obligation to exercise due diligence, the obligation to conduct an environmental impact assessment, the obligation to notify and consult in good faith, and the duty to compensate for harm;

58.5 the duty to cooperate, the principle of solidarity, and the public participation principle;

58.6 the obligation to protect, respect, and fulfil human rights;

58.7 the obligation to provide remedies for human rights violations arising from climate change; and

58.8 the duty to protect the marine environment.

CHAPTER VI. LEGAL PRINCIPLES RELEVANT TO THE REQUEST FOR AN ADVISORY OPINION

A. The Paris Agreement identifies three interrelated objectives necessary to limit the adverse effects of climate change, and requires States to take specific measures that represent a progression over time

59. The UNFCCC's objective is to stabilise "*greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*".[99] The Paris Agreement gives effect to this objective in "*aiming to strengthen the global response to climate* change",[100] in line with the Paris Agreement's objectives. The objectives of the Paris Agreement are set out in Article 2 and are threefold:

59.1 *first*, the temperature goal of holding "*the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels*" (**temperature goal**);[101]

59.2 *second*, the adaptation goal to increase "*the ability to adapt to the adverse impact of climate change and foster climate resilience and low greenhouse gas emissions development*" (**adaptation goal**);[102] and

59.3 *third*, the finance goal to make financing flows "*consistent with a pathway towards low greenhouse gas emissions and climate resilient development*" (**finance goal**).[103]

60. Much attention is given to Article 2(1)(a) of the Paris Agreement which sets the main objective of keeping acceptable warming at well below 2 °C with efforts to be made to limit temperature rise to 1.5 °C. However, in grouping three objectives under the chapeau of Article 2(1), this demonstrates the interrelated nature of the temperature, adaptation, and financing goals in responding to the adverse effects of climate change. The chapeau to Article 2(1) combines these three objectives and reflects the understanding achieved at

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99 *UNFCCC* (n 95) art 2.

100 *Paris Agreement* (n 95) art 2(1).

101 Ibid art 2(1)(a).

102 Ibid art 2(1)(b).

103 Ibid art 2(1)(c).

COP17 in 2011 to "*develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties*".[104]

61. Turning first to the temperature goal. Since the Paris Agreement was adopted in 2016, the States Parties to the UNFCCC have reiterated the objective of pursuing efforts towards achieving the temperature goal in their annual Conference of the Parties (**COP**). At COP28, States Parties:

61.1 reaffirmed the Paris Agreement temperature goal "*recognizing that this would significantly reduce the risks and impacts of climate change*";[105]

61.2 resolved to "*pursue efforts to limit the temperature increase to 1.5 °C*";[106]

61.3 emphasised "*the need for urgent action and support to keep the 1.5 °C goal within reach and to address the climate crisis in this critical decade*";[107] and

61.4 emphasised that "*finance, capacity-building and technology transfer are critical enablers of climate action*".[108]

62. The objective of the temperature goal reflects scientific consensus on the level of emissions reduction necessary and the measures necessary to prevent the adverse effects of climate change.

63. Importantly, the temperature goal in Article 2(1)(a) must be read in light of other provisions in the Paris Agreement. For example, Article 4(1) which requires States Partis to "*aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties*" and that States should also undertake economy-wide absolute emissions reduction targets.[109] The obligations on States to take specific measures in pursuit of the temperature goal is discussed below at **Chapter VI, Part B.**

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104 United Nations Framework Convention on Climate Change, *Decision 1/CP.17: Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action* UN Doc FCCC/CP/2011/9/Add.1, (15 March 2022, adopted 11 December 2011) [2].

105 United Nations Framework Convention on Climate Change, *Draft-Decision -/CMA.5: The UAE Consensus, FCCC/PA/CMA/2023/L.17* (13 December 2023) [3] ('*The UAE Consensus*').

106 Ibid [4].

107 Ibid [5].

108 Ibid [8].

109 *Paris Agreement* (n 95) art 4.

64. Further, the adaptation goal[110] must be considered as central to achieving the temperature goal.[111] The Global Stocktake at COP28 made clear that "*despite overall progress on mitigation, adaptation and means of implementation and support, Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long-term goals*" (emphasis added).[112] For developing States, including LDCs and SIDS like Solomons, progress on the adaptation goal is conditional on developed States meeting their obligations to provide technical and financial assistance.

65. Finally, achieving the temperature and adaptation goals is not possible without access to financial resources.[113] The finance goal is therefore crucial to enabling climate change mitigation and adaptation. States have recognised that developing States face significant challenges in "*accessing finance for implementing their national adaptation plans*",[114] and that "*adaptation and mitigation financing would need to increase manyfold*"[115] to achieve the Paris Agreement's objectives. The finance goal in Article 2(1)(c) is considered in detail in the context of developed States' obligations below in **Chapter VI, Part D.**

66. The cascading goals set out in Article 2(1) of the Paris Agreement means action on all three goals is necessary to make meaningful progress in pursuit of the UNFCCC and Paris Agreement's objectives. While climate change is the "*common concern of humankind*", not all States have equally contributed to its effects, nor have access to the same level of resources to respond to the adverse effects of climate change. Developed States have continually failed to meet their obligations to support developing States in achieving the Paris Agreement objectives and therefore "*Parties are not collectively on track to achieve the long-term global goal and that the pre-2020 pledges of some Parties and their subsequent implementation have been insufficient*" (emphasis added).[116] Mitigation and adaptation efforts must be collective and account for the CBDR-RC principle.

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110 Ibid art 2(1)(b).

111 Ibid art 2(1)(a).

112 United Nations Framework Convention on Climate Change, *Decision 1/CP.27: The Sharm el-Sheikh Implementation Plan*, UN Doc FCCC/CP/2022/10/Add.1 (17 March 2023, adopted 20 November 2022) 41 [15] ('*Sharm el-Sheikh Implementation Plan*'); *The UAE Consensus* (n 105) [2].

113 *Paris Agreement* (n 95) art 2(1)(c).

114 *The UAE Consensus* (n 105) [46].

115 Ibid [16(b)].

116 *Sharm el-Sheikh Implementation Plan* (n 105) [15].

B. The obligations in the UNFCCC and the Paris Agreement require the exercise of "due diligence", and must represent progression over time

67. The UNFCCC and the Paris Agreement reflect an internationally accepted standard of conduct, agreed by States, to reduce anthropogenic greenhouse gas emissions and pursue mitigation and adaptation measures.

68. The UNFCCC draws a distinction between commitments applicable to all parties, and those only applicable to developed States Parties. For example, Article 4(1)(b) of the UNFCCC requires all parties to "*formulate, implement, publish and regularly update … programmes containing measures to mitigate climate change*". Article 4(2)(a) requires developed States Parties commit to "*adopt ... policies and take corresponding measures on the mitigation of climate change*". These provisions reflect both procedural and substantive obligations. However, unlike the Paris Agreement, the UNFCCC does not define a benchmark to assess whether sufficient efforts have been made.

69. In contrast, Article 4(2) of the Paris Agreement reflects States' obligations in relation to the preparation of NDCs:

> "*Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions*".[117]

70. Article 4(2) creates an obligation directed towards a specific objective, being the specific mitigation objectives defined in States' respective NDCs.

71. There are two obligations reflected in Article 4(2). The first creates a binding procedural obligation on States to prepare, communicate, and maintain a NDC. States are thus obliged to prepare and submit their NDCs within the specified timeframe.

72. The second obligation requires States to "*pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions*" (emphasis added).[118] This is relevant for developing States who may have set ambitious NDCs, but the realisation of those mitigation and

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117 *Paris Agreement* (n 95) art 4(2).

118 Ibid.

adaptation efforts may not be possible without the necessary technical and financial assistance from developed States.[119]

73. In terms of the status of NDCs, they may be considered unilateral declarations of States,[120] capable of creating legal obligations.[121]

74. Article 4(2) of the Paris Agreement must be read in light of Article 3 which provides:

> "*As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement*".

75. There are three main components to Article 3:

75.1 *first*, States Parties are obliged to "undertake" and "communicate" ambitious "efforts" in mitigation, adaptation, finance, technology, capacity-building, and transparency in furtherance of the Paris Agreement's objectives;

75.2 *second*, there is an expectation that the efforts of all Parties "*will represent a progression over time*"; and

75.3 *third*, "*progression over time*" is qualified by the "*need to support developing country Parties for the effective implementation of this Agreement*".

76. The second element requires States' efforts to represent "a *progression over time*". Read with the use of the word "will", it sets an expectation of progressively more ambitious actions over time.[122] Articles 3 and 4 of the Paris Agreement link together other key provisions of the Paris Agreement in relation to mitigation, adaptation, and support progression across these areas.[123]

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119 The obligations on developed States to provide technical and financial assistance are discussed at **Chapter VI, Part D**.

120 Principle 1 of the *Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations* provides that "*Declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations. When the conditions for this are met, the binding character of such declarations is based on good faith; States concerned may then take them into consideration and rely on them; such States are entitled to require that such obligations be respected*".

121 'Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations' (2006) II *Yearbook of the International Law Commission* 176, Principle 1.

122 Daniel Klein et al. *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press, 2017) 140.

123 *Paris Agreement* (n 95) art 4(4); Klein (n 122) 139.

77. The final element focuses on supporting developing States in pursuing initiatives to meet the Paris Agreement's objectives. The obligations on developed States to provide technical and financial assistance to developing States are set out in detail at **Chapter VI, Part D**.

78. The obligations set out in Articles 3 and 4(2) of the Paris Agreement, requiring good faith efforts to achieve domestic mitigation measures, are informed by the concept of "due diligence". "Due diligence" requires States to adhere to a standard of conduct, rather than attain a particular result.[124] It creates a normative expectation, obligation, or standard. The central objectives of the UNFCCC and the Paris Agreement suggest these provisions inform the nature and extent of due diligence required of States, including:

78.1 the UNFCCC's objective of "*stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*";[125]

78.2 the temperature, adaptation, and finance goals in Article 2 of the Paris Agreement; and

78.3 Article 4(1) of the Paris Agreement which requires States Parties to peak emissions "*as soon as possible*", while also "*recognizing that peaking will take longer for developing country Parties*".

79. While the Paris Agreement gives States autonomy and flexibility in setting their NDCs and choosing the measures they implement to respond to climate mitigation and adaptation obligations, these are still subject to the applicable standard of conduct. Article 4(2) requires States to pursue domestic mitigation measures. The second sentence, "*with the aim of achieving the objectives of such contributions*", establishes the due diligence standard of conduct. The obligation includes taking measures that are necessary, meaningful, and effective to achieve a States' NDC. As the International Law Commission ("**ILC**") has stated, "[o]*bligations of prevention are usually construed as best efforts obligations, requiring States to take all*

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124 *Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* [2010] ICJ Rep 14 [187] ('*Pulp Mills*'); Lavanya Rajamani, 'Due Diligence in International Climate Law' in Heike Krieger, Anne Peters and Leonhard Kreuzer (eds), *Due Diligence in the International Legal Order* (Oxford University Press, 2020) 164.

125 *UNFCCC* (n 95) art 2.

reasonable or necessary measures to prevent a given event from occurring, but without warranting that the event will not occur".[126]

80. Due diligence is therefore "*an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result*".[127] The jurisprudence of international courts and tribunals explain that the obligation to act with due diligence requires not only the adoption of appropriate rules and measures,[128] but also "*a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators*".[129]

81. "Due diligence" is a continuous duty.[130] It may be satisfied by particular actions at particular times, but the duty itself is continuous. In *Activities in the Area*, the Seabed Disputes Chamber noted that due diligence with respect to environmental protection is a "variable concept" that may "*change in relation to the risks involved in the activity*", and in particular "*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*".[131]

82. Given the rapidly diminishing carbon budget, wealthy, high-emitting, and developed States are therefore required to exercise due diligence by ensuring "*appropriate measures are adopted to mitigate the damage … and should rely upon the best available scientific data and technology*".[132] Where environmental damage does occur some of the measures States should take are:

> *(i) clean-up and restoration within the jurisdiction of the State of origin; (ii) containment of the geographical range of the damage to prevent it from affecting other States; (iii) collection of all necessary information about the incident and the existing risk of damage; (iv) in cases of emergency in relation to an activity that could produce significant damage to the environment of another State, the State of origin should, immediately and as rapidly as possible, notify the States that are likely to be affected by the damage; (v) once notified, the affected or potentially affected States should take all possible steps to mitigate and, if possible, eliminate the consequences of the damage, and (vi) in*

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126 *Responsibility of States for Internationally Wrongful Acts*, GA Res 56/83, UN Doc A/RES/56/83 (28 January 2002, adopted 12 December 2001) annex, art 1 ('*Responsibility of States for Internationally Wrongful Acts*').

127 *Area Advisory Opinion* (n 96) [110]; *Pulp Mills* (n 124) [187].

128 See also *Area Advisory Opinion* (n 96) 74.

129 *Pulp Mills* (n 124) [197]; *Area Advisory Opinion* (n 96) [115], [239]; *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (Advisory Opinion)* [2015] ITLOS Rep 4, [131].

130 Jorge E. Viñuales, 'Due Diligence in International Climate Law: A Fine-grained Cartography' in Heike Krieger, Anne Peters and Leonhard Kreuzer (eds), *Due Diligence in the International Legal Order* (Oxford University Press, 2020) 113.

131 *Area Advisory Opinion* (n 96) [117].

132 *State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: interpretation and scope of articles 4(1) and 5(1) in relation to articles 1(1) and 2 of the American Convention on Human Rights (Advisory Opinion)* (Inter-American Court of Human Rights, Series A No 23, 15 November 2017) [172] ('*IACtHR Advisory Opinion*').

case of emergency, any persons who could be affected should also be informed.[133]

83. In the case of emissions reductions, States should also transition away from "*the use of coal, oil and natural gas, ensure a fair and just transition of energy sources and invest in renewable energy, energy storage and energy efficiency to address the climate crisis*".[134]

84. Articles 3 and 4(3) establish a requirement that the efforts of all Parties will represent a progression over time, meaning that every new effort will go beyond previous ones:

> "*Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances*" (emphasis added).

85. Article 4(3) indicates that States Parties will communicate subsequent NDCs that progress beyond existing and past NDCs and build on the level of ambition. In clearly specifying the need for progression, Article 4(3) has the effect of setting a "floor" on States' ambitions. Such an approach ensures Parties do not divert from earlier ambition levels but continue to increase such levels for every successive NDC.

86. Importantly, a State's capabilities to regulate particular conduct or take measures is generally considered a relevant factor in determining the level of due diligence required, so as to avoid an unreasonable burden on the State.[135] This requires consideration of Article 4(1) which recognises that "*peaking* [emissions] *will take longer for developing country Parties*", and the principle of CBDR-RC. Consequently, for LDCs and SIDS like Solomons, achieving progress and "*undertak*[ing] *rapid reductions*" may take place over a longer timeframe than the period required for wealthy and developed States. Accounting for these differences in resources, this leads to Solomons' submission that the principle of CBDR-RC informs States' obligations under the UNFCCC and the Paris Agreement.

C. The principle of common but differentiated responsibilities and respective capabilities informs States' obligations under international law

87. The contemporary legal order is predicated on the claim that all States are sovereign and equal: a perspective that stands in the way of equitable and fair outcomes. The principle

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133 Ibid.

134 Committee on the Rights of the Child, *General Comment No. 26 on Children's rights and the environment with a special focus on climate change* CRC/C, 93rd sess, UN Doc CRC/C/GC/26 (22 August 2023) [65(d)]; *The UAE Consensus* (n 105) [28(d)].

135 Viñuales (n 130) 125–126.

of "*common but differentiated responsibilities and respective capabilities, in the light of different national circumstances*",[136] seeks to bridge the gap between factual inequality and formal equality of States.

88. CBDR-RC is of paramount importance to the Request as, while climate change is a "*common concern of humankind*",[137] not every State bears common responsibility, nor common capacity to address its causes and effects.

89. Solomons, alongside other LDCs and SIDS, have made negligible gross and per capita contributions to global greenhouse gas emissions, with Solomons' emissions representing less than 0.01 percent of global contributions.[138] In parallel, Solomons is amongst the most vulnerable countries to the impacts of the climate crisis, with communities and livelihoods devastated, entire islands submerged under rising sea-levels, and communities being driven from their homes, livelihoods, and resources.[139] Climate change has been a key factor undermining Solomons' sustainable development as well as its ability to graduate out of LDC status.[140]

90. As early as 1972, the international community broadly accepted the notion of collective responsibility for the environment on the basis of differentiated contributions, reflecting each State's capacity.[141] The principle of CBDR-RC, as it is known today, was first mentioned in the preamble to the UNFCCC:

> "*the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions*" (emphasis added).[142]

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136 See, for example, *Paris Agreement* (n 95) art 2(2), 4(3), and 4(19).

137 United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, UN Doc A/CONF.151/26 (vol I) (12 August 1992), preamble ('*Rio Declaration*'); *The UAE Consensus* (n 105) [1].

138 *NDC Solomon Islands 2021* (n 7) 10.

139 Secretariat of the Pacific Regional Environment Programme, 'Solomon Islands welcomes historic Loss and Damage Fund capitalisation' (Web Page, 3 December 2023) <https://www.sprep.org/news/solomon-islands-welcomes-historic-loss-and-damage-fund-capitalisation>.

140 Honourable Manasseh Damukana Sogavare, Prime Minister of Solomon Islands, 'A Watershed Moment: Transformative Solutions to Interlocking Challenges' (Speech, Opening Debate of the 77th Session of the United Nations General Assembly, 23 September 2022) <https://www.forumsec.org/2022/09/23/remarks-solomon-islands-pm-manasseh-d-sogavare-delivers-national-statement-to-unga77/>.

141 United Nations Conference on the Human Environment, *Stockholm Declaration: Declaration on the Human Environment*, UN Doc A/CONF.48/14/Rev.1 (16 June 1972), Principle 21 ('*Stockholm Declaration*').

142 *UNFCCC* (n 95) preambular [6].

91. It is further reflected in Principle 7 of the Rio Declaration in which developed States "*acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command*".

92. CBDR-RC is set out in the UNFCCC[143] and the Paris Agreement,[144] as well as the Glasgow Climate Pact,[145] the Sharm el-Sheikh Implementation Plan,[146] and The UAE Consensus.[147] It comprises two elements:

92.1 *first*, States have common responsibilities to protect the environment, individually and collectively, including in the regulation of anthropogenic greenhouse gas emissions; and

92.2 *second*, the notion of responsibility must account for "different national circumstances" including each State's contribution to current and historical greenhouse gas emissions capable of impacting on climate change, and each State's ability to prevent, reduce and control the threat.[148]

93. CBDR-RC accounts for important differences in contribution to anthropogenic greenhouse gas emissions, vulnerability to the adverse effects of climate change, and access to financial and technical resources to implement mitigation and adaptation initiatives. It is reinforced in Article 4(7) of the UNFCCC:

> "*The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties*" (emphasis added).

143 Ibid arts 3(1) and 4(1).

144 Ibid arts 2(2), 4(3), and 4(19).

145 United Nations Framework Convention on Climate Change, *Decision 1/CP.26: Glasgow Climate Pact*, UN Doc FCCC/CP/2021/12/Add.1 (13 November 2021, adopted 8 March 2022) [4], [23] ('*Glasgow Climate Pact*').

146 *Sharm el-Sheikh Implementation Plan* (n 105) [12].

147 *The UAE Consensus* (n 105) [6].

148 Philippe Sands, *Principles of International Environmental Law* (Cambridge University Press, 3rd ed, 2012) 233.

94. Article 4(7) implies conditionality in the context of CBDR-RC, imposing specific obligations on developed States to, *inter alia*, provide technical and financial assistance to developing States (see further, **Chapter VI, Part D**).

95. When initially formulated, CBDR-RC clearly intended to differentiate between the obligations owed by developed and developing States. During an early negotiation session on the UNFCCC, Working Group I, responsible for determining appropriate commitments for limiting and reducing net emissions,[149] observed that "[d]*eveloped countries are the main contributors of GHGs and thus should take the lead and shoulder the main responsibility to stabilize and limit the greenhouse gas emissions*".[150] Therefore, CBDR-RC "*gives effect to conceptions of equity and fairness*"[151] by accounting for historical responsibility and present contributions to emissions, while recognising the vulnerability, and financial and technological capabilities of States.

96. In 1997, the Kyoto Protocol, which operationalised the UNFCCC, adopted a clearly defined approach to CBDR-RC, with distinct expectations for developed and developing States. It categorised States as Annex I, Annex II, and Non-Annex, and required developed States (listed in Annex I) to commit to reduce their emissions, while developing States were only needed to report their emissions.

97. The application of CBDR-RC in the Paris Agreement adopts a more dynamic approach. The principle's appearance in two general obligations of the Paris Agreement, Article 2(2) and Article 4(3), suggests that the principle has general relevance in interpreting State obligations under the treaty. As such, its application is capable of evolving to reflect States Parties' social and economic circumstances.[152] This view is reinforced by the choice of wording: "developed" and "developing" countries. Neither of these terms are defined nor attached to specific States in the Paris Agreement which suggests States can move towards

149 Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the work of its First Session, UN Doc A/AC.237/6, Washington, D.C. (Report, 4 to 14 February 1991) 24.

150 Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, *Compilation of Texts Related to Principles, Submitted by the Bureau of Working Group I*, UN DocA/AC.237/Misc.6 (13 August 1991) first session, part I.E.7.

151 Friedrich Soltau, *Fairness in International Climate Change Law and Policy* (Cambridge University Press, 2009) 187.

152 Thomas Deleuil, 'The Common but Differentiated Responsibilities Principles: Changes in Continuity After the Durban Conference of the Parties' (2012) 21(3) *Review of European Community and International Environmental Law* 271-281.

greater mitigation and ambition over time "*without the need to 'graduate' from one category to the other*".[153]

98. Further, the temperature goal expressed in Article 2 of the Paris Agreement is a fundamental "common" objective of the Agreement. However, it is qualified by Article 2(2) which requires implementation in line with equity and CBDR-RC to ensure States perform their "fair share".[154] States' responsibilities are assessed "*in the light of different national circumstances*", acknowledging that States are to differentially and equitably share the burden of the common effort to achieve the temperature goal.

99. The interpretation of States' obligations under the Paris Agreement should be considered against a wide array of criteria, such as "*past, current, and projected future emissions, but also financial and technical capabilities, human capacity, population size and other demographic criteria, abatement costs, opportunity costs, and so on*".[155] This allows for a dynamic interpretation of States' responsibilities and accounts for the evolving circumstances of States, in contrast to the fixed designations of States in the Kyoto Protocol. In turn, this enhances States' mitigation and adaptation ambitions over time as States' levels of development increase,[156] setting normative expectations as to progression and highest possible ambition through successive cycles of contributions.[157] As a result, States' obligations are reflective of their social and economic realities.

100. Solomons, as both an LDC and SIDS, affirms that States' obligations under the UNFCCC and the Paris Agreement are to be interpreted coherently with the principle of CBDR-RC, to take into account the "*specific needs and special circumstances of developing country Parties… especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention*".[158] Without regard to CBDR-RC, imposing certain conduct standards may be inappropriate and of disproportionate economic and social cost to some States, such as

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153 Daria Shapovalova, 'In Defence of the Principle of Common but Differentiated Responsibilities and Respective Capabilities' in Benoit Mayer and Alexander Zahar (eds), *Debating Climate Law* (Cambridge University Press, 2020) 68.

154 Lavanya Rajamani et al., 'National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law' (2021) 21(8) *Climate Policy* 983.

155 Harald Winkler et al., 'What factors influence mitigation capacity' (2007) 35 *Energy Policy* 1, 692-703.

156 Lavanya Rajamani, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics Shorter Articles and Notes' (2016) 65 *ICLQ* 493, 508.

157 Lavanya Rajamani, 'The principle of common but differentiated responsibilities and respective capabilities in the international climate change regime' in Rosemary Lyster and Robert R.M. Verchick (eds), *Research Handbook on Climate Disaster Law* (2018, Elgar) 55.

158 *UNFCCC* (n 95)art 3(2).

developing States and, in particular, LDCs and SIDS.[159] The appropriate application of CBDR-RC ensures that States with limited means are not required to decide between compliance with climate change obligations and the pursuit of sustainable development and the eradication of poverty. Inversely, the application of CBDR-RC to developed States and States that were exempt from obligations under the Kyoto Protocol but have now experienced a material increase in mitigatory and adaptive capacity alongside significant increases in anthropogenic greenhouse gas emissions, requires those States to assume greater responsibility for action on climate change, including mitigation, adaptation, provision of climate finance, and transfer of technology.

D. Developed States are required to provide technical and financial assistance to developing States to assist in climate mitigation and adaptation initiatives

Obligations on developed States to provide technical and financial assistance, and undertake capacity building initiatives

101. There is an implicit assumption in the Paris Agreement that "*sustainable development requires low CO_2 emissions development and a cap on global temperature increases*".[160] LDCs and SIDS have contributed the least to the adverse effects of climate change yet will experience the highest impacts both due to higher levels of vulnerability and lower adaptive capacities.[161] Climate change presents short, medium, and long-term challenges to the sustainable development and net zero trajectories of LDCs and SIDS. Assistance from the international community will be necessary and is required under international law.

102. During the Second Session of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, it was acknowledged "*there was general acceptance that all developing countries which became parties to the convention would need additional financial resources and transfer of technology to enable them to meet their obligations under the convention*".[162] Such

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159 Malgosia A. Fitzmaurice, *International Protection of the Environment* (Hague Academy of International Law) 65.

160 Alan Boyle, 'Protecting the Marine Environment from Climate Change: The LOSC Part XII Regime', in Elise Johansen, Signe Veierud Busch and Ingvild Ulrikke Jakobsen (eds), *The Law of the Sea and Climate Change: Solutions and Constraints* (Cambridge University Press, 2021) 91.

161 Patricia Kameri-Mbote, 'The Least Developed Countries and Climate Change Law' in Cinnamon Carlarne et al (eds), *The Oxford Handbook of International Climate Change Law* (Oxford University Press, 2016) 743.

162 Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, *Report on the work of its Second session, held at Geneva from 19 to 28 June 1991*, UN Doc A/AC.237/9 (19 August 1991) 14 [54].

transfers were considered vital if developing States were to be able to contribute to the reduction of greenhouse gas emissions.[163]

103. Recognising this disparity, the UNFCCC and the Paris Agreement place obligations on developed States to provide financial, technical, and capacity building resources to developing States. Under the UNFCCC, developed States shall:

103.1 provide new and additional financial resources to meet the agreed full cost of developing States in complying with reporting requirements under the UNFCCC, and to meet incremental costs of mitigation measures;[164]

103.2 assist developing States that "*are particularly vulnerable to the adverse effects of climate change*" in meeting costs of adaptation;[165]

103.3 take practical steps to "*promote, facilitate and finance*" the transfer and access to technologies for developing States to enable them to implement the provisions of the UNFCCC;[166] and

103.4 "*take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology*".[167]

104. The Paris Agreement reinforces the special status of developing States, expressly noting:

104.1 the need to take full account "*of the specific needs and special situations of the least developed countries with regard to funding and transfer of technology";*[168]

104.2 that "[s]*upport <u>shall</u> be provided to developing country Parties for the implementation of this Article* [4]… *recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions*";[169] and

163 Ibid 14 [56].

164 *UNFCCC* (n 95) art 4(3); Bodansky et. al, *International Climate Change Law* (Oxford University Press, 2017), 139.

165 *UNFCCC* (n 95) art 4(4).

166 Ibid art 4(5), 4(7).

167 Ibid art 4(9).

168 *Paris Agreement* (n 95) preamble.

169 Ibid art 4(5).

104.3 that "*Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties*".[170]

105. Article 9 of the Paris Agreement also requires the provision of financial resources to developing States. Article 9(1) specifies that developed countries "*shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention*". Article 9(2) reinforces the obligation in Article 9(1), suggesting "[o]*ther Parties are encouraged to provide or continue to provide such support voluntarily*". The difference in language between Article 9(1) ("shall") and Article 9(2) ("encouraged" and "voluntarily") indicates Article 9(1) was intended as a legally binding obligation on developed States Parties.[171]

106. Although the treaty texts are silent as to the specific contribution required by each developed State, the climate finance commitments should properly be understood as a collective obligation, applying to all developed States individually.[172]

107. Developed States therefore have mandatory obligations to provide climate finance and technical support under the Paris Agreement, consistent with their existing obligations under the UNFCCC.[173] These obligations may be satisfied by States through sufficient, *inter alia*, delivery on collective quantified climate finance goals, contributions to multilateral climate change funds, and provision of climate-aligned official development assistance.

108. Obligations relating to the transfer of technology and financial assistance are also reflected in several treaties that interact with States' obligations under the UNFCCC and the Paris Agreement, including UNCLOS[174] and the Convention on Biological Diversity ("**CBD**").[175]

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170 Ibid art 4(15).

171 Klein (n 122) 244.

172 Yulia Yamineva, 'A Legal Perspective on Climate Finance Debates: How Constructive Is the Current Norm Ambiguity?' in Benoit Mayer and Alexander Zahar (eds), *Debating Climate Law* (Cambridge University Press, 2021).

174 See for example, *UNCLOS* (n 94) arts 202 and 203.

175 See for example, *Convention on Biological Diversity,* 1760 UNTS 69 (signed 5 June 1992, entered into force 29 December 1993), art 8, 12, 16 – 18, and 20(4) ('*Convention on Biological Diversity*').

109. Developed States have made limited progress towards making financing flows "*consistent with a pathway towards low greenhouse gas emissions and climate resilient development*".[176] Global climate finance flows in 2021/22 were estimated at approximately USD 1.27 trillion, far short of the USD 5.9-12 trillion needed in that year.[177] In relation to adaptation finance, States Parties acknowledged at COP28 that "*the adaptation finance needs of developing countries are estimated at USD 215–387 billion annually up until 2030*",[178] 10-18 times larger than international public adaptation finance flows.[179]

110. Although public international climate finance flows will only satisfy a portion of overall climate financing needs, developed States must accelerate their efforts and rapidly scale provision of technical and financial assistance to discharge their obligations articulated above. The Paris Agreement requires the efforts of all Parties – including the provision of financial resources to developing States – to represent a progression over time.[180] Additionally, the scale of finance provided to developing countries should be determined in the context of the overall temperature goal of the Paris Agreement.[181]

111. In recent COP decisions, including the Glasgow Climate Pact, developed country Parties were urged "*to urgently and significantly scale up their provision of climate finance, technology transfer and capacity-building for adaptation so as to respond to the needs of developing country Parties as part of a global effort, including for the formulation and implementation of national adaptation plans*".[182] This same sentiment was stressed again in the Sharm el-Sheikh Implementation Plan.[183]

112. Developed State Parties have failed to satisfy commitments made to collectively deliver USD 100 billion per year in climate financing through to 2025,[184] and should comply with

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176 *Paris Agreement* (n 95) art 2(1)(c); *The UAE Consensus* (n 105) [91].

177 Buchner et al. *Global Landscape of Climate Finance 2023* (Climate Policy Initiative, 2023).

178 *The UAE Consensus* (n 105) [68].

179 United Nations Environment Programme, 'Adaptation Gap Report 2023: Underfinanced. Underprepared. Inadequate investment and planning on climate adaptation leaves world exposed' (Report, 2023).

180 Bodansky et. al (n 164) 234-235.

181 Yamineva (n 172).

182 *Glasgow Climate Pact* (n 145) [15].

183 *Sharm el-Sheikh Implementation Plan* (n 105) [35].

184 United Nations Framework Convention on Climate Change, *Decision 2/CP.15: Copenhagen Accord*, UN Doc FCCC/CP/2009/11/Add.1(30 March 2010, adopted 18 December 2009) [8] (pledging to mobilise USD 100 billion per year by 2020); United Nations Framework Convention on Climate Change, *Decision 1/CP.21: Adoption of the Paris Agreement*, UN Doc FCCC/CP/2015/10/Add.1 (29 January 2016, adopted 13 December 2015) [53] (extending the USD 100 billion pledge through 2025).

the urging of States at COP28 to "*fully deliver, with urgency, on the USD 100 billion per year goal through to 2025, in the context of meaningful mitigation actions and transparency on implementation*".[185]

113. The Loss and Damage Fund, agreed by consensus and operationalised at COP28, highlights the disparity in investments needed to address climate change. A handful of developed States have pledged a combined total of just over USD 700 million to the loss and damage fund. This amount reflects approximately 0.2 percent of the irreversible economic and non-economic losses developing countries face every year from global warming.[186] The bases under international law for obligations to compensate and make reparations for loss and damage are addressed below in **Chapter X, Part C**.

114. Solomons' NDC makes clear that without technical and financial support from developed States, as required under the UNFCCC and the Paris Agreement, it cannot effectively implement its NDC commitments:

> "*The effective implementation of the mitigation and adaptation measures in Solomon Islands' Nationally Determined Contribution is conditional upon and will depend on the accessibility, availability and timely provision of financial resources, technology and capacity building support*"[187] (emphasis added).

115. There is a noticeable gap between the capabilities of developed and developing States like Solomons to deliver a comprehensive response to climate change. While developed States look to transition to new technologies to curb their emissions, developing States are put in the position where they can no longer rely on the technologies that allowed those developed States to leap forward.[188] The ability of developing States to implement climate mitigation and adaptation solutions is dependent on developed States meeting their obligations to provide technical, financial, and capacity building resources in accordance with their obligations under the UNFCCC and the Paris Agreement[189] and under international environmental norms such as the polluter pays principle, CBDR-RC, and the duty to cooperate. Without timely transfer of financial, technical, and human resources to

185 *The UAE Consensus* (n 105) [85].

186 Nina Lakhani, '$700m pledged to loss and damage fund at Cop28 covers less than 0.2% needed' *The Guardian* (online, 7 December 2023) <https://www.theguardian.com/environment/2023/dec/06/700m-pledged-to-loss-and-damage-fund-cop28-covers-less-than-02-percent-needed>

187 *NDC Solomon Islands 2021* (n 7) 20.

assist in mitigation and adaptation initiatives, developing States will lose opportunities to participate as part of the international community.

Duty to cooperate in mitigation and adaptation measures

116. In addition to the obligations on developed States to provide technical and financial assistance, States have a duty to cooperate in implementing mitigation and adaptation measures under the UNFCCC and the Paris Agreement. The duty to cooperate requires States to work together to pursue a common goal or task, and is a core requirement in international environmental law.[190]

117. Climate change is "*a common concern of humankind*"[191] and therefore cooperation amongst members of the international community is critical in addressing the adverse impacts of climate change. The IPCC's Sixth Assessment Report notes that "*international cooperation is a critical enabler for achieving ambitious climate action and encouraging development and implementation of climate policies*".[192] Conservation and management of shared resources and the environment "*must be based on shared interests, rather than the interests of one party*".[193] Within the context of a treaty, cooperation shifts from a general duty to cooperate, and instead to a duty to cooperate within the framework of the agreement, taking into account its object and purpose.[194] As such, the duty to cooperate is "other-regarding" and is necessary to make meaningful contributions to progress towards the goals of the UNFCCC and the Paris Agreement.

118. The duty to cooperate is reflected throughout the UNFCCC and the Paris Agreement. Article 4 of the UNFCCC, which addresses States Parties' commitments, uses prescriptive

190 *Rio Declaration* (n 137) Principle 7; *Stockholm Declaration* (n 141) Principle 24.

191 *Paris Agreement* (n 95) preamble.

192 *The UAE Consensus* (n 105) [155].

193 *Whaling in the Antarctic (Australia v Japan: New Zealand intervening)* [2014] ICJ Rep 226, 457 [13] (Separate Opinion of Judge Ad Hoc Charlesworth).

194 Neil Craik, 'The Duty to Cooperate in International Environmental Law: Constraining State Discretion through Due Respect' (2019) 30(1) *Yearbook of International Environmental Law* 22, 28.

language ("shall") to impose binding obligations on State to cooperate, including to cooperate in:

118.1 "*development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases*"[195] (emphasis added);

118.2 "*preparing for adaptation to the impacts of climate change*";[196]

118.3 "*scientific, technological, technical, socio-economic and other research*" to further understanding of, and bridging information gaps, with respect to climate change;[197]

118.4 "*full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information*" relating to climate change and its economic impacts;[198] and

118.5 the "*education, training and public awareness related to climate change*".[199]

119. The commitments in Article 4 of the UNFCCC are further reinforced in Articles 10 to 12 of the Paris Agreement. Article 10(2) requires that States Parties "*shall strengthen cooperative action on technology development and transfer*". Article 11(3) encourages States Parties to "*cooperate to enhance the capacity of developing country Parties to implement this Agreement*". Finally, Article 12 creates a legal obligation on States Parties to "*cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information*".

120. Cooperation in capacity building and education plays an important role in addressing climate change. Capacity-building support for developing States, in particular LDCs and SIDS, for implementing and scaling up mitigation and adaptation measures is crucial to ensuring these States are not left behind as part of the net zero transition. Cooperation in capacity building is also fundamental to realising developing States' right to development and self-determination discussed below at **Chapter VII, Part B**.

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195 *UNFCCC* (n 95) art 4(1)(c).

196 Ibid art 4(1)(e).

197 Ibid art 4(1)(g).

198 Ibid art 4(1)(h).

199 Ibid art 4(1)(i).

121. Importantly, the obligation of conduct ("cooperation") is not placed on individual States. Rather, cooperation amongst States at the collective level is required. The notion of cooperation to achieve "*higher standards of living, full employment, and conditions of economic and social progress and development*" is further reinforced in Articles 55 and 56 of the Charter. Further, the duty to cooperate is also reflected in other treaties that interact with the UNFCCC and the Paris Agreement including UNCLOS[200] and the CBD.[201]

122. The global nature of climate change calls for the widest possible cooperation by all States and their participation in an effective and appropriate international response to promote mitigation and adaptation.

E. States are obligated to protect the climate system for the benefit of present and future generations.

123. The adverse effects of climate change can have irreversible, intergenerational effects. The accumulation of greenhouse gas emissions over time can result in a time lag between the release of emissions and the latent detrimental effects, impacting future generations. Incorporating reference to both present and future generations in the Request directs the Court to consider the principles of both intragenerational and intergenerational equity.

124. Intragenerational equity is concerned with equity between people of the same generation.[202] Intergenerational equity requires "*the needs of future generations be considered alongside the needs of the present generation*".[203]

125. International law was founded on the notion of the protection of future generations and intergenerational equity. The opening line of the Charter states that the United Nations is "*determined to save succeeding generations*". Several treaties have expressly incorporated the principle of protecting the natural environment for future generations.[204] Importantly, these agreements all precede the UNFCCC and Paris Agreement.

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200 See for example, *UNCLOS* (n 94) art 197.

201 See for example, *Convention on Biological Diversity* (n 175) art 5.

202 United Nations Environment Programme, *Intragenerational equity* (Web Page) <https://leap.unep.org/knowledge/glossary/intragenerational-equity>.

203 Margaretha Wewerinke-Singh, Ayan Garg, Shubhangi Agarwalla, 'In Defence of Future Generations' (2023) 34(3) *European Journal of International Law* 651, 665.

204 See for example, *Convention on the prevention of marine pollution by dumping of wastes and other matter*, opened for signature 29 December 1972, 1046 UNTS 120 (entered into force 30 August 1975), *Convention on International Trade in Endangered Species*, opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975), and *Convention Concerning the Protection of the World Cultural and Natural Heritage*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975).

126. In *Legality of the Threat or Use of Nuclear Weapons*, the Court emphasised 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*" (emphasis added).[205] The Court reaffirmed that position in *Gabčíkovo-Nagymaros Project.*[206]

127. Article 3(1) of the UNFCCC provides that:

> "*In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:*
>
> > "*The 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…*"[207] (emphasis added).

128. For future generations, Article 3(1) creates an expectation of "*equitable access to planetary resources*".[208] For present generations, this creates an obligation for this generation to act as "*trustee of these resources to ensure that future options are not unduly constrained*".[209] The references throughout the UNFCCC and the Paris Agreement to the CBDR principle and differences in "respective capabilities" (as discussed above at **Chapter VI, Part C**) further reinforces the role of intragenerational equity in these instruments and across other sources of international law.

129. In addition to the express language of Article 3(1) of the UNFCCC, notions of equity are frequently referenced in COP decisions and in resolutions of the UNGA in relation to climate change and protection for future generations. For example, the Sharm el-Sheikh Implementation Plan recognises "*the role of children and youth as agents of change in addressing and responding to climate change*", and "*the importance of intergenerational equity and maintaining the stability of the climate system for future generations*".[210]

130. In the latest version of the UNGA's resolution on *Protection of global climate for present and future generations of human kind* (A/RES/78/153), the UNGA recognised that "*in undertaking its work, the United Nations should promote the protection of the global climate for the well-being of present*

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205 *Nuclear Weapons Advisory Opinion* (n 4).

206 *Gabčíkovo-Nagymaros Project (Hungary/Slovakia) (Judgment)* [1997] ICJ Rep 7, [53], [112], [140] ('*Gabčíkovo-Nagymaros Project*').

207 *UNFCCC* (n 95) 3(1).

208 Catherine Redgwell, 'Principles and Emerging Norms in International law: Intra- and Intergenerational Equity' in Kevin Gray et al (eds), *The Oxford Handbook of International Climate Change Law* (Oxford University Press, 2016) 193.

209 Ibid.

210 *Sharm el-Sheikh Implementation Plan* (n 105) [59], [87].

and future generations of humankind".[211] The UNGA has previously adopted 32 resolutions on this matter,[212] with the resolution being adopted annually since 1999.

131. The operative paragraphs of the most recent statement of the resolution on *Protection of global climate for present and future generations of human kind* (A/RES/78/153) have a forward-looking emphasis. The language chosen emphasises the intergenerational aspect of climate change, in particular, as it relates to States' obligations under the UNFCCC, the Paris Agreement, and international law. For example:

131.1 paragraph 2 urges States to "… *formulate and communicate long-term strategies on the basis of the best available scientific knowledge*"[213] (emphasis added);

131.2 paragraph 2 also urges States to "*accelerate a transition to low-emission, climate-resilient, inclusive and sustainable economies and societies*"[214] (emphasis added); and

131.3 paragraph 5 reaffirms States commitments under the Paris Agreement and reiterates the "*aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing countries, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century*"[215] (emphasis added).

132. The language used in this resolution has temporal elements which reference a point in time in the future. As such, this imports notions of intra- and inter-generational equity to States' response to climate change. Reinforcing the importance of protecting the climate system for future generations through the broader aspects of the UNFCCC and the Paris Agreement and the UNGA emphasises the key role Article 3 of the UNFCCC plays in promoting intra- and inter-generational equity. The Court must therefore ensure Article 3 is interpreted as requiring States to protect the climate system for the benefit of present

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211 *Protection of Global Climate for Present and Future Generations of Humankind*, GA Res 78/153, UN Doc A/RES/78/153 (21 December 2023, adopted on 19 December 2023) preamble ('*2023 Global Climate and Future Generations Resolution*').

212 *Protection of global climate for present and future generations of mankind*, GA Res 43/53, UN Doc A/Res/43/53 (27 January 1989, adopted 6 December 1988); *Protection of global climate for present and future generations*, GA Res 63/32, UN Doc A/Res/63/32 (26 November 2008); *Protection of global climate for present and future generations of humankind*, GA Res 69/220, UN Doc A/Res/69/220 (19 December 2014); *Protection of global climate for present and future generations*, GA Res 78/153, UN Doc A/Res/78/153 (19 December 2023).

213 *2023 Global Climate and Future Generations Resolution* (n 211) [2].

214 Ibid [2].

215 Ibid [5].

and future generations to achieve the UNFCCC's objective to stabilise greenhouse gas concentrations "*at a level that would prevent dangerous anthropogenic interference with the climate system*".[216] As mentioned above, the intergenerational aspect of the Paris Agreement is of practical relevance when considering the time lapse between the effects of actions taken by States today to curb anthropogenic greenhouse gas emissions, and their actual effect on the climate. Ultimately, it is the responsibility of each generation to prevent further harm to the environment and protect the interests of further generations.[217]

F. The precautionary principle requires States protect the environment under customary international law

133. The adverse of effects of climate change will have irreversible, intergenerational effects. While the climate science is clear on the anthropogenic causes of dangerous climate change, the international community's understanding of the precise adverse impacts of anthropogenic greenhouse gas emissions on the climate system continues to evolve. Consequently, the precautionary principle is central to States' general obligation under customary international law to protect the environment in the context of climate change.

134. Under customary international law, the most widely cited formulation of the precautionary principle is in Principle 15 of the Rio Declaration:

> "*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*".

135. The precautionary principle is also reflected in Article 3 of the UNFCCC which requires States to:

> "*take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost*".

136. At its simplest, the precautionary principle aims to ensure adequate environmental protection through the taking of early action in response to threats of environmental harm,

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216 *UNFCCC* (n 95) art 2.

217 Ibid.

even in the context of scientific uncertainty. Protective actions should not be impeded by uncertainty. "*The trigger for precaution is the concern over environmental harm, not uncertainty itself*".[218]

137. Historically, international environmental law took a reactive approach, focussing on remedying actual damage or preventing identified hazards. For example, in *Trail Smelter* the Tribunal was of the view that it could not intervene to control the conduct of one State unless the threatened invasion of rights was of serious magnitude and was "*established by clear and convincing evidence*".[219] However, as the international community's understanding of the fragility of our ecosystems has increased, the precautionary principle has since been reflected in virtually every international regime, including biodiversity[220] and climate change.[221]

138. While international judicial bodies have not made a conclusive statement as to the customary nature of the precautionary principle, it is clear the precautionary principle is supported. In *Pulp Mills on the River Uruguay*, Judge Ad Hoc Vinuesa recognised the precautionary principles as being "*indisputably at the core of environmental law*" and "*is not an abstraction or an academic component of desirable soft law, but a rule of law within general international law as it stands today*".[222]

139. The International Tribunal for the Law of the Sea ("**ITLOS**") in *Southern Bluefin Tuna* concluded the parties "*should in the circumstances act with prudence and caution to ensure that effective conservation measures are taken to prevent serious harm to the stock of southern bluefin tuna*".[223] The Tribunal noted that "*although the Tribunal cannot conclusively assess the scientific evidence presented by the parties, it finds that measures should be taken as a matter of urgency to preserve the rights of the parties and to avert further deterioration of the southern bluefin tuna stock*".[224] Finally, in the *Area Advisory Opinion*, the Chamber observed that the incorporation of the precautionary principle into several international treaties and other instruments had "*initiated a trend*

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218 Aline L. Jaeckel, *The International Seabed Authority and the precautionary Principle: Balancing Deep Seabed Mineral Mining and Marine Environmental Protection* (Brill, 2017) 36.

219 *Trail Smelter (United States of America v Canada) (Awards)* (1938/1941) 3 RIAA 1905, 1964 *('Trail Smelter')*.

220 *Convention on Biological Diversity* (n 175) preamble.

221 Ibid.

222 *Pulp Mills* (n 124) 152 (Judge Ad Hoc Vinuesa).

223 *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan) (Provisional Measures),* Order of 27 August 1999 [1999] ITLOS Rep 280, [77].

224 Ibid [80].

towards making this approach part of customary international law".[225] The Chamber also considered the precautionary principle as being integral to States' general due diligence obligations noting "[t]*his obligation applies in situations where scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient but where there are plausible indications of potential risks*".[226] While the Court or another international judicial body is yet to provide a conclusive statement as to the customary nature of precaution, it is clear the precautionary principle plays a central role in the protection of the environment.

140. Regional courts have also considered the application of the precautionary principle. In its 2017 Advisory Opinion on the Environment, the Inter-American Court of Human Rights ("**IACtHR**") applied the precautionary principle in the context of the right to life and a healthy environment. The IACtHR concluded:

> "*States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty. Consequently, States must act with due caution to prevent possible damage … even in the absence of scientific certainty, they must take "effective" measures to prevent severe or irreversible damage*"[227] (emphasis added).

141. The precautionary principle is comprised of three elements:

141.1 *first*, threat of environmental harm;

141.2 *second*, uncertainty; and

141.3 *third*, action.

142. *First*, as to the threat of environmental harm, the threat must reach a certain threshold before the precautionary approach is triggered. The threat of such harm is therefore closely tied to the risk of that harm eventuating and the seriousness of such harm. In the context of climate change, the threat of environmental harm is significant. The language of the Request to the Court focuses on "*significant harm*" to the climate system from the adverse effects of climate change. The interpretation of the phrase "significant harm" is considered in detail below at **paragraphs 154 to 158.** The effects of climate change are several orders

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225 *Area Advisory Opinion* (n 96) [135].

226 Ibid [131].

227 *IACtHR Advisory Opinion* (n 132) [180].

of magnitude larger than typical events resulting in environmental harm.[228] Such effects are likely to be irreversible and have intergenerational consequences. Therefore, in the context of climate change resulting from anthropogenic greenhouse gas emissions, there is a significant threat of environmental harm.

143. *Second,* as to uncertainty, there is no minimum level of uncertainty required for precaution to apply. In the case of climate change, while the international community's scientific knowledge continues to evolve as to the precise adverse effects resulting from anthropogenic greenhouse gas emissions, the actual and potential adverse effects of climate change from anthropogenic greenhouse gas emissions are well understood. The IPCC's reports clearly describe the effects on our climate system and provide the scientific evidence of such.[229]

144. The final element of the precautionary principle calls for remedial action at an early stage. Measures must be taken that prevent environmental degradation. Precautionary measures are essential to addressing latent impacts such as climate change. The measures States must take to adhere to the precautionary principle are reflected throughout the chapters of this written statement.

145. Waiting for proof of the causal relationship or magnitude of harm can result in irreversible damage. The accumulation of greenhouse gas emissions over time can result in a time lag between the release of emissions and the latent detrimental effects. The precautionary principle is also closely tied to notions of intergenerational equity and the need to protect the climate system for both present and future generations. These concepts are discussed in detail at **Chapter VI, Part E**.

G. States have a general obligation to prevent transboundary harm from causing significant damage to the environment of another State

146. Tied to States' general obligation to protect the environment is the obligation to use "*all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State*".[230] Not only must

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228 See for example, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica) (Judgment)* [2015] ICJ Rep 665 ('*Certain Activities*'); *Trail Smelter* (n 219); *Pulp Mills* (n 124).

229 *Synthesis Report* (n 86) 50.

230 *Pulp Mills* (n 124) 56 [101].

States refrain from certain actions, but they are also required to positively take action to meet their obligations. In 2015, the Court summarised the core of this obligation at customary international law in *Certain Activities and Construction of a Road*:

> "… *to fulfil its obligation to exercise due diligence in preventing significant transboundary environmental harm, a State must, before embarking on an activity having the potential adversely to affect the environment of another State, ascertain if there is a risk of significant transboundary harm, which would trigger the requirement to carry out an environmental impact assessment* [...] *If the environmental impact assessment confirms that there is a risk of significant transboundary harm, the State planning to undertake the activity is required, in conformity with its due diligence obligation, to notify and consult in good faith with the potentially affected State, where that is necessary to determine the appropriate measures to prevent or mitigate that risk*".[231]

147. Therefore, States' obligations to prevent transboundary harm to other States comprises two interrelated obligations:

147.1 *first*, the prevention principle; and

147.2 *second*, the duty to notify and consult with the potentially affected State.

Principle of prevention and duty of due diligence

148. The principle of prevention is reflected in the Articles on the Prevention of Transboundary Harm from Hazardous Activities ("**Transboundary Harm Articles**") which impose a general obligation on States to "*take all appropriate measures to prevent significant transboundary harm or at any event to minimize the risk thereof*".[232] The prevention of significant transboundary harm is well established in international environmental law, being emphasised in Principle 2 of the Rio Declaration,[233] and confirmed by the Court in the *Legality of the Threat or Use of Nuclear Weapons*.[234]

149. "Transboundary harm" is defined to mean "*harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin, whether or not the States concerned share a common border*".[235] The definition of "transboundary harm" is sufficiently broad to encompass anthropogenic greenhouse gas emissions. Anthropogenic greenhouse gas

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231 *Certain Activities* (n 228) [104].

232 International Law Commission, 'Draft Articles on Prevention of Transboundary Harm from Hazardous Activities (and Commentaries)' in *Report of the International Law Commission on the Work of its 53rd Session* (23 April 2001–1 June 2001 and 2 July 2001–10 August 2001) UN Doc A/56/10, art 3 ('*Transboundary Harm Articles*').

233 *Rio Declaration* (n 137).

234 *Nuclear Weapons Advisory Opinion* (n 4) [29].

235 *Transboundary Harm Articles* (n 232) art 2(a).

emissions are released in the territory of one State yet are capable of causing harm in the territory of another State. Further, the preamble to the UNFCCC acknowledges that "*States have … the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*".[236] This makes clear that the "no-harm rule" was intended to form part of the UNFCCC and the subsequent Paris Agreement, and is relevant to anthropogenic greenhouse gas emissions.

150. In addition to anthropogenic greenhouse gas emissions falling within the principle of prevention, it is important to consider that it is now well established that the obligation of prevention applies regardless of whether the potential harm would impact "*the territory of a neighbouring state, a non- neighbouring state, or even in areas beyond national jurisdiction*".[237] The Court in *Legality of the Threat or Use of Nuclear Weapons* recognised the "*general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment*".[238] Similarly, ITLOS in *Activities in the Area* confirmed that "[t]*he Court's reasoning in a transboundary context may also apply to activities with an impact on the environment in an area beyond the limits of national jurisdiction; and the Court's references to 'shared resources' may also apply to resources that are the common heritage of mankind*".[239] The Tribunal interpreted the obligation of prevention as requiring States to prevent harm to areas beyond national jurisdiction on the grounds that such harm would affect the non-exclusive right of every other State to the preservation of these "shared resources".[240]

151. As such, there is no basis to distinguish between obligations to protect shared resources situated in a defined area, for example the High Seas, and those that are global in scope, or found everywhere, such as the climate system. Therefore, the obligation of prevention can reasonably be interpreted as "*implying an obligation for every state to regulate its* [greenhouse gas] *emissions in order to prevent both a direct infringement of states' non- exclusive rights to the protection of the atmosphere and an indirect infringement of their exclusive rights*".[241]

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236 *UNFCCC* (n 95) preamble.

237 Benoit Mayer, *International Law Obligations on Climate Change Mitigation* (Oxford University Press, 2022) 107.

238 *Nuclear Weapons Advisory Opinion* (n 4) [29].

239 *Area Advisory Opinion* (n 96) 42-44 [148].

240 Ibid.

241 Mayer (n 237) 108.

152. The duty to prevent transboundary harm applies to "*activities not prohibited by international law which involve a risk of causing significant transboundary harm through their physical consequences*". It is clear activities that generate substantial anthropogenic greenhouse gas emissions will cause "physical consequences" such as sea-level rise, coastal erosion, and an increase in the frequency and severity of extreme weather events. The physical impacts on Solomons and its people are detailed in **Chapter IV**. As such, the duty has broad application across the UNFCCC, the Paris Agreement, law of the sea, biological diversity, human rights, and other relevant sources of international law.

153. Importantly, the principle of prevention is closely intertwined with the principle of due diligence. While the prevention principle centres on harm of a certain magnitude, being "significant harm", the duty of diligence is not measured by magnitude. Rather, the duty of due diligence requires meeting a certain standard of conduct, which encompasses precautionary measures even in the absence of scientific certainty as to the existence of a risk of significant harm. Action or inaction that results in harm or risk to the environment that is below the threshold of significance required for a breach of the prevention principle remains governed by, and could potentially constitute a breach of, the duty of due diligence.[242] The duty of due diligence therefore operates as a component of the prevention principle.

154. When assessing the level of due diligence required as part of the prevention principle at customary international law it is necessary to consider three factors:

154.1 *first*, the gravity of the outcome that may result from negligence;

154.2 *second*, the capabilities of the State of origin; and

154.3 *third*, the contemporaneous element, the time at which diligence is assessed.

155. *First*, "significant harm" is not defined in the UNFCCC, nor any of the other international instruments named in the question put to the Court. "Significant harm" is used widely, yet there is no objective test of what constitutes "significant". This principle has been

[242] Pierre-Marie Dupuy, Ginevra Le Moli and Jorge E. Viñuales, 'Customary International Law and the Environment' (C-EENRG Working Papers 2018) 15.

repeatedly applied by international courts and tribunals,[243] including the Court, despite the absence of clarity on the threshold of harm or the associated obligations to prevent it. The notion of "significant harm" is crucial to identifying the applicability of the duty of prevention in a particular case.

156. The term "harm" is defined in the Transboundary Harm Articles and is used in the context of "significant transboundary harm". "Harm" means "*harm caused to persons, property of the environment*".[244] The ILC's commentary to the Transboundary Harm Articles provides the following interpretation of the words "significant" and "harm":

> "*The term "significant" is not without ambiguity and a determination has to be made in each specific case. It involves more factual considerations than legal determination. It is to be understood that "significant" is something more than "detectable" but need not be at the level of "serious" or "substantial". The harm must lead to a real detrimental effect on matters such as, for example, human health, industry, property, environment or agriculture in other States. Such detrimental effects must be susceptible of being measured by factual and objective standards*".[245]
>
> …
>
> "*The term "significant", while determined by factual and objective criteria, also involves a value determination which depends on the circumstances of a particular case and the period in which such determination is made. For instance, a particular deprivation at a particular time might not be considered "significant" because at that specific time scientific knowledge or human appreciation for a particular resource had not reached a point at which much value was ascribed to that particular resource. But some time later that view might change and the same harm might then be considered "significant"*." [246]
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> "*Subparagraph (b) is self-explanatory in that "harm" for the purpose of the present articles would cover harm caused to persons, property or the environment*".[247]

157. While it is clear "significant harm" was intended to be an objective standard, it is highly context dependent. Typically, "significant harm" is assessed prospectively and forms part of a risk assessment. As such, "*'significance' is a function of both the degree of potential harm and the likelihood of that harm actually occurring*".[248] Yet States have different risk preferences and

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243 See for example, *Nuclear Weapons Advisory Opinion* (n 4) [29]; *Gabčíkovo-Nagymaros Project* (n 206) 41 [53]; *Pulp Mills* (n 124) 56 [101]; *Area Advisory Opinion* (n 96) 42-44 [113]-[120].

244 *Transboundary Harm Articles* (n 232) art 2(b).

245 Ibid 152 [4].

246 Ibid 153 [7].

247 Ibid 153.

248 Ibid art 2.

may disagree as to whether an activity reaches the threshold of "significant harm" or "likelihood of significant harm".

158. However, it is clear that the adverse effects of climate change are significant. "*A State's obligation to exercise due diligence in preventing significant transboundary harm requires that State to ascertain whether there is a risk of significant transboundary harm prior to undertaking an activity having the potential adversely to affect the environment of another State*".[249] The globally systemic effects of climate change vastly exceed the typical events that have been found to result in transboundary harm.[250]

159. *Second*, a State's ability to address "significant harm" in the context of climate change must reflect the level of response a State can provide to meet due diligence standards and apply the prevention principle in light of the principle of CBDR. The principle of CBDR in the context of climate change is discussed in detail at **Chapter VI, Part C.**

160. *Finally*, the Seabed Disputes Chamber in its Advisory Opinion on *Activities in the Area* made clear that "due diligence" obligations cannot be precisely described. It is a variable concept, and an obligation that evolves over time to take into account "*new scientific or technological knowledge* … [or] *change*[s] *in relation to the risks involved in the activity*".[251] The stringency of due diligence must increase as States attain greater scientific knowledge as to the causal links between certain actions and the adverse effects of climate change. Due diligence obligations are discussed in detail at **Chapter VI, Part B.**

The duty to notify and consult

161. The duty to cooperate is a parallel obligation that is triggered by the presence of the likelihood for significant transboundary harm. Several decisions of international courts and tribunals have considered the content of this duty to notify and consult. For example, in the *Lac Lanoux* arbitration, the Tribunal held that "[c]*onsultations and negotiations between the two States must be genuine, must comply with the rules of good faith and must not be mere formalities*".[252] In *Railway Traffic between Lithuania and Poland*, the Court held the obligation to consult required "*not only to enter into negotiations, but also to pursue them as far as possible, with*

249 *Certain Activities* (n 228) 720 [153].

250 Ibid. See also *Trail Smelter* (n 219); *Pulp Mills* (n 124).

251 *Area Advisory Opinion* (n 96).

252 *Lac Lanoux (Spain v France)* (1957) 12 RIAA 281, 15-16.

a view to concluding agreements".[253] Importantly, while the Transboundary Harm Articles contemplate cooperation between States that are likely to be affected, this does not give States likely to be affected "*the right to veto the activity or project itself*".[254] That said, a State's discretion to undertake an activity is not unlimited, even if that activity is not illegal as such, as shown above. The duty to cooperate is considered in further detail at **Chapter VI, Part D.**

162. In light of the above, States have a general obligation to use all the means at their disposal in order to avoid activities which take place on their territory, or in any area under their jurisdiction, causing significant damage to the environment of another State. This obligation includes the prevention principle, the duty of due diligence, and the duty to notify and consult.

CHAPTER VII. PRINCIPLES OF INTERNATIONAL HUMAN RIGHTS LAW

163. The Request poses questions about States' obligations in respect of the climate system and the environment. These questions necessarily implicate the connection between international environmental law and international human rights law, a well-established body of international law comprised of many obligations derived from treaty and customary international law.[255] The Court has previously recognised this connection, stating:

> "*The Court also recognizes that the environment is not an abstraction <u>but represents the living space, the quality of life and the very health of human beings, including generations unborn.</u> The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment*"[256] (emphasis added).

164. Because harm to the environment threatens human health and quality of life, States' obligations with respect to the environment are inherently tied to their human rights obligations. Climate change presents grave risks to human rights and affects the full range of human rights protected under international law. This Chapter identifies a non-

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253 *Railway Traffic between Lithuania and Poland (Advisory Opinion)* [1931] PCIJ (ser A/B) No 42, 116.

254 *Transboundary Harm Articles* (n 232)150 [6].

255 *Stockholm Declaration* (n 141) Principle 1, 3.

256 *Nuclear Weapons Advisory Opinion* (n 4) [29].

exhaustive set of human rights principles that form the basis of States' obligations in the context of climate change and environmental degradation.

A. Right to life

165. The right to life is an established principle of treaty law and customary international law.[257] The right is codified in Article 6(1) of the ICCPR which sets out that "*every human being has the inherent right to life*" and Article 3 of the UDHR which states that "[e]*veryone has the right to life, liberty and security of person*". The right to life is fundamental, and States must preserve life and ensure its effective protection to allow the enjoyment of all other rights and freedoms.[258]

166. Climate change will threaten the lives of millions of people across the States Parties and deny many more people access to the conditions for a dignified existence through slow onset impacts like coastal erosion and sea-level rise, and extreme weather events such as tropical cyclones, heatwaves, wildfires and droughts.[259] These threats are particularly grave in Solomons and across the Pacific.[260]

167. The UN Human Rights Committee ("**UNHRC**"), the body responsible for interpreting and monitoring implementation of the ICCPR, issues authoritative interpretations on the right to life, and other rights codified within the ICCPR. Of direct relevance to these proceedings are the observations of the Committee in response to a complaint submitted by Torres Strait Islanders against the Australian government for breaching their rights to life, culture, and private and family life[261] by failing to adequately mitigate or adapt to

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257 *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) art 3 ('*UDHR*'); *International Convention on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 6 ('*ICCPR*'); *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) art 2 ('*ECHR*'); *American Convention on Human Rights*, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978) art 4 ('*ACHR*'); *American Declaration of the Rights and Duties of Man*, signed 2 May 1948, UN Doc E/CN.4/122, art 1 ('*ADRDM*'); *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, opened for signature 9 June 1994 (entered into force 5 March 1995), art 4 ('*Convention of Belém do Pará*'); *African Charter on Human Peoples' Rights* opened for signature 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986), art 4 ('*ACHPR*'); *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, opened for signature 11 July 2003, OAU Doc CAB/LEG/66.6 (entered into force 25 November 2005), art 4; *African Charter on the Rights and Welfare of the Child*, opened for signature 11 July 1990, OAU Doc CAB/LEG/24.9/49 (1990) (entered into force 29 November 1999), art 5 ('*ACRWC*'); *Arab Charter of Human Rights*, adopted 22 May 2004 (entered into force 15 March 2008) art 5 ('*Arab Charter*'); *African Charter on Human and Peoples' Rights*, opened for signature 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986), art 4 ('*Banjul Charter*').

258 *Case of the "Juvenile Reeducation Institute" v Paraguay (Preliminary Observations, Merits, Reparations, and Costs*) (Inter-American Court of Human Rights, Series C No 112, 2 September 2004) [156].

259 See **Chapter IV**.

260 See **Chapter IV**.

261 ICCPR (n 257) arts 6, 17, and 27.

climate change.[262] The Torres Strait Islanders are Melanesian regional neighbours of Solomons and share many characteristics and vulnerabilities to climate change.

168. The UNHRC upheld the complaint in relation to Articles 17 and 27, and expressly recognised that the obligation to protect the right to life encompasses obligations that concern the environment and the climate system: "*environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life*".[263] The Committee noted that "*the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life*", including, importantly, "*adverse climate change impacts*".[264]

169. In its reasoning, the Committee adopted a systematic integration approach to principles of international environmental law in the context of the right to life, reflecting the interpretation used by Solomons in this written statement:

> "*The obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law*".[265]

170. As such, the Committee confirmed that the right to life encompasses duties to prevent harm to the environment, including through climate change. This obligation has similarly

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262 See generally, Human Rights Committee, *Views: Communication No 3624/2019*, 135th sess, UN Doc CCPR/C/135/D/3624/2019 (22 September 2022) ('*Billy et. al v. Australia*').

263 Ibid [8.3].

264 Ibid.

265 Ibid.

been recognised by courts and tribunals in the context of domestic[266] and international[267] litigation and should be adopted by the Court in the present proceedings.

B. Right to self-determination

171. The right to self-determination is a fundamental human right codified in Article 1 common to the Charter, ICCPR, and ICESCR.[268] The Court has regularly recognised that the right is an obligation *erga omnes*,[269] while the ILC recently recognised the right as having *jus cogens* status.[270]

172. The right to self-determination is a conglomerate right that requires States to ensure the full enjoyment of subsidiary rights, including social, cultural, and economic rights.[271] These subsidiary rights include the right to life, the right to a healthy environment, adequate food, water, health, an adequate standard of living (including housing), the productive use and enjoyment of property, and cultural practices and traditions.[272] As such, if one of these subsidiary rights is undermined, the right to self-determination itself is undermined. Environmental degradation and climate change affect and infringe upon these subsidiary rights. Climate change impacts such as rising global temperatures, sea-level rise, acidifying oceans, and more frequent and intense storms threaten natural

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266 *Urgenda Foundation v Netherlands (Ministry of Infrastructure and the Environment)*, Rechtbank Den Haag [Hague District Court], C/09/456689/HA ZA 13-1396 (24 June 2015) [English translation] ('*Urgenda*'); *VZW Klimaatzaak v. Kingdom of Belgium and Others, Civ.* (2021) Tribunal of First Instance, Brussels (4th ch.), Case 2015/4585/A (appeal pending) ('*Klimaatzaak*') (holding that by failing to take sufficient climate action to protect the life and privacy of the plaintiffs, the defendants were in breach of their obligations under Articles 2 and 8 of the European Convention on Human Rights); *Leghari v Federation of Pakistan*, Lahore High Court Green Bench (Pakistan), WP No 25501/2015, Orders of 4 September 2015 and 14 September 2015 ('*Ashgar Leghari*') (holding the national government had violated the fundamental rights of its citizens, including the right to life, by failing to implement adaptation measures recommended in the 2012 National Climate Policy and Framework); *Subhash Kumar v. State of Bihar* (1991) SCR 5 (holding that the right to a safe environment was integral to the right to life under Article 21 of the Indian Constitution).

267 *Yanomami v. Brazil*, Res 12/85 (5 March 1985), as contained in Inter-American Commission on Human Rights, *Annual Report of the Inter-American Commission on Human Rights*, OEA/Ser.L/V/II.66 (1984–85) (finding that Brazil had violated the rights to life, liberty and personal security of the Yamomani Indians by failing to take measures to prevent environmental degradation); *Budayeva v Russia* [2008] II Eur Court HR 267, [128]–[130], [133] and [159] (holding States must also take reasonable measures to protect citizens against the reasonably foreseeable effects of natural disasters); Human Rights Committee, *Views: Communication No. 2751/2016*, UN Doc CCPR/C/126/D/2751/2016 (25 July 2019) ('*Portillo Cáceres and Others v. Paraguay*'); *Öneryildiz v Turkey* [2004] XII Eur Court HR 79; *Kawas-Fernández v Honduras (Merits, Reparations and Costs)* (Inter-American Court of Human Rights, Series C No 196, 3 April 2009) [148]; Human Rights Committee, *Views: Communication No 2728/2016*, UN Doc CCPR/C/127/D/2728/2016 (24 October 2019) 1 [9.9] ('*Teitiota v Australia*'); *Billy et. al v. Australia* (n 262).

268 *Charter of the United Nations* art 1(2) ('*UN Charter*'); *ICCPR* (n 257), art 1(1); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1966) art 1(1) ('*ICESCR*').

269 *East Timor (Portugal v Australia) (Judgment)* [1995] ICJ Rep 90, [29]; *Construction of a Wall* (n 5) [88]; *Chagos* (n 4) [180].

270 International Law Commission, *Report of the International Law Commission on the Work of Its Seventy-third Session*, UN GAOR, 73rd sess, Supp No 10, UN Doc A/77/10 (2022), 'Peremptory norms of general international law (*jus cogens*)' 16 ('*ILC Report on Seventy-third session*').

271 Tekau Frere, Clement Yow Mulalap, Tearinaki Tanielu 'Climate Change and Challenges to Self-Determination: Case Studies from French Polynesia and the Republic of Kiribati' (2020) 129 *Yale Law Journal* 653.

272 Ibid 653-654.

environments, endanger human life, imperil food and water sources, and undermine the ability of peoples to enjoy suitable standards of living.[273]

173. These threats are particularly acute for SIDS and LDCs like Solomons; States whose territory is physically threatened by coastal erosion, sea-level rise and tropical cyclones. The IPCC noted that these physical vulnerabilities are compounded by a number of factors, such as socio-economic status and "*historical and ongoing patterns of inequality such as colonialism*".[274] In this context, climate displacement of islander and indigenous communities is likely to cause a loss of cultural identity, loss of physical connection with ancestral land, and a loss of effective nationality, thereby infringing the right to self-determination.[275] See also the experience of Ms Gladys Habu described above at **paragraph 29.4**.

C. Right to a healthy environment

174. The right to a healthy environment has been recognised across a number of international human rights and environmental treaties, beginning over 40 years ago with codification in Article 24 of the African Charter on Human and People's Rights.[276] Building on the framework established in Principle 1 of the Stockholm Declaration in 1971,[277] the right has subsequently been recognised in the Protocol of San Salvador, an Additional Protocol to the American Convention on Human Rights,[278] the Aarhus Convention,[279] the Charter of Fundamental Rights of the European Union,[280] the Arab Charter on Human Rights,[281] and the Escazú Agreement.[282]

175. Beyond treaty recognition, international courts and UN organs and agencies have recognised and applied the right, including: (i) the UNGA which has recognised "*the right*

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273 UN Human Rights Council, *Resolution 16/11: Human Rights and the Environment*, A/HRC/RES/16/11, 12 April 2011, 2; Frere (n 271).

274 *Summary for Policymakers* (n 13).

275 *UN Charter* (n 268) art 15(2).

276 ACHPR (n 257) art 24.

277 *Stockholm Declaration* (n 141) Principle 1.

278 *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador')* A/52 (16 November 1999) art 11. See also *IACtHR Advisory Opinion* (n 132) [79].

279 *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('Aarhus Convention')* 2161 UNTS 447 (25 June 1998), preamble.

280 *Charter of Fundamental Rights of the European Union* [2000] OJ C 364/1, art 37 ('*EU Charter of Fundamental Rights*').

281 *Arab Charter* (n 257), art 38.

282 *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean* ('*Escazú Agreement*') signed 26 September 2020, 3397 UNTS (entered into force 22 April 2021) 21, arts 1 and 4.

to a clean, healthy and sustainable environment as a human right",[283] (ii) the UNHRC which took note of "the *right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human right*s",[284] (iii) the UN Special Rapporteur on Human Rights and the Environment;[285] (iv) the African Commission on Human and People's Rights; (v) the IACtHR in advisory[286] and contentious cases;[287] and (vi) most recently, the UNHRC, which expressly recognised the right to a clean, healthy and sustainable environment as a human right in 2022.[288]

176. At the regional and national level, the right has been recognised in over 150 countries,[289] and has been widely enforced by domestic courts.[290]

177. The clear link between climate change and protection of the right to a healthy environment was relevantly recognised by the IACtHR in its 2017 Advisory Opinion OC-23/17 on the environment, which noted:

> "*This Court has recognized the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights. In addition, the preamble to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter "Protocol of San Salvador"), emphasizes the close relationship between the exercise of economic, social and cultural rights – which include the right to a healthy environment – and of civil and political rights, and indicates that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human being*"[291] (emphasis added).

178. In the same Opinion, the Court stated that the right, which protects both individuals and collectives, including future generations, can be used to hold States responsible for cross-

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283 UN General Assembly, *The Human Right to a Clean, Healthy and Sustainable Environment*, A/RES/76/300 (28 July 2022).

284 Human Rights Council, *Resolution adopted by the Human Rights Council on 8 October 2021: The human right to a clean, healthy, and sustainable environment*, UN Doc HRC/RES/48/13 (8 October 2021).

285 Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UN Doc A/HRC/37/59 (24 January 2018).

286 *IACtHR Advisory Opinion* (n 132) [47].

287 *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina (Merits, Reparations and Costs)* (Inter-American Court of Human Rights, Series C No 400, 6 February 2020) [289].

288 Human Rights Council, *The role of good governance in the promotion and protection of human rights*, UN Doc A/HRC/RES/51/5 (12 October 2022).

289 Human Rights Council, *Right to a healthy environment: good practices; Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/43/53 (30 December 2019); UN General Assembly, *The Human Right to a Clean, Healthy and Sustainable Environment*, A/RES/76/300 (28 July 2022).

290 *Dover District Council v. CPRE Kent*, [2017] UKSC 79; *Francisco Chahuan Chahuan v. Empresa Nacional de Petróleos, ENAP S.A*, Judgment, Case No. 5888-2019 (28 May 2019); Cour Administrative d'Appel de Nantes, 2ème Chambre, No. 07NT03775 (1 December 2009); *Ashgar Leghari v Urgenda* (n 266); *Urgenda* (n 266) [5.7.1]; *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7 [698].

291 *IACtHR Advisory Opinion* (n 132) [47].

border violations that are within their "effective control".[292] As the right has crystalised, both substantive and procedural elements have been identified. Substantive elements include "*clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems*" (emphasis added),[293] with procedural elements extending to "*access to information, the right to participate in decision-making, and access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation*".[294]

179. The right to a healthy environment is plainly implicated and infringed by climate change and environmental degradation. The experience of Solomon Islanders from villages such as Ambu and Sikaiana, described above at **paragraph 29**, demonstrates how environments are being destroyed. States must take measures to guarantee a clean, healthy, and sustainable environment as a standalone obligation, and as a fundamental precondition for the enjoyment of other well-established and interconnected rights.

D. Right to private and family life

180. The right to private and family life is recognised in international and regional human rights treaties.[295] Article 17 of the ICCPR is codified in similar terms to Article 12 of the UDHR, and states:

> "*1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
>
> *2. Everyone has the right to the protection of the law against such interference or attacks*".

181. The right has been interpreted broadly, and involves a corresponding obligation on States, who are required to "*prevent interference with a person's privacy, family or home that arises from conduct not attributable to the State, at least where such interference is foreseeable and serious*".[296] The UNHRC has held that in the climate change context, this obligation requires States to

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292 Ibid [79].

293 UN Environment Programme, 'What is the Rights to a Healthy Environment – Information Note' (Web Page, 23 January 2023) <https://www.unep.org/resources/publication/what-right-healthy-environment-information-note> 9.

294 Ibid.

295 See *UDHR* (n 257) art 12; *ICCPR* (n 257) art 17; *ECHR* (n 257) art 8; *ACHR* (n 257) art 11; *ACHPR* (n 257) art 18.

296 *Billy et al v. Australia* (n 262).

prevent interference with the right, even if the cause of climate change is the conduct of non-state actors.[297]

182. As set out above at **Chapter VII, Part A**, the UNHRC expressly recognised the relationship between the right to private and family life and climate change and environmental degradation in *Billy et al v. Australia*. The complainants, peoples of the low-lying Torres Strait Islands, are among the most vulnerable to the impacts of climate change, similar to States like Solomons. The complaint alleged that Australia had failed to implement adaptation measures to protect the habitability of the islands from the effects of climate change, particularly from sea-level rise. It further alleged that Australia has failed to mitigate the impacts of climate change, including by failing to reduce its greenhouse gas emissions. The complainants argued that climate change had already affected their rights to private, family and home life under the ICCPR because they faced the prospect of having to abandon their homes due to sea-level rise.

183. The Committee subsequently found that Australia had violated the authors' right to private and family life, reasoning as follows:

> "*The Committee considers that when climate change impacts – including environmental degradation on traditional lands in communities where subsistence is highly dependent on available natural resources and where alternative means of subsistence and humanitarian aid are unavailable – have direct repercussions on the right to one's home, and the adverse consequences of those impacts are serious because of their intensity or duration and the physical or mental harm that they cause, then the degradation of the environment may adversely affect the well-being of individuals and constitute foreseeable and serious violations of private and family life and the home. The Committee concludes that the information made available to it indicates that by failing to discharge its positive obligation to implement adequate adaptation measures to protect the authors' home, private life and family, the State party violated the authors' rights under article 17 of the Covenant*"[298] (emphasis added).

184. This decision sits alongside the IACtHR Advisory Opinion OC-23/17 on the environment[299] and domestic cases, such as *Urgenda Foundation v. the Netherlands*,[300] *VZW Klimaatzaak v. Kingdom of Belgium and Others*,[301] and *Ashgar Leghari v. Federation of Pakistan*,[302] that have similarly found that the impacts of climate change and environmental

297 Ibid [6.8].

298 Ibid [8.12].

299 *IACtHR Advisory Opinion* (n 132) [66].

300 *Urgenda* (n 266).

301 *Klimaatzaak* (n 266).

302 *Ashgar Leghari* (n 266).

degradation infringe the right to private and family life. The European cases stem from established jurisprudence on Article 8 which recognises that the right protects a broad range of interests, including a person's physical and psychological well-being, living conditions, and enjoyment of one's home – all of which can be directly and seriously affected by environmental harm, such as that caused by climate change.[303]

185. Therefore, States have an obligation to prevent interference with a person's privacy, family, or home. This right includes protection against the effects of climate change and entails obligations to adequately address the causes and impacts of climate change to protect the right to private and family life.

E. Rights of the child

186. The rights of children are principally enshrined in the Convention on the Rights of the Child ("**CRC**") which is the world's most widely ratified treaty.[304] The obligations to protect the rights of children stemming from international human rights law are closely related to the principle of intergenerational equity explored above in **Chapter VI, Part E**, with the obligations established under the CRC mutually reinforcing intergenerational equity.

187. Children are particularly vulnerable to climate change.[305] Children have specific characteristics which mean that existing impacts of climate change disproportionately affect them. For example, climate change exacerbates health impacts on children by exposing them to disease and displacement in the context of extreme weather events.[306] Children are also our link to future generations, and hold in common with those generations exposure to the long-term effects of climate change: "*because of the inter-connected and inter-related nature of rights … children's vulnerability to climate change fundamentally threatens the realization of many, if not all, of their rights as stated in the CRC*".[307] In Solomons, children make

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303 *Case of Fadayeva v Russia*, No. 55723/00. Judgment of June 9, 2005; *Case of Ivan Atanasov v. Bulgaria*, No. 12853/03. Judgment of December 2, 2010, [66], [75].

304 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3(1) (*'CRC'*).

305 Human Rights Council, *Analytical Study on the relationship between climate change and rights of the child*, UN Doc A/HRC/35/13 (4 May 2017) [20], [55].

306 Committee on the Rights of the Child, *General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health*, UN Doc CRC/C/GC/15 (17 April 2013) [5], [50].

307 UNICEF, 'The Challenges of Climate Change: Children on the Front Line' (Web Page) <https://www.unicef-irc.org/publications/pdf/ccc_final_2014.pdf> 49 ('*UNICEF Challenges of Climate Change*').

up more than a third of the population[308] and in some communities, they are already having their access to education impacted by climate change-induced extreme weather events (see for example, the impacts on Solomon Islander children in the villages of Haleta and Rendova above at **paragraphs 29.3 and 29.8**, respectively).

188. While UNICEF has identified at least 15 children's rights that are at risk from climate change,[309] only Articles 2, 3, 6, 12, and 24 under the CRC are briefly considered here.

189. Article 2 of the CRC recognises the right to freedom from discrimination, which is also protected under the ICCPR and ICESCR, where discrimination is prohibited, including on age-based grounds is prohibited.[310] Article 2 requires States to actively identify individuals and groups of children who require special measures, and to recognise and realise their rights. Climate change affects children unevenly, with vulnerable groups like displaced children, those in poverty, and those with disabilities being disproportionately impacted.[311] Inaction on climate change can thus be considered a violation of Article 2 of the CRC and a discriminatory policy. Policies that exacerbate climate change can therefore be seen as discriminatory against children as they are more vulnerable to harmful health effects.[312]

190. Article 3 of the CRC recognises that States have a duty to act in the best interests of the child. The best interests of the child must be a primary consideration in all actions concerning children, including by all institutions that affect children, such as those which concern the climate system and the environment.[313] The right established in Article 3 has three different aspects: a substantive right, a legal principle, and a rule of procedure.[314] Given that Article 3 requires decision-makers to weigh the best interests of the child as an important factor in any decision, they must consider the current and future impacts that climate change will have on children.[315]

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308 *Population and Housing Census* (n 11).

309 Ibid.

310 *ICCPR* (n 257) arts 2(1), 26; ICESCR (n 268) art 2(2).

311 Jeffrey Goldhagen et al., 'Rights, Justice, and Equity: A Global Agenda for Child Health and Wellbeing' (2020) 4 *The Lancet Child & Adolescent Health* 80, 85.

312 *UNICEF Challenges of Climate Change* (n 307) 1.

313 Committee on the Rights of the Child, *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration*, UN Doc CRC/C/GC/14 (May 29, 2013) [26].

314 Ibid [6].

315 Francesca Ippolito, 'The Best Interests of the Child: Another String to the Environmental and Climate Protection Bow?' (2022) 89 *Questions International Law Journal* 7, 7-9, 12.

191. Article 12 of the CRC guarantees children's rights to express their opinions and be heard, including before courts and tribunals. This right is important given the prominent role that children and youth advocates have played in advocating for better climate policies, including through litigation in domestic, regional, and international courts.[316]

192. Article 6(2) of the CRC protects children's rights to survival and development. The right requires States to take positive measures to extend children's lives, such as by ensuring a healthy and safe environment. This is guaranteed under Article 24 which states that children have the right to the highest attainable standard of health. Article 24(2)(c) requires States to consider environmental pollution risks, and to ensure access to nutritious food and clean water. Climate change poses a threat to children's health, which is particularly acute for disadvantaged children.[317]

193. These rights have been the subject of litigation and commentary from UN bodies. In *Sacchi v Germany*, the Committee on the Rights of the Child heard a complaint from children against multiple States alleging that their rights under the Convention were violated by a failure of those States to prevent and mitigate the consequences of climate change.[318] The Committee observed that: "*as children, the authors are particularly affected by climate change, both in terms of the manner in which they experience its effects and the potential of climate change to have an impact on them throughout their lifetimes, particularly if immediate action is not taken*".[319] As such, the Committee observed that "*States have heightened obligations to protect children from foreseeable harm*".[320]

194. In a claim brought by 16 youth claimants in *Held v Montana*, the state court held that physical and psychological harm to children accrues "*from impacts to the climate such as heat waves, droughts, wildfires, air pollution, extreme weather events, the loss of wildlife, watching glaciers melt, and the loss of familial and cultural practices and traditions*".[321]

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316 These proceedings were catalysed by 27 Pasifika law students campaigning as the Pacific Islands Students Fighting Climate Change. See for example, Committee on the Rights of the Child, *View: Communications No. 104/2019*, UN Doc CRC/C/88/D/104/2019 (8 October 2021) ('*Saachi et al v Argentina*').

317 Goldhagen (n 311) 85.

318 *Saachi et al v Argentina* (n 316).

319 Ibid [9.6].

320 Ibid.

321 *Held v Montana*, CDV 2020 307 (MT, 2023) [108].

195. In *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* impacts on the cultural rights of children were considered, with the Court noting:

> "*Increased temperatures already hamper the efforts of the First Nations parents to teach their children about their sea country. If, as adults, these children are displaced from their country, that will risks severing their relationship to country and culture*".[322]

196. The infringement of cultural rights due to climate displacement is a significant risk in Solomons, which has already seen 26,000 people displaced since 2008 due to climate change and associated health and economic impacts.[323] This includes the experience of communities from Kale, Ontong Java, and Pileni islands (see above at **paragraphs 29.4, 29.5, 29.7**).

197. The CRC therefore establishes a range of State obligations to mitigate and adapt to climate change to guarantee the rights of the child.

F. Right to health

198. The right to health is recognised in various regional and international instruments.[324] The right to health encompasses a variety of socio-economic factors that promote conditions for a healthy life, including the determinants of health, such as access to safe and potable water, adequate sanitation, and a healthy environment.[325] The right therefore implies a corresponding obligation on States to protect people from the impacts of environmental degradation, such as pollution of air, water, and soil.[326] Both the effects of climate change and carbon-intensive industries threaten the right to health.

199. Consistent with the principles set out above, international bodies, and domestic courts have recognised that the guarantee of a right to health includes an obligation by States to protect people from the impacts of environmental degradation.

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322 *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1601].

323 *World Bank Social Dimensions of Climate Change* (n 74).

324 See *UDHR* (n 257) art 25; *ICESCR* (n 268) art 12; *CRC* (n 304) art 24; *ACHPR* (n 257) art 16; European Social Charter, ETS No 035 (26 February 1965) art 11.

325 Committee on Economic, Social, and Cultural Rights, *General Comment No. 14, The right to the highest attainable standard of health,* UN Doc E/C. 12/2005/4, (14 August 2000) [34].

326 Ibid [36].

G. Right to effective remedy for breach of human rights obligations

200. The right to an effective remedy is a key aspect of human rights law, and is recognised in a wide range of international instruments and treaties.[327] Under international human rights law, the right to redress and remedy is a substantive right not only codified in treaties but established through custom.[328] In the context of climate change, the right to an effective remedy applies to all rights-holders, including against private actors. The right ensures that States and private actors can be held accountable for their contributions to climate change and their failure to regulate emissions adequately. The Office of the High Commissioner for Human Rights ("**OHCHR**") summarised the right in the context of climate change as follows:

> "*The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other human rights instruments require States to guarantee effective remedies for human rights violations. Climate change and its impacts, including sea level rise, extreme weather events, and droughts have already inflicted human rights harms on millions of people. For States and communities on the frontline, survival itself is at stake. Those affected, now and in the future, must have access to meaningful remedies including judicial and other redress mechanisms.*"[329]

201. The primary form of remedy in international human rights law is reparations. Reparations can take a range of different forms beyond monetary compensation. The IACtHR noted in the *Herrera Espinoza et al. v. Ecuador* case that "*a full and adequate reparation cannot be reduced to the payment of compensation to the victims or their families, since, depending on the case, rehabilitation measures, satisfaction and guarantees of non-repetition are also necessary*".[330] The scope of the obligation on States to provide access to remedies, such as reparations, for harm flowing

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327 *UDHR* (n 257) art 8; *ICCPR* (n 257) art 2; *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 6; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) art 14; *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998,2187 UNTS 90 (entered into force 1 July 2002) art 75; *Hague Convention (IV) respecting the Laws and Customs of War on Land, Annex to the Convention, Regulations respecting the Laws and Customs of War on Land*, opened for signature 18 October 1907, (1910) UKTS 9, art 3; *ACHPR* (n 257) art 25; *ACHR* (n 257) art 7; *ECHR* (n 257) art 13; *EU Charter of Fundamental* Rights (n 280), art 47.

328 *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,* GA Res 60/147, 60th sess, UN Doc A/RES/60/147 (21 March 2006) [3(d)]; *Moiwana Village v. Suriname (Preliminary Objections, Merits, Reparations and Costs)* (Inter-American Court of Human Rights, Series C No 124, 15 June 2005) [169]; See further Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press, 2nd ed., 2010) 103.

329 Office of the High Commissioner for Human Rights. 'Understanding Human Rights and Climate Change: Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change' (2021) 3.

330 *Herrera Espinoza et al. v. Ecuador (Preliminary objections, merits, reparations and costs*) (Inter-American Court of Human Rights), Series C No 316 (30 November 2016) [314] ('*Herrera Espinoza*').

from climate change is wide and extends to harm that occurs both within and beyond State boundaries:

> "*The obligations of States in the context of climate change and other environmental harms extend to all rights-holders and to harm that occurs both inside and beyond boundaries. States should be accountable to rights-holders for their contributions to climate change including for failure to adequately regulate the emissions of businesses under their jurisdiction regardless of where such emissions or their harms actually occur*"[331] (emphasis added).

202. The wide scope of the obligation is particularly important for rights-holders in States such as Solomons, who suffer the severe effects of climate change that have been caused by historical and ongoing high emissions from States and non-State actors in developed countries.

203. The right to an effective remedy importantly includes a right of access to remedial institutions and procedures, such as courts and tribunals, which must afford victims of human rights violations a fair hearing and substantive redress.[332] The right of access to justice is a key aspect of international human rights law and international environmental law instruments.[333] OHCHR has recognised that those who suffer violations to their human rights because of the harm caused by climate change must be guaranteed access to justice so that they may receive adequate reparation.[334]

204. In summary, international human rights law provides a significant number of State obligations to address harm caused by climate change and environmental degradation, only some of which have been described here. Climate change implicates the full range of human rights protected under international law. The Court has previously recognised the relationship between environmental harm and human rights, noting "*the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings*".[335] Where human rights have been breached due to the harmful effects of climate change,

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331 Office of the High Commissioner for Human Rights '*Understanding Human Rights and Climate Change*', (Submission to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, 2021), 3.

332 *Herrera Espinoza* (n 330) [314].

333 *ICCPR* (n 257) art 19; *Rio Declaration* (n 137) Principles 9–10; Aarhus Convention (n 279) arts 1, 2, 3.3; *Escazú Agreement* (n 282) art 1.

334 Office of the High Commissioner for Human Rights, *Frequently Asked Questions on Human Rights and Climate Change: Fact Sheet No. 38* (Web Page, 2021) <https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf>.

335 *Nuclear Weapons Advisory Opinion* (n 4) [29]; *Gabčíkovo-Nagymaros Project* (n 206) Separate opinion of Judge Weeramantry (describing the protection of the environment as a "*sine qua non for numerous human rights such as the right to health and the right to life itself*").

States have an obligation to provide effective access to remedies through access to courts and tribunals and other form of redress.

CHAPTER VIII. MARITIME ENTITLEMENTS AND STATEHOOD

A. The law of the sea is relevant to regulating the effects of climate change resulting from anthropogenic greenhouse gas emissions

205. For SIDS, the ocean is a critical part of their history, culture, traditions, and day-to-day lives. Climate change has already started to severely impact oceans and the impacts on Solomons have been detailed throughout these submissions (see **Chapter IV**). Whilst UNCLOS was negotiated and agreed prior to the UNFCCC and Paris Agreement, it should be read in light of the obligations under these agreements and other relevant sources of international law. As States in a *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* near universally agreed, the definition of "pollution of the marine environment" in UNCLOS Article 1(1)(4) applies to anthropogenic greenhouse gas emissions.[336] Greenhouse gas emissions are a "substance" within the definition of the Article, and therefore States are in breach of their obligations under the Convention at the point at which they release the polluting substance.

206. Solomons recognises that States have obligations, in accordance with the principle of CBDR-RC, under UNCLOS and at customary international law to:

206.1 protect and preserve the marine environment from the adverse effects of climate change; [337] and

206.2 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.[338]

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336 See for example, 'Verbatim Record' *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (International Tribunal for the Law of the Sea, 20 September 2023, ITLOS/PV.23/C31/14) 7 (Democratic Republic of Timor-Leste); 'Verbatim Record' *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (International Tribunal for the Law of the Sea, 13 September 2023, ITLOS/PV.23/C31/6) 21 (People's Republic of Bangladesh); 'Verbatim Record' *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (International Tribunal for the Law of the Sea, 25 September 2023, ITLOS/PV.23/C31/18) 29 (United Kingdom); 'Verbatim Record' *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (International Tribunal for the Law of the Sea, 20 September 2023, ITLOS/PV.23/C31/14) 32 (The European Union).

337 *UNCLOS* (n 94) art 192; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia) (Judgment)* [2022] ICJ Rep 266 [95].

338 *UNCLOS* (n 94) art 194.

207. Given Solomons' unique position as a LDC and SIDS vulnerable to the loss of its territory resulting from climate change-related sea-level rise, this written statement will focus on the implications of sea-level rise and a States' maritime entitlements.

B. Climate change-induced sea-level rise may impact a State's maritime entitlements

208. UNCLOS was drafted in 1982 at a time when sea-level rise was not considered to be an issue that needed to be addressed as part of the law of the sea. As a result of climate change-related sea-level rise, the coastal configuration of a State and, as a consequence, its baselines, may change. A State's baselines are relevant to the determination of the outer limits of a State's maritime spaces. For States with unresolved maritime boundaries, baselines are also relevant to establishing a maritime boundary. The role of islands is also of particular importance to archipelagic States such as Solomons. Sea-level rise could change the legal status of islands, leading to their reclassification as a "rock", "low tide elevation", or even a fully submerged feature that cannot be used to generate any maritime claims.[339]

209. The application of the principles under UNCLOS to circumstances of climate-induced sea-level rise may result in maritime and archipelagic baselines changing.[340] This does not accord with the international community's concerns on this matter, nor with the need to promote legal stability, security, certainty, and predictability in relation to a State's maritime entitlements. Accordingly, the impacts of climate-induced sea-level rise on a State's sovereignty are currently being considered by the ILC following from its earlier report into the issue.[341] An interpretation of UNCLOS where maritime entitlements change with sea-level rise is of particular concern to Solomons, as an archipelagic State, that is already experiencing inundation of small islands and dying reefs that impact existing baselines.

210. The Pacific Island Countries ("**PICS**") have been persistent advocates in reaffirming the importance of preserving these countries' existing maritime zones in the face of sea-level

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339 David Freestone and Clive Schofield, 'Securing Ocean Spaces for the Future? The Initiative of the Pacific SIDS to Develop Regional Practice Concerning Baselines and Maritime Zone Limits' (2019) 33(1) *Ocean Yearbook Online* 58, 74.

340 See for example *UNCLOS* (n 94) arts 5, 6, 7(1), 13 and 47.

341 See International Law Commission, *Sea-level rise in relation to international law, First issues paper by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law*, 77th sess, UN Doc A/CN.4/740 (28 February 2020).

rise. PICS have made concerted efforts to develop regional practice concerning baselines and maritime zone limits in the face of sea-level rise. Examples of this include:

210.1 2010 Framework for a Pacific Oceanscape developed by the Pacific Islands Forum;[342]

210.2 2015 Taputapuatea Declaration on Climate Change adopted by seven Polynesian leaders;[343]

210.3 2018 Delap commitment adopted by leaders from Solomons, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, and Tuvalu;[344]

210.4 2021 Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise adopted by the Pacific Islands Forum;[345] and

210.5 Eight PICS – Marshall Islands, Cook Islands, Fiji, Kiribati, Nauru, Niue, Palau, and Tuvalu –have already adopted legislation purporting to "fix" their maritime limits.

211. Solomons also took steps in 2022 to legally formalise the delimitation of all five of its maritime boundaries with Australia, Papua New Guinea, Vanuatu, France, and Fiji.[346]

212. Though these acts, PICS have decided to develop State practice that rejects an interpretation of UNCLOS where baselines, and by extension outer maritime limits, are ambulatory. This general and consistent State practice[347] is therefore relevant to establishing the international community's preferred interpretation of UNCLOS.

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342 C. Pratt and H. Govan, *Our Sea of Islands, Our Livelihoods, Our Oceania. Framework for A Pacific Oceanscape: A Catalyst for Implementation of Ocean Policy* (Pacific Islands Forum Secretariat, November 2010) <http://www.forumsec.org/wp-content/uploads/2018/03/Framework-for-a-Pacific-Oceanscape-2010.pdf>

343 Polynesian Leaders Group, 'Polynesia Against Climate Threats' (Declaration, 16 July 2015) <https://www.samoagovt.ws/wp-content/uploads/2015/07/The-Polynesian-P.A.C.T.pdf>.

344 'Delap Commitment' (Declaration, 2 March 2018) <https://www.pnatuna.com/sites/default/files/Delap%20Commitment_2nd%20PNA%20Leaders%20Summit.pdf>. See for example operative paragraph 8.

345 The Pacific Islands Forum, 'Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise' (Declaration, 6 August 2021) 3 <https://www.forumsec.org/wp-content/uploads/2021/08/Declaration-on-Preserving-Maritime.pdf> ('*PIF Maritime Zones Declaration*').

346 The Honourable Manasseh Damukana Sogavare (Prime Minister of the Solomon Islands), 'Remarks at the Opening Debate of the 77th session of the United Nations General Assembly – Theme: "A Watershed Moment: Transformative Solutions to Interlocking Challenges"' (Speech, United Nations General Assembly, 23 September 2022).

347 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits)* [1986] ICJ Rep 14, [186] ('*Paramilitary Activities*').

213. Solomons submits that in the context of climate change-related sea-level rise, States' baselines, and outer limits of the maritime zones therefrom, should be preserved.

C. Climate change-induced sea-level rise may affect statehood

214. As further described in **Chapter IV**, Solomons is particularly exposed to the effects of sea-level rise. Terrestrial territory has already been lost including on Kale Island as described by Gladys Habu above at **paragraph 29.4**. To date, Solomons has already lost five islands to total submergence, with further islands at risk.[348] While the major islands of Solomons have mountainous interiors, population centres are predominantly coastal and situated at extremely low elevation. As explained in **Chapter IV** over half of the population of Solomons, around 350,000 people,[349] lives within approximately one kilometre of the coast.[350]

215. For low-lying States, and in particular SIDS, sea-level rise threatens to undermine the legal and practical elements that together constitute the basis of their statehood. By extension, sea-level rise also poses a risk to the inhabitants of those States and their enjoyment of rights fundamentally linked to statehood, threatening to compromise the enjoyment of the right to a nationality and thereby contributing to an attendant risk of statelessness. As a matter related to sea-level rise and maritime entitlements, the ILC is also considering the impacts of climate-induced sea-level rise on statehood.[351]

216. Solomons has taken an active stance in endorsing the presumption of continuity of statehood despite a loss of physical territory. On 9 December 2023, Solomons supported the PIF's *2023 Declaration on the Continuity of Statehood and the Protection and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise*, which stated:

> "*WE, THE LEADERS OF THE PACIFIC ISLANDS, THEREFORE*
>
> ***Affirm*** *that international law supports a presumption of continuity of statehood and does not contemplate its demise in the context of climate change-related sea-level rise,*

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348 Noel Matea, 'Draft Statement delivered by Solomon Islands at the Sixth Committee on Agenda Item 82: Report of the International Law Commission on the work of its 72nd Session' (Speech, Sixth Committee, 10 August 2001) ('*Sixth Committee Statement*').

349 The World Bank, *Population, total – Solomon Islands* (Web Page, 2022) <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=SB>.

350 *Sixth Committee Statement* (n 348).

351 International Law Commission, *Sea-level rise in relation to international law: Second issues paper by Patrícia Galvão Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on sea-level rise in relation to international law*, 73rd sess, UN Doc A/CN.4/752 (19 April 2022).

> ***Declare*** *that the statehood and sovereignty of Members of the Pacific Island Forum will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of climate change-related sea-level rise, …*".[352]

217. Solomons submits that international law does not presently contemplate the extinguishing of statehood as a result of climate change-induced sea-level rise, and that in circumstances of the complete loss of a State's territory and displacement of its population, the presumption of continuity of statehood ought still to apply.

CHAPTER IX. CLIMATE CHANGE AND HUMAN DISPLACEMENT

A. People displaced by climate change should be afforded protection under the Refugee Convention 1951

218. Sea-level rise in Solomons is beyond the global average. Increasing salinity of soil threatens subsistence agriculture and the viability of human settlements.[353] The IPCC predicts that climate change-related displacement and involuntary migration will disproportionately affect Pacific SIDS, such as Solomons.[354] Beyond the loss of habitable land, sea-level rise exacerbates flooding, crop destruction, and saltwater encroachment, all of which contribute to displacement.[355]

219. As explained in **Chapter IV**, Solomons has already experienced the loss of islands and involuntary migration of populations due to sea-level rise and other impacts of climate change. In 2009, people in Walande and Fanalei atolls in the Malaita province were involuntarily relocated to the Tetele region due to king tides caused by sea-level rise.[356] This is consistent with broader global trends, with it being estimated that 24.5 million people have been displaced each year since 2008 due to climate change related impacts, such as floods, storms, wildfires, and extreme temperatures.[357]

220. In addition to its own people being displaced, Solomons also hosts a community of people considered to be the world's first "climate change refugees" – i-Kiribati people living on Vaghena (Wagina) Island in Choiseul Province. In the 1930s, the British Solomon Islands

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352 Pacific Islands Forum, *2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise*, 9 December 2023 (emphasis in original) *('PIF Statehood Declaration*').

353 Neil L. Andrew et al., 'Coastal proximity of populations in 22 Pacific Island Countries and Territories' (2019) 14(9) PLOS ONE.

354 *Summary for Policymakers* (n 13) 11, 15.

355 Hayley Roberts, 'Climate change and the legal implications of rising sea levels on low-lying states' (2024) *Living with Climate Change* 359.

356 Pacific Islands Forum, 'Submission to the International Law Commission on the Sub-Topics of Sea-Level Rise in relation to Statehood and to the Protection of Persons Affected by Sea Level Rise' (31 December 2021) 31.

357 *Global Report on Internal Displacement* (n 73).

Protectorate resettled the i-Kiribati people from the Southern Gilbert Islands to the Phoenix Islands (both of these island groups now form part of modern-day Kiribati). In the 1950s and 1960s, the British again forcibly relocated these people from the Phoenix Islands to Wagina Island. The i-Kiribati people were resettled in part due to the pressures placed on communities by frequent droughts[358] and overpopulation.[359] Since they were last relocated, these people have called Wagina their home.

221. Today's residents of Wagina derive their livelihoods from subsistence farming, fishing, and seaweed farming. These are all food systems which are now vulnerable to the effects of climate change, including rising sea-levels and increases in ocean temperatures and pH levels. The history of the people of Wagina provides a clear example of the causal link between experiences of colonialism and forced displacement, and the reality that communities most vulnerable to climate change are those without the economic or political means to mitigate or adapt to its impacts.

222. Boyle puts forward that climate change effects, such as sea-level rise which results in internal displacement or migration, are sufficient to meet the definition of "pollution of the marine environment" prescribed in Article 1 of UNCLOS, in that the effect of displacement or abandonment of territory is a harmful and persistent effect.[360] Sea-level rise inevitably reduces amenities for low-lying SIDS by inundating and eroding habitable areas, and increasing salination of fresh water sources and soil; effects which ultimately cause communities to leave the affected area.[361]

223. Under UNCLOS, as briefly noted in **Chapter VIII, Part A**, States have obligations to:

223.1 prevent, reduce, and control pollution of the marine environment;[362] and

223.2 protect and preserve the marine environment.[363]

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358 Tammy Tabe, 'Sapon Riki Ba Kain Toromon: A study of the I-Kiribati Community in Solomon Islands' (Research Paper, University of Hawaií at Manoa, August 2011) <https://scholarspace.manoa.hawaii.edu/handle/10125/24272>.

359 Glynn Cochrane, 'The Administration of Wagina Resettlement Scheme', (1970) 29(2) *Human Organization* 123.

360 Alan Boyle 'Litigating Climate Change under Part XII of the LOSC' (2019) 34(3) *International Journal of Marine and Coastal Law* 458, 463.

361 Intergovernmental Panel on Climate Change, 'Sea Level Rise and Implications for Low Lying Islands, Coasts and Communities' in *Special Report on the Ocean and Cryosphere in a Changing Climate: Changing Ocean, Marine Ecosystems and Dependent Communities* (Cambridge University Press, 2016).

362 *UNCLOS* (n 94) art 194.

363 Ibid art 192.

224. As relevant to displacement, States must take measures to mitigate pollution of the environment which ultimately increases the rate of sea-level rise.[364] "Marine environment" has been broadly defined to include living resources, marine life, and ecosystems in general.[365] The obligation to protect the marine environment should extend to coastal communities who are reliant on the habitat and ocean ecosystems for their livelihoods.[366]

225. Displacement of communities due to sea-level rise, and climate change impacts more generally, challenges the safeguarding of human rights, access to services, community and culture, and domestic security.[367] Climate change-related displacement also affects various human rights, including:

225.1 **The right to be free from hunger**.[368] The right to adequate food is integral to the fulfilment and enjoyment of other rights.[369] The IPCC has on several occasions confirmed that a natural consequence of sea-level rise is increased salination of soil, which renders it less fertile for agriculture.[370] The availability and accessibility of food is further impacted by sea-level rise where food production is disrupted, and prices are increased.[371] As set out above at **paragraphs 29.1, 29.2, 29.5, 29.6,** and **29.8**, communities in Ambu, Kombe, Ontong Java, Sikaiana, and Rendova are already suffering severe impacts to their crops and food systems, which threatens the livelihood of communities and increases the risks of displacement.

225.2 **The right to adequate housing**.[372] Adequate housing is defined to include security of tenure, availability of services, affordability, habitability, accessibility,

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364 Intergovernmental Panel on Climate Change, 'Water' in *Climate Change 2022: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022) ('*Sixth Assessment Report – Water*').

365 *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom) (Award on Merits)* (Permanent Court of Arbitration, Case No. 2011–03, 18 March 2015) [538].

366 United Nations Ocean Conference, *Interactive dialogue 2: managing, protecting, conserving and restoring marine and coastal ecosystems: Concept paper prepared by the Secretariat*, UN Doc A/CONF.230/2022/10 (29 April 2022) [35]; Mark Schuerch et al., 'Future response of global coastal wetlands to sea-level rise' (2018) 561(7772) *Nature* 231.

367 Ian Fry, Special Rapporteur, *Report on the promotion and protection of human rights in the context of climate change*, UN Doc A/78/255 (28 July 2023); Cecilia Jimenez-Damary, Special Rapporteur, *Report on internal displacement in the context of the slow-onset adverse effects of climate change,* UN Doc A/75/207 (21 July 2020).

368 *ICESCR* (n 268) art 11.

369 Ben Saul, David Kinley, Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (2014, Oxford University Press) 868.

370 *Sixth Assessment Report – Water* (n 364) [4.3.2.4.1].

371 Jane McAdam et al. 'International law and sea-level rise: forced migration and human rights' (2016) *University of New South Wales Law Research Series* 60 [33].

372 *ICESCR* (n 268) art 11.

appropriate location, and cultural adequacy.[373] Sea-level rise and other climate impacts undoubtedly puts all of those elements at risk. Further, up to 80 percent of land in Solomons is owned and occupied by tribes.[374] This creates an additional level of complexity when neighbouring communities are forced to migrate into that land. Internal climate displacement into population-dense Honiara, for example, has resulted in informal settlements and poor provision of services.[375]

225.3 **The right to cultural identity**.[376] Taking part in cultural life is essential for the full promotion of human dignity and positive social interaction.[377] As communities are forced to migrate due to climate change impacts and the associated risks to life and other human rights, their connection with traditional lands is lost. Loss of unique and lasting ties to land, and vital cultural identities due to climate displacement raises distinct challenges to the way of life of many Pacific SIDS and Indigenous cultures. Solomons has reported that "*as people relocated* [due to sea-level rise]*, they became disconnected from the traditional crops and relied on imported food, leading to the onset of non-communicable diseases, the leading killer in Solomon Islands*".[378] This submission has recounted at **paragraph 29.4** the impacts on Ms Gladys Habu from Isabel province, whose ancestral home, Kale Island has disappeared in less than a decade. This has led to irreparable cultural loss which is being experienced by thousands of Solomon Islanders who are already displaced due to climate change.

226. There is no existing legal framework which adequately provides for persons affected or displaced by sea-level rise.[379] Regional instruments such as the Cartagena Declaration on Refugees[380] and the Brazil Declaration[381] in Latin America, or the Kampala Convention in

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373 Committee on Economic, Social and Cultural Rights, *General Comment No 4: The Right to Adequate Housing (Art. 11(1) of the Covenant)*, UN ESCOR, 43rd sess, UN Doc E/1992/23 (13 December 1991) [8].

374 Anouke Ride 'Climate Change and Conflict in Solomon Islands' *United States Institute of Peace* (Web Page, 2023) <https://www.usip.org/publications/2023/11/climate-change-and-conflict-solomon-islands>.

375 Ibid.

376 *ICESCR* (n 368) art 15.

377 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) of the International Convention on Economic, Social and Cultural Rights)*, UN ESCOR, 43rd sess, UN Doc E/C.12/GC/21 (20 November 2009) [1].

378 Human Rights Council, *The human right to a clean, healthy and sustainable environment*, UN Doc A/HRC/48/13 (28 June 2021).

379 *ILC Report on Seventy-third session* (n 270) 'Sea-level rise in relation to international law' [214].

380 *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panam*a (22 November 1984).

381 *Brazil Declaration, A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean* (3 December 2014).

Africa,[382] consider movement of persons resultant from disasters and climate change more broadly, however, there is no equivalent international consideration. The ILC commented in 2022 that refugee law, climate change law, and international humanitarian law are all unequipped "*to deal with the protection of persons affected by sea-level rise*".[383] A high degree of cooperation between States is necessary to protect persons displaced both internally and internationally.

227. Where internal migration is not feasible, it is necessary to consider international migration of persons escaping unsafe living situations due to sea-level rise. The Refugee Convention[384] defines refugees as those who have a "*well-founded fear of persecution based on race, religion, nationality or membership of a particular social group or political opinion*". In 2020, the UN High Commissioner for Refugees stated that people displaced across international borders due to climate change may fall within the international legal definition of a refugee under the 1951 Convention.[385] In Communication No. 2728 of 2016,[386] the UNHCR similarly recognised that sea-level rise may constitute sufficient harm to seek protection, and that a fellow Pacific SIDS, Kiribati, may be completely inundated in the next 10 to 15 years, rendering an inability to safeguard the right to life. The UNHRC clarified that individuals who seek asylum due to sudden or slow-onset climate change harm, are in fact seeking protection from a harm, which "*create pathways into the Refugee Convention or protected person jurisdiction*".[387] As such, Solomons submits that climate refugees should be afforded protection under the Refugee Convention, and that the principle of non-refoulement applies to those escaping environmentally hazardous States due to climate change effects.

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382 *African Union Convention for the protection and assistance of internally displaced persons in Africa*, opened for signature 23 October 2009, 3014 UNTS 3 (entered into force 6 December 2012).

383 *ILC Report on Seventy-third session* (n 270) 'Sea-level rise in relation to international law' [215].

384 *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).

385 United Nations High Commissioner for Refugees, 'Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters' (Report, 1 October 2020) <www.refworld.org/docid/5f75f2734.html>.

386 *Teitiota* (n 267aboveaboveaboveabove) [9.4].

387 Ibid [2.2], [2.8], [2.10].

PART B

228. This section responds to Part B of the question put to the Court, namely:

> **"*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?*"**

CHAPTER X. STATE RESPONSIBILITY

229. While Question (a) of the Request is concerned with clarifying the legal obligations of States with respect to climate change, Question (b) is concerned with the consequences for States that flow from a failure to meet those obligations. Based on our analysis in **Chapter VI to Chapter IX**, it is clear that the failure 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 is an ongoing violation of international law that continues to cause harm. This Chapter explains that the legal consequences for States in breach of their obligations owed toward States particularly affected by climate change includes State responsibility, the obligation to cease harmful conduct, guarantees of non-repetition, and the obligation to provide reparation for the harm caused, including but not limited to the restoration and rehabilitation of the affected ecosystem to its original state, if possible. If restoration and rehabilitation are not feasible, the infringing State must provide sufficient reparation to the affected parties, which may include compensation or other forms of redress.

A. States are liable under general international law for breaches of their climate change obligations

230. Under customary international law, States bear responsibility for violations of the rules of international law that can be attributed to them.[388] The rules of customary international

[388] *Responsibility of States for Internationally Wrongful Acts* (n 126) art 1; See also, *Corfu Channel (United Kingdom v Albania) (Merits)* [1949] ICJ Rep 4, 23; *Gabcíkovo-Nagymaros Project* (n 206) 38 [47].

law on State responsibility have been codified in the Articles on Responsibility of States for Internationally Wrongful Acts ("**Articles on State Responsibility**").

231. In accordance with the Articles on State Responsibility, the contemporary conceptualisation of State responsibility is more commonly predicated on "breach", rather than "injury" or "damage".[389] Responsibility may therefore be engaged even where no material damage results from a State's failure to meet its international obligations.[390] This may include a "*refusal to fulfil a treaty obligation*",[391] such as those contained in the UNFCCC and the Paris Agreement. Where several States are responsible for the same internationally wrongful act, such as the emission of greenhouse gases in contravention of their obligations under international law, the responsibility of each State may be invoked in relation to that act.[392]

232. The Court has made multiple pronouncements on the legal consequences of serious breaches of norms affecting the international community as a whole. In *Barcelona Traction*, the Court established that obligations owed towards the international community as a whole "are the concern of all States" and that "[i]*n view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes*".[393] The Court has reaffirmed these obligations in its opinions on *Namibia*, the *Construction of a Wall* and *Chagos*.

233. Solomons again reaffirms that, as articulated by the ILC in 1991, "*a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human*

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389 James Crawford, *State Responsibility* (Cambridge University Press, 2013) 54-60; Eric Wyler, 'From "State Crime" to Responsibility for "Serious Breaches of Obligations Under Peremptory Norms of General International Law"' (2002) 13 *European Journal of International Law* 1147, 1153.

390 *Rainbow Warrior Arbitration (Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements, concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair), UNRIAA, 1990, vol. XX*, 215 [110] ('*Rainbow Warrior*'); International Law Commission, *Report of the International Law Commission on the Work of Its Fifty Third Session*, UN GAOR, 56th sess, Supp No 10, UN Doc A/56/10 (2001) art 2 ('*Commentary to ARSIWA*').

391 *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Second Phase, Advisory Opinion* [1950] ICJ Rep 228; *Rainbow Warrior* (n 390) 551; *Gabcíkovo-Nagymaros Project* (n 206) 7 [8]-[9]. For an example where damage is an element of the primary responsibility, see *UNCLOS* (n 94) art 139(2) which provides that the failure of a sponsoring State to carry out its responsibilities entails liability only if there is damage, see *Area Advisory Opinion* (n 96) [178], [210].

392 *Responsibility of States for Internationally Wrongful Acts* (n 126) art 47.

393 *Barcelona Traction, Light and Power Company, Limited (Judgment)* [1970] ICJ Rep 3, [33] ('*Barcelona Traction*').

environment, such as those prohibiting massive pollution of the atmosphere or of the seas" should be categorised "*as an international crime, or delict*".[394]

B. State responsibility entails a concomitant obligation to put an end to an internationally wrongful act

234. Article 30(a) of the Articles on State Responsibility establishes the obligation of cessation. Where a State is responsible for an internationally wrongful act, that State is then under an obligation "*to put an end to that act*".[395] The obligation of cessation applies equally to breaches by omission.[396]

235. A State may invoke the responsibility of a State committing an internationally wrongful act by notifying the latter of the wrongful conduct and specifying the corrective measures of that breach.[397] This may include the cessation of the conduct and/or the reparation of the loss suffered according to the applicable principles of international law. Therefore, a SIDS such as Solomons which has been affected by climate change, could notify a high-emitting State in such a manner. In certain cases, a non-injured state can also invoke a breach of international law on behalf of the international community as a whole,[398] where a breach concerns the common heritage of mankind,[399] the global commons, or where a certain breach relates to a common concern of humankind,[400] such as climate change.

C. States must make full reparations for injury and damage arising from an internationally wrongful act

236. As Solomons has observed previously,[401] State responsibility entails an associated obligation to make "*full reparation for the injury*"[402] as measured through an examination of

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394 *Nuclear Weapons Advisory Opinion* (n 4) Written Statement of the Government of the Solomon Islands (20 June 1995) 99, citing *Report of the International Law Commission Covering the Work of Its Sixth Session, 3 June – 28 July 1954*, UN Doc A/2693 (1954) 'Draft Code of Crimes Against the Pace and Security of Mankind', especially draft art 26.

395 *Factory at Chorzów (Germany v Poland) (Jurisdiction)* [1927] PCIJ (ser A) No. 8, 21, 21, 27 ('*Chorzów Factory*'); *Paramilitary Activities* (n 347) 149; *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran) (Judgment)* [1980] ICJ Rep 44, [95]; *Haya de la Torre (Colombia v Peru) (Judgment)* [1951] ICJ Rep 82; *Construction of a Wall* (n 5) 197 [150].

396 *Commentary to ARSIWA* (n 390) 89.

397 *Responsibility of States for Internationally Wrongful Acts* (n 126) art 43.

398 Ibid arts 42(b) and 48; *Barcelona Traction* (n 393) [33]-[34].

399 *UNCLOS* (n 94) arts 136 and 311(6); *Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space*, GA Res 1962 [XVIII], UN Doc A/RES/1962/XVIII (13 December 1963) art 1.

400 See the *UNFCCC* (n 95); *Paris Agreement* (n 95); *Convention on Biological Diversity* (n 175).

401 *Nuclear Weapons Advisory Opinion* (n 4) Written Statement of the Government of the Solomon Islands (20 June 1995) 98-99.

402 *Responsibility of States for Internationally Wrongful Acts* (n 126) art 31.

"*the consequences of the illegal act*".[403] This obligation is well-established under customary international law.

237. Reparations are to be made to States who have suffered damage or injury. "Injury" includes any damage, being material or moral damage, caused by an internationally wrongful act.[404] Thus, it is a question of actual harm or damage, rather than of material harm or damage.[405]

238. Reparation for an internationally wrongful act is made in three ways: (i) restitution, (ii) compensation, and/or (iii) satisfaction, including through a combination of these forms.[406]

239. Restitution requires States to "*re-establish the situation which existed before the wrongful act was committed*".[407] In the context of climate change, restitution is the legal obligation of a party to provide redress for any harm or damage caused to the environment by their actions by restoring the environment or affected area to its original state. This can involve a range of measures, such as cleaning up contaminated areas, restoring habitats for wildlife, and implementing new policies to eliminate existing harm.[408] In the case of climate change, restitution is likely to be the preferred option for reparation, unless the re-establishment of the environment to its original state, or an acceptable similar state, is materially impossible, or involves a burden out of all proportion to the benefit deriving from restitution instead of compensation.[409]

240. The benefits of environmental restitution are significant and can guarantee human rights for future generations living in the environment indefinitely (including the right to life, food, water, health, self-determination, private and family life) in a way that financial compensation, even if paid in perpetuity, cannot account for.

241. Compensation is a secondary form of reparation that entails the obligations of infringing States to provide monetary payment to the affected, except when damage has already been

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403 *Chorzów Factory* (n 395) 47.

404 *Responsibility of States for Internationally Wrongful Acts* (n 126) arts 31 and 32; *Commentary to ARSIWA* (n 390) 91-92 [5].

405 *Rainbow Warrior* (n 390) 266-267 [107] and [109].

406 *Responsibility of States for Internationally Wrongful Acts* (n 126) art 34.

407 Ibid art 35.

408 Kindji K and Faure M, 'Assessing Reparation of Environmental Damage by the ICJ: A Lost Opportunity?' (2019) *Questions of Internatioal Law* 5.

409 *Pulp Mills* (n 124) [273]; *Responsibility of States for Internationally Wrongful Acts* (n 126) art 35(b).

remedied through restitution.[410] Compensation under international law covers any financially accessible damage, including loss of profits.[411] This includes damages suffered by the State or its personnel, as well as damage suffered by its nationals, whether individuals or companies. Compensable personable injury includes both tangible losses such as loss of income and medical expenses, and intangible losses such as emotional pain, suffering, and intrusion on privacy.

242. In *Costa Rica v Nicaragua*, the Court made clear the obligation to make full reparation for environmental damage caused by an unlawful act, reaffirming that compensation may be an appropriate form of reparation "*particularly where restitution is materially impossible or unduly burdensome*".[412] Given that many impacts of climate change will be irreversible, monetary compensation may sometimes be a necessary legal consequence of States' breach of their international obligations concerning climate change. However, it is important to note that for SIDS and LDCs such as Solomons, monetary compensation will never be sufficient to remedy the myriad harms of climate change, due to the profound loss of culture, ecology, and social structures.[413] This non-economic loss and damage includes harm to individuals through loss of life, health, and mobility; to societies through lost territory, cultural heritage, ecosystem services, and indigenous and local knowledge; and to the natural environment itself through loss of and damage to biodiversity and habitats.[414] Despite the nature of this loss, States nonetheless remain obligated, insofar as it is possible, to ensure the effective remediation of the harm they have caused by breach of their obligations under international law.

243. A final form of reparations is satisfaction, which is a tertiary form of reparation generally utilised when an injury cannot be remedied through either restitution or compensation.[415] Satisfaction can be given through public acknowledgments or statements, or by taking

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410 *Responsibility of States for Internationally Wrongful Acts* (n 126) art 36(1).

411 Ibid 36(2).

412 *Certain Activities* (n 228) 26 [31].

413 Padin-Dujon A, 'What is non-economic loss and damage (NELD)' *London School of Economics* (Web Page, 2023) <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-non-economic-loss-and-damage-neld/>; Alexa Zellentin, 'Climate justice, small island developing states & cultural loss' (2015) 133 *Climatic Change* 491.

414 Sam Frankenhauser, Simon Dietz, and Phillip Gradwell, 'Policy Paper: Non-economic losses in the context of the UNFCCC work programme on loss and damage' (2014) *Centre for Climate Change Economics and* Policy 13.

415 *Responsibility of States for Internationally Wrongful Acts* (n 126) art 37; Sean D Murphy, *Principles of International Law* (Paul MN: West Academic Publishing, 3rd ed, 2018) 240.

disciplinary actions against State officials who have fostered or committed breaches of international law.[416]

D. State responsibility must be assessed in accordance with the principle of common but differentiated responsibilities

244. Climate change is "*an environmental issue of unrivalled complexity*"[417] and a "*paradigmatic issue of shared responsibility*".[418] But the shared or common responsibility is differentiated between different types of States. It is therefore imperative that responsibility is considered on a fair share basis with recognition that the largest share of historic and current global greenhouse gas emissions originated in developed States.[419]

245. With the exclusion of present-day high emitting States, developing States, and particularly SIDS, including Solomons, have made negligible contributions to global emissions.[420] Therefore, it is developed and high-emitting States that are obligated to take the lead in efforts to reduce emissions and developed States must provide the necessary means of implementation to developing States, including the provision of financial resources, technology transfer and capacity-building.[421]

E. States are responsible for breaches of obligations with respect to climate change, in particular, those obligations concerning specially affected States

246. Question (b) focuses, in particular, on specially affected States due to their geography and their level of development, including SIDS. In this context, as set out in earlier chapters, State responsibility varies on the basis of CBDR-RC.

247. A State's failure to meet its mitigation obligations will disproportionately affect SIDS and LDCs, such as Solomons, and will necessitate the provision of restitution by developed and high-emitting States in the form of enhanced mitigation and assistance, beyond existing primary law obligations. This includes restitution through the Loss and Damage Fund. However, while the Loss and Damage Fund reflects a positive development towards greater financial support for LDCs and SIDS, it remains a voluntary, rather than

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416 Murphy (n 415) 241.

417 Jacqueline Pell, 'Climate Change' in *The Practice of Shared Responsibility in International Law*, eds. André Nollkaemper and Ilias Plakokefalos (Cambridge University Press, 2017) 1009.

418 Ibid 1010.

419 Rajamani et al. 'National fair shares' (n 154).

420 As at 2021, the Solomon Island's contribution to global emissions is less than 0.01 percent: *NDC Solomon Islands 2021* (n 7) 10.

421 *Paris Agreement* (n 95) arts 9-11.

a mandatory undertaking by developed States. States have an obligation to provide significantly greater commitments to ensure sufficient finances for restitution.

248. Further, a breach of the State obligations identified in Question (a) requires compensation for "damage" or "injury" caused to States, particularly specially affected States (which includes both SIDS and LDCs), resulting from the breach. The rules on cessation and reparations apply to these obligations.

CHAPTER XI. CONCLUSION

249. For the reasons set out above, Solomons respectfully invites the court to provide an advisory opinion as follows:

249.1 in answer to the first Question (a), that States have obligations under international law to:

(a) exercise due diligence in meeting relevant obligations as set out in the UNFCCC, the Paris Agreement, and other relevant sources of international law that must also represent progression over time;

(b) adhere to the principle of common but differentiated responsibilities and respective capabilities, including by providing technical assistance, finance and capacity-building to developing States;

(c) adhere to the duty to cooperate in implementing their obligations under international environmental law and the mitigation and adaptation measures under the UNFCCC and the Paris Agreement;

(d) protect the climate system and the environment for the benefit of present and future generations;

(e) adhere to the precautionary principle which relevantly requires States to protect the climate system and the environment under customary international law;

(f) prevent transboundary harm from causing significant damage to the environment of another State;

(g) respect, protect and fulfil the internationally recognised human rights of present and future generations, including the rights to life, private and family life, the rights of children and women, the right to live with dignity in a clean, healthy and sustainably environment, and the right to self-determination and its related rights to health, water, food, housing and culture;

(h) protect and preserve the marine environment from the adverse effects of climate change by preventing, reducing and controlling pollution from greenhouse gas emissions; and

(i) recognise that people displaced by climate change are afforded protection under the 1951 Refugee Convention.

249.2 in answer to the second Question (b), that States have obligations under international law to:

(a) provide full reparations, where a State has committed an internationally wrongful act against the climate system and other States;

(b) provide full reparations to individuals and communities of present and future generations, where States have caused significant harm to the climate system and those parties; and

(c) cease all internationally wrongful acts and guarantee non-repetition, where States commit internationally wrongful acts against the climate system and other States.

Honiara, Solomon Islands, 11 March 2024

Respectfully submitted

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