

**INTERNATIONAL COURT OF JUSTICE**

**OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE**

**(REQUEST FOR ADVISORY OPINION)**

**WRITTEN STATEMENT OF THE REPUBLIC OF NAURU**

**22 MARCH 2024**

## I. INTRODUCTION

1. The United Nations General Assembly, at its sixty-fourth plenary meeting held on 29 March 2023, under agenda item 70, adopted resolution 77/276 entitled “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change”. The General Assembly decided, in accordance with Article 96 of the Charter of the United Nations,<sup>1</sup> to request the International Court of Justice to render an advisory opinion pursuant to Article 65 of the Statute of the Court,<sup>2</sup> on the following questions:

“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?”
2. The President of the Court decided, by an Order dated 20 April 2023, that the United Nations and its Member States were likely to be able to furnish information on the questions submitted to the Court for an advisory opinion, and fixed, in accordance with Article 66, paragraph 2, of the Statute, 20 October 2023 as the time-limit within which written statements on the questions might be presented to it, and fixed, in accordance with Article 66, paragraph 4, of the Statute, 22 January 2024 as the time-limit within

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<sup>1</sup> 26 June 1945, 892 *U.N.T.S.* 119.

<sup>2</sup> 26 June 1945, 14 *U.N.C.I.O.* 355.

which States and organizations having presented written statements might submit comments on the written statements made by other States and organizations.

3. By an Order dated 4 August 2023, the President of the Court extended, in accordance with Article 66, paragraph 2, of the Statute, to 22 January 2024 the time-limit within which statements on the questions might be presented to the Court, and, in accordance with Article 66, paragraph 4, of the Statute, to 22 April 2024 the time-limit within which States and organizations having presented written statements might submit written comments on the written statements made by other States and organizations.
4. By an Order dated 15 December 2023, the President of the Court extended, in accordance with Article 66, paragraph 2, of the Statute, to 22 March 2024 the time-limit within which all written statements on the questions might be presented to the Court, and extended, in accordance with Article 66, paragraph 4, of the Statute, to 24 June 2024 the time-limit within which States and organizations having presented written statements might submit written comments on the other written statements.
5. The Republic of Nauru welcomes the General Assembly's request of the Court for an advisory opinion. It also welcomes the manner in which it is drafted, which gives special emphasis to "small island developing States", of which Nauru is one. Nauru is pleased to file the present written statement within the 22 March 2024 time-limit.
6. The balance of this written statement is in four parts: Part II sets out Nauru's geographical circumstances and why, in the context of obligations of States in respect of climate change, it is a specially affected State. Part III sets out the first of the legal principles that, in Nauru's submission, are among the most directly relevant applicable principles of law governing the question of which the Court has been seised: the prohibition of transboundary harm. Part IV turns to the second such principle: the right of all States to territorial integrity. Part V sets out the third such principle: the right of peoples to self-determination, including that in no case may a people be deprived of its own means of subsistence. Part VI concludes this written statement.

## II. NAURU’S GEOGRAPHICAL CIRCUMSTANCES

7. Climate change is the existential threat to humanity of our time.<sup>3</sup> Nevertheless, “climate action is dwarfed by the scale of the challenge”.<sup>4</sup> The climate catastrophe is particularly serious for small island developing States such as Nauru, whose interests are “specially affected”<sup>5</sup> by climate change. In particular as regards their geographical circumstances, small island developing States are specially affected by — and particularly vulnerable to — the adverse effects of climate change.<sup>6</sup>
8. This is evident from the expert report of Dr Maharaj: “Small islands face increasing risks stemming from climate change and in particular from the increasing warming of oceans and ocean acidification via uptake of anthropogenic carbon dioxide. The IPCC has *very high confidence* in the growing impacts of multiple stressors in the forms of physical phenomena, such as sea-level rise, tropical cyclones, storm surges, droughts, and other changes in precipitation patterns that are already detectable across both natural and human systems. Compound events — significant events resulting from a combination of processes (e.g. sea-level rise, tectonic movement, coral reef destruction, and a tsunami, leading to catastrophic destruction and loss of life) — pose especially high risks to small islands.”<sup>7</sup>
9. Nauru is the world’s smallest island State. It has a total population estimate of 12,500 persons. Nauru’s total land area is 21.1 square kilometres.<sup>8</sup> It is a raised limestone island, made up of sedimentary rock, so that it has steep slopes with flat tops, lacks

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<sup>3</sup> N. Salam, “Reflections on International Law in Changing Times” (2019), vol. 60, Harvard International Law Journal, p. 205.

<sup>4</sup> UN Secretary-General’s Opening Remarks at the Climate Ambition Summit, 20 September 2023.

<sup>5</sup> *North Sea Continental Shelf, I.C.J. Reports 1969*, p. 42, para. 73; see also e.g. Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise, 6 August 2021, preamble (available at <https://www.forumsec.org/2021/08/11/declaration-on-preserving-maritime-zones-in-the-face-of-climate-change-related-sea-level-rise/>).

<sup>6</sup> Alliance of Small Island States Opening Statement at UNFCCC Subsidiary Body Meeting, ECOSOC Forum on Financing for Development, 23 February 2021.

<sup>7</sup> Expert Report of Shobha Maharaj on Impacts of Climate Change on Small Island States, 22 March 2024, para. 21, citing IPCC, Working Group II, *Chapter 15: Small Islands*, pp. 2045, 2052.

<sup>8</sup> See SAMOA Pathway Progress Report — 2023, Department of Finance, Republic of Nauru, p. 9.

surface water, and has poor soil.<sup>9</sup> The territory is mostly coastal; the population lives and works close to the sea and depends on it. Nauru relies entirely on the ocean for its livelihood and development.<sup>10</sup> It is for this reason that Nauru and its population are, to a larger degree than most States and their populations, especially vulnerable to the impacts of climate change. This is especially the case as regards sea-level rise, to the extent that sea-level rise poses for Nauru's population a security threat of existential dimensions. For Nauru the effects of climate change will impact coastal infrastructure, food and water security, public health and safety, and local ecosystems.<sup>11</sup> Climate change is already undermining and threatening Nauru's ability to deliver basic services to its population.<sup>12</sup>

10. It is a sad irony that, in spite of being among the very worst affected, Nauru is among the very least responsible for climate change. Nauru is committed to sustainable development that respects the environment.<sup>13</sup> Its levels of CO<sub>2</sub> equivalent emissions are minimal. They were in 2014 estimated at 0.00019% of global emissions.<sup>14</sup>

11. As Nauru's President stated on 1 November 2023, the regional leaders of the Pacific islands have "recognised that there is an increased urgency 'for the Region to act collectively to progress issues of ... climate change and disaster risk'".<sup>15</sup> The Pacific Island Forum leaders have resolved, in the 2050 Strategy for the Blue Pacific Continent, "to act collectively to progress issues of significance, including ... climate change and disaster risk, gender equality, regional security, ocean governance and trade development". His Excellency emphasized the "increased urgency" of climate action

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<sup>9</sup> Expert Report of Shobha Maharaj on Impacts of Climate Change on Small Island States, 22 March 2024, para. 19.

<sup>10</sup> Statement delivered by Ms Josie-Ann Dongobir, Chargé d'Affaires, Permanent Mission of the Republic of Nauru to the United Nations, United Nations General Assembly, 77th Session.

<sup>11</sup> Republic of Nauru, Updated Nationally Determined Contribution, 14 October 2021, p. 12.

<sup>12</sup> Statement delivered by H.E. Margo Deiye, Permanent Representative of the Republic of Nauru to the United Nations, 2nd United Nations Ocean Conference, Plenary Session, 30 June 2022.

<sup>13</sup> National Address by His Excellency The President Hon. David W.R. Adeang, M.P. On the occasion of Nauru's 56th Anniversary Of Independence Day and 78th Anniversary of the people's return from Chuuk, 31 January 2024.

<sup>14</sup> Republic of Nauru, Updated Nationally Determined Contribution, 14 October 2021, p. 13, available at <<https://unfccc.int/documents/497816>>.

<sup>15</sup> H. E. David Adeang, "Opening Address", Pacific Law Officers' Network, Nauru, 1 November 2023.

and highlighted the critical importance of addressing climate change and disaster risk.<sup>16</sup> As Nauru’s representative observed at the twenty-eighth meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP28) in the United Arab Emirates, its small island environment is “rapidly becoming just as inhospitable as the desert” of the host country of that important Conference.<sup>17</sup> At COP28, Nauru endorsed, along with 158 other States, the Emirates Declaration on Sustainable Agriculture, Resilient Food Systems, and Climate Action, which recognizes “that unprecedented adverse climate impacts are increasingly threatening the resilience of agriculture and food systems as well as the ability of many, especially the most vulnerable, to produce and access food in the face of mounting hunger, malnutrition, and economic stresses”.<sup>18</sup> Nauru furthermore endorsed the COP28 Declaration on Climate, Relief, Recovery and Peace, which calls

“for bolder collective action to build climate resilience at the scale and speed required in highly vulnerable countries and communities, particularly those threatened or affected by fragility or conflict, or facing severe humanitarian needs, many of which are Least Developed Countries and Small Island Developing States.”<sup>19</sup>

Along with 122 other States, Nauru also endorsed the COP28 Declaration on Climate and Health, in which States expressed their “grave concern about the negative impacts of climate change on health”.<sup>20</sup>

12. It should be stated at the outset that Nauru’s baselines and existing maritime entitlements necessarily will remain unaltered in spite of sea-level rise.<sup>21</sup> As the Court has observed, in connection with the small island Jan Mayen in the eponymous case: the attribution of maritime areas to the territory of a State is, by its nature, “destined to

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<sup>16</sup> *Ibidem*.

<sup>17</sup> COP28 High Level Statement, 6 December 2023, p. 1.

<sup>18</sup> Emirates Declaration on Sustainable Agriculture, Resilient Food Systems, and Climate Action, preamble, available at <https://www.cop28.com/en/food-and-agriculture>.

<sup>19</sup> COP28 Declaration on Climate, Relief, Recovery and Peace, 3 December 2023.

<sup>20</sup> COP28 Declaration on Climate and Health, preamble, available at <https://www.who.int/publications/m/item/cop28-uae-declaration-on-climate-and-health>.

<sup>21</sup> See International Law Commission, *Sea-level rise in relation to international law*, A/CN.4/761, 13 February 2023, para. 154.

be permanent”.<sup>22</sup> The Court has also made the general observation that any maritime delimitation “inevitably involves the same element of stability and permanence”<sup>23</sup> as any terrestrial boundary delimitation.

13. Although Nauru’s baselines and existing maritime entitlements will remain stable and permanent, climate change nevertheless poses an existential threat to Nauru’s population and to its vital needs.<sup>24</sup> It represents serious security risks to the livelihoods and to the subsistence of Nauru’s island population.

14. At the initiative of the small island State of Malta, the General Assembly in 1981 adopted its Resolution 43/53, entitled *Protection of global climate for present and future generations of mankind*. This resolution, the first of its kind to address climate change, identified that “certain human activities could change global climate patterns, threatening present and future generations with potentially severe economic and social consequences”.<sup>25</sup> It also pointed to the connection between “the continued growth in atmospheric concentration of ‘greenhouse’ gases” and the effects of climate change on the sea, such as “rise in sea-levels”.<sup>26</sup> There existed already in the 1980s a clearly crystallized understanding that there was a vital nexus between climate change and its deleterious effects on the environment, including specifically the marine environment. At the Rio Conference on Environment and Development of 1992, it was recognised that “small increases in sea-level have the potential of causing significant damage to small islands and low-lying coasts”.<sup>27</sup>

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<sup>22</sup> *Jan Mayen, I.C.J. Reports 1993*, p. 74, para. 80. The full quotation is: “The Court would observe that the attribution of maritime areas to the territory of a State, which, by its nature, is destined to be permanent, is a legal process based solely on the possession by the territory concerned of a coastline.” The French text makes it apparent that “permanent” refers to “the attribution”, and not to “the territory”: “*La Cour observe que l’attribution d’espaces maritimes à un territoire étatique qui, par nature, a vocation à être permanente, constitue une opération basée sur le droit et fondée sur le seul caractère côtier dudit territoire.*”

<sup>23</sup> *Aegean Sea Continental Shelf, I.C.J. Reports 1978*, p. 39, para. 85; see also *Guinea-Bissau v. Senegal* (1989), vol. 83, p. 70, para. 43; *Bay of Bengal Maritime Boundary* (2014), vol. XXXII, R.I.A.A., p. 74, para. 216; S. Murphy, “International Law relating to Islands” (2017), vol. 386, *Recueil des Cours*, pp. 215–16; R. E. Fife, “Sea-Level Rise in Relation to International Law: How to Protect Coastal State Rights by Operationalizing Legal Analysis” in *The International Legal Order in the XXIst Century: Essays in Honour of Professor Marcelo Gustavo Kohon* (2023), pp. 790–91.

<sup>24</sup> e.g. SAMOA Pathway Progress Report — 2023, Department of Finance, Republic of Nauru, pp. 17, 118.

<sup>25</sup> United Nations General Assembly resolution 43/54 (1988), preambular para. 3

<sup>26</sup> *Ibidem*.

<sup>27</sup> A/CONF. 151/26/Rev. 1, Vol. 1, para. 17.19.

15. The Intergovernmental Panel on Climate Change has since its first report recognized sea-level rise as one of the outcomes of climate change.<sup>28</sup> In its 2019 Special Report on the Ocean and Cryosphere, it observed that “[t]he dominant cause of [the global mean sea-level] rise since 1970 is anthropogenic forcing”.<sup>29</sup>
16. This understanding has only become clearer over time. It admits of no doubt that the absorption of excess heat into the ocean and marine cryosphere is causing sea-level rise. The global mean sea-level increased by 0.20 metres between 1901 and 2018.<sup>30</sup> Further sea-level rise is unavoidable; as a result, the Intergovernmental Panel on Climate Change has concluded, with high confidence, that “risks for coastal ecosystems, people and infrastructure will continue to increase beyond 2100”.<sup>31</sup> Sea-level rise causes significant harm to States such as Nauru and poses an existential threat to their populations. According to the Intergovernmental Panel on Climate Change synthesis report of 2023, “[a]s the scale and pace of sea-level rise accelerates beyond 2050, long-term adjustments may in some locations be beyond the limits of current adaptation options and for some small islands and low-lying coasts could be an existential risk.”<sup>32</sup> At the current rate of greenhouse gas emissions, some small island developing States will be uninhabitable by 2100.<sup>33</sup>

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<sup>28</sup> IPCC, *Scientific Assessment: Climate Change* (1990), [https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc\\_far\\_wg\\_I\\_full\\_report.pdf](https://www.ipcc.ch/site/assets/uploads/2018/03/ipcc_far_wg_I_full_report.pdf); Expert Report of Sarah R. Cooley on Impacts of Anthropogenic Greenhouse Gas Emissions on the Marine Environment and Affected Communities, 22 March 2024, para. 27.

<sup>29</sup> IPCC, *Chapter 4: Sea-Level Rise and Implications for Low-Lying Islands, Coasts and Communities: Special Report on the Ocean and Cryosphere in a Changing Climate* (2019), p. 323; Expert Report of Sarah R. Cooley on Impacts of Anthropogenic Greenhouse Gas Emissions on the Marine Environment and Affected Communities, 22 March 2024, para. 27.

<sup>30</sup> IPCC, *Working Group I, Summary for Policymakers, Sixth Assessment Report: The Physical Science Basis* (2021), p. 5.

<sup>31</sup> IPCC, *Summary for Policymakers, Sixth Assessment Synthesis Report* (2023), p. 15.

<sup>32</sup> IPCC, *Synthesis Report: Sixth Assessment Synthesis Report* (2023), p. 46.

<sup>33</sup> IPCC, *Working Group II, Chapter 15: Small Islands, Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), p. 2046.

17. Sea-level rise inevitably causes displacement of people in coastal and island communities.<sup>34</sup> It threatens economic activity in connection with the coasts and coastal infrastructure. The Intergovernmental Panel on Climate Change has concluded, with high confidence, that the impact of climate change, together with local human disturbances, “will continue to denude coastal and marine ecosystem services in many small islands with serious consequences for vulnerable communities”.<sup>35</sup> As the leaders of the eighteen States that make up the Pacific Islands Forum recognized in 2021, the threat of climate change and sea-level rise is “the defining issue that imperils the livelihoods and wellbeing of our peoples and undermines the full realisation of a peaceful, secure and sustainable future for our region”.<sup>36</sup>
18. Dr Cooley’s expert report emphasizes that “[c]ommunities are responding to sea-level rise via protection, accommodation, advance, and planned relocation, but they are all incomplete solutions to what matters to people. People’s homelands and histories are at risk: ‘The vulnerability of communities in small islands, especially those relying on coral reef systems for livelihoods, may exceed adaptation limits well before 2100 even for a low GHG emission pathway (*high confidence*).’”<sup>37</sup>
19. Nauru has lived for some time with the realities of rising seas caused by climate change. One of the initiatives that have become necessary in Nauru is the Higher Ground Initiative.<sup>38</sup> Since projected sea-level rise poses risks to Nauru’s communities and key infrastructure, most of which are located in low-lying coastal areas, it has become necessary to migrate a significant percentage of the population and infrastructure to the higher-elevation interior of the island.<sup>39</sup>

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<sup>34</sup> IPCC, *Working Group II, Chapter 15: Small Islands, Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), p. 2067.

<sup>35</sup> IPCC, *Working Group II, Chapter 15: Small Islands*, p. 2058.

<sup>36</sup> Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise, 6 August 2021, preamble.

<sup>37</sup> Expert Report of Sarah R. Cooley on Impacts of Anthropogenic Greenhouse Gas Emissions on the Marine Environment and Affected Communities, 22 March 2024, para. 58, citing IPCC, *Working Group II, Chapter 15: Small Islands: Sixth Assessment Report: Impacts, Adaptation, and Vulnerability* (2022), p. 2046.

<sup>38</sup> See <https://www.climatechangenauru.nr/higher-ground-initiative>.

<sup>39</sup> SAMOA Pathway Progress Report — 2023, Department of Finance, Republic of Nauru, p. 37.

20. Under the Higher Ground Initiative, the Government of Nauru has already completed work on a new whole island master land use plan, developed in order to account for projected sea-level rise, as well as climate change impacts on food, water, and public health systems. Nauru has also developed a site plan for the first new, mixed-use urban settlement at higher elevation, which in time will be capable of housing approximately 450 people, at a cost of construction of approximately USD 100 million over a five-year period. This development will have to be expanded in subsequent years to form part of a new township, with capacity capable of rehousing, if necessary, the entire population of Nauru. The Higher Ground Initiative has been undertaken at the Government’s own initiative, and provides an indication of the cost and scale of action now necessary to migrate internally.
21. Ocean warming and acidification are also of great concern to Nauru. Reefs and marine life are being eroded owing to ocean acidification. As it is impossible for certain types of marine flora to live at elevated temperatures, sessile marine life is likely to die,<sup>40</sup> whereas mobile species migrate to colder waters.<sup>41</sup>
22. As observed by Dr Maharaj in her expert report, “there is *high confidence* that ‘globally and in small islands tropical corals are presently at high risk.’”<sup>42</sup> The most widespread and visible impact upon corals is coral bleaching — caused by elevated sea surface temperatures — but it is not the only impact coral reefs face. Dr Maharaj concludes that “projections under mid and high future warming scenarios based on both bleaching and ocean acidification suggest that some Pacific small islands (e.g., Nauru ... ) will likely face conditions that cause severe bleaching events on an annual basis before 2040, and that ‘90% of the world reefs are projected to experience conditions that result in severe bleaching annually by 2055 (*medium confidence*).”<sup>43</sup>

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<sup>40</sup> IPCC, *Working Group I, Chapter 3: Oceans and Coastal Ecosystems and Their Services, Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), p. 418.

<sup>41</sup> IPCC, *Working Group II, Cross-Chapter 6: Polar Regions, Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), p. 2333.

<sup>42</sup> Expert Report of Shobha Maharaj on Impacts of Climate Change on Small Island States, 22 March 2024, para. 56, citing IPCC, *Working Group II, Chapter 15: Small Islands*, p. 2045.

<sup>43</sup> Expert Report of Shobha Maharaj on Impacts of Climate Change on Small Island States, 22 March 2024, para. 56, citing IPCC, *Working Group II, Chapter 15: Small Islands*, p. 2056.

23. The resultant coral bleaching is particularly devastating to States such as Nauru because the livelihoods of so many in small island developing States depend on marine resources.<sup>44</sup> Fisheries are vital for the subsistence of Nauru’s population and a major source of funds — one of very few — for its national treasury. Ocean warming has decreased sustainable yields of certain fish populations.<sup>45</sup> It has, in the period 1930–2010, decreased sustainable yields of certain wild fish populations by 4.1%; ocean acidification and warming have already affected farmed aquatic species.<sup>46</sup> The effect of all this is especially pronounced in the Pacific Ocean. The Intergovernmental Panel on Climate Change estimates that a 20% decline in fish production from coral reefs by 2050 could threaten nutritional security.<sup>47</sup>
24. Among Nauru’s concerns as regards the deleterious impacts of climate change are their security implications. Climate change — as well as attendant adverse impacts such as sea-level rise — presents a very great danger to small island developing States such as Nauru. Security means, in its most general sense, the state of being “free from danger”.<sup>48</sup> The United Nations General Assembly has expressed its deep concern “that the adverse impacts of climate change, including sea-level rise, could have possible security implications”.<sup>49</sup> The Security Council, exercising its primary responsibility for the maintenance of international peace and security,<sup>50</sup> has in a Presidential Statement recognized “the adverse effects of climate change, ecological changes and natural disasters” on regional stability.<sup>51</sup> The United Nations Secretary-General has observed that, in the case of small island developing States, “sea-level rise presents perhaps the

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<sup>44</sup> IPCC, *Working Group II, Chapter 15: Small Islands*, p. 2056.

<sup>45</sup> IPCC, *Working Group II, Chapter 3: Oceans and Coastal Ecosystems and Their Services, Sixth Assessment Report: Impacts, Adaptation and Vulnerability* (2022), Technical Summary, p. 48 (TS.B 3.1).

<sup>46</sup> *Ibidem*.

<sup>47</sup> IPCC, *Working Group II, Chapter 15: Small Islands*, p. 2065.

<sup>48</sup> J. Salmon, *Dictionnaire de droit international public* (2001), p. 1024 (“*A prendre le mot dans son sens le plus général, la sécurité peut se définir comme l’état d’une personne qui se sent ou se croit à l’abri d’un danger*”).

<sup>49</sup> General Assembly resolution A/RES/63/281 (2009), *Climate change and its possible security implications*.

<sup>50</sup> See generally Art. 24(1), UN Charter; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, *I.C.J. Reports 1971*, p. 51 para. 109.

<sup>51</sup> United Nations Security Council, Statement by the President of the Security Council, S/PRST/2018/17, 10 August 2018.

ultimate security threat”.<sup>52</sup> The danger posed by the phenomenon of sea-level rise was well described by the United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment:

“Climate change threatens the very existence of some small island States. Global warming expands ocean waters and melts land-based ice, causing sea-levels to rise. ... If the residents of small island States are forced to evacuate and find other homes, the effects on their human rights, including their rights to self-determination ... will be devastating”.<sup>53</sup>

25. Climate change, including sea-level rise, is having catastrophic repercussions for the livelihood and economic well-being of the population of Nauru. The deleterious effects of climate change constitute a serious security threat to Nauru.

### III. THE PROHIBITION OF TRANSBOUNDARY HARM

26. The most important principle of international law that addresses climate change is the prohibition of transboundary harm.<sup>54</sup> The prohibition of transboundary harm is among “the most directly relevant applicable law governing the question”<sup>55</sup> of which the Court has been seised in these advisory proceedings. The International Court of Justice has expressed the principle of transboundary harm in the following manner:

“in general international law it is ‘every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States’ (*Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22). ‘A State is thus obliged 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’ in a transboundary context...”<sup>56</sup>

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<sup>52</sup> *Climate change and its possible security implications*, Report of the Secretary-General, A/64/350, 11 September 2009, para. 71.

<sup>53</sup> A/HRC/31/52, 1 February 2016, para. 29.

<sup>54</sup> See e.g. General Assembly Resolution A/RES/61/36, 18 December 2006, *Allocation of loss in the case of transboundary harm arising out of hazardous activities*, to which is annexed the ILC’s Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities.

<sup>55</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 243, para. 34.

<sup>56</sup> *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia), I.C.J. Reports 2022*, p. 648, para. 99, citing *Pulp Mills on the River Uruguay (Argentina v. Uruguay), I.C.J. Reports 2010*, p.

27. It follows from this fundamental principle that “a State is liable for conduct within its territory which has effect outside its territory damaging to other States, such as pollution”.<sup>57</sup> The principle was given expression in Principle 2 of the Rio Declaration,<sup>58</sup> which provides that:

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

28. The principle of transboundary harm imposes an obligation of “due diligence”.<sup>59</sup> The Court observed in *Pulp Mills* that “the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory. It is ‘every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States’”.<sup>60</sup>

29. This requirement has a long pedigree in international law. It was set out, at an early stage, by the arbitral tribunal in the *Affaire des biens britanniques au Maroc espagnole*.<sup>61</sup> As Sir Gerald Fitzmaurice observed in 1950, “since foreign countries are, by reason of the exclusive jurisdiction asserted by the territorial State, precluded from

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56, para. 101; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 242, para. 29; *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)*, *I.C.J. Reports 2015*, p. 706, para. 104.

<sup>57</sup> E. Jiménez de Aréchaga, “International Law in the Past Third of a Century” (1978), vol. 159, *Recueil des Cours*, p. 179.

<sup>58</sup> A/CONF.151/26 (Vol. I), 12 August 1992, Report of the United Nations Conference on Environment and Development, adopted in GA Res 47/190, 22 December 1992. See also A/CONF.48/14/Rev.1., 5 June 1972, Report of the United Nations Conference on the Human Environment, adopted in GA Res 2994/27, 2995/27, 2996/22, 15 December 1972.

<sup>59</sup> e.g. *Responsibilities and Obligations of States with Respect to Activities in the Area, ITLOS Reports 2011*, p. 41, para. 110.

<sup>60</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *I.C.J. Reports 2010*, pp. 55–56, para. 101, referring to *Corfu Channel (United Kingdom v. Albania)*, *Merits, I.C.J. Reports 1949*, p. 22.

<sup>61</sup> *Affaire des biens britanniques au Maroc espagnole (Espagne c. Royaume-Uni)* (1925), vol. II R.I.A.A. p. 642; G. Guillaume, “Terrorisme et droit international” (1989), vol. 215, *Recueil des Cours*, p. 391.

asserting or protecting their own rights in the area, it therefore becomes specially incumbent on the territorial State to use all due diligence to protect those rights”.<sup>62</sup>

30. Part of this requirement of due diligence is that “[w]hen an activity bears a significant risk of transboundary damage the government must take all necessary measures to prevent such damage”.<sup>63</sup> The due diligence obligation is, as the Court explained in *Pulp Mills*, “an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercises of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators.”<sup>64</sup>
31. The arbitral tribunal in *Trail Smelter* held that, under the principles of international law, “no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”<sup>65</sup>
32. While this principle originally developed in a transboundary context, it applies regardless of whether the States concerned share a border, as “the ecological unity of the planet does not correspond to political boundaries”.<sup>66</sup> Indeed, the preamble of the UNFCCC recalls that “States have ... the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”.

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<sup>62</sup> G. Fitzmaurice, “The Law and Procedure of the International Court of Justice: General Principles and Substantive Law” (1950), vol. 27, *British Yearbook of International Law*, p. 21.

<sup>63</sup> X. Hanqin, *Transboundary Damage in International Law* (2003), p. 163.

<sup>64</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *I.C.J. Reports 2010*, pp. 79–80, para. 197.

<sup>65</sup> *Trail Smelter case (United States, Canada)* (1941), vol. II, *R.I.A.A.*, p. 1965.

<sup>66</sup> ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, 2001, p. 152.

33. If (as Nauru submits) the principle that it is “every State’s obligation not to allow knowingly its territory to be used for acts *contrary to the rights of other States*”<sup>67</sup> is at the heart of the prohibition of transboundary harm, then it is apposite for the Court to determine what are the most directly relevant rights of other States in the context of the questions the General Assembly has asked of the Court. As regards small island developing States, which, owing to their geographical circumstances and level of development, are specially affected by and particularly vulnerable to the adverse effects of climate change, those rights are: on the one hand, the right of all States to territorial integrity, and, on the other, the right of their peoples to self-determination.

#### IV. THE RIGHT OF ALL STATES TO TERRITORIAL INTEGRITY

34. Every State has the right to respect for its territorial integrity; “[b]etween independent States, respect for territorial sovereignty is an essential foundation of international relations”.<sup>68</sup> As the Court has observed, “the principle of territorial integrity is an important part of the international legal order and is enshrined in the Charter of the United Nations”.<sup>69</sup> The obligation for every State not to allow its territory to be used for acts contrary to the rights of other States itself is inherent in the more fundamental principle of State sovereignty. This is necessarily so, because one State cannot, relying on its own sovereignty, threaten that of another. The right of one State to sovereignty “has as a corollary a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity”.<sup>70</sup>

35. The respect a State is due in relation to its territorial sovereignty extends beyond the land territory. The Court observed in *Military and Paramilitary Activities in and against Nicaragua* that the “principle of respect for State sovereignty”, expressed in Article 2, paragraph 1, of the United Nations Charter, amounts to a “duty of every State to respect

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<sup>67</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, I.C.J. Reports 2010, pp. 55–56, para. 101; *Corfu Channel (United Kingdom v. Albania)*, Merits, I.C.J. Reports 1949, p. 22 (emphasis added).

<sup>68</sup> *Corfu Channel (United Kingdom v. Albania)*, Merits, I.C.J. Reports 1949, p. 35.

<sup>69</sup> *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 437, para. 80.

<sup>70</sup> *Island of Palmas (Netherlands, United States of America)* (1928), vol. II, R.I.A.A., p. 839

the territorial sovereignty of others”,<sup>71</sup> which extends beyond the land territory “to the internal waters and territorial sea of every State and to the air space above its territory”.<sup>72</sup>

36. The limitation, necessarily inherent in the very principle of sovereignty, of the sovereignty of the territorial State by the duty of that State to respect the integrity and inviolability of other States was classically stated in the *Island of Palmas* case.<sup>73</sup> The arbitral tribunal explained that territorial sovereignty

“involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war ... Territorial sovereignty cannot limit itself to its negative side, i.e. to excluding the activities of other States; for it serves to divide between nations the space upon which human activities are employed, in order to assure them at all points the minimum protection of which international law is the guardian.”<sup>74</sup>

## V. THE RIGHT OF ALL PEOPLES TO SELF-DETERMINATION

37. The Court has observed that the right to territorial integrity is “a corollary of the right to self-determination”, since respect for territorial integrity “is a key element of the exercise of the right to self-determination under international law”.<sup>75</sup> It is by virtue of the right to self-determination, a peremptory norm of general international law,<sup>76</sup> that peoples “freely determine their political status and freely pursue their economic, social

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<sup>71</sup> *Military and Paramilitary Activities in and against Nicaragua, Merits, I.C.J. Reports 1986*, p. 111, para. 213.

<sup>72</sup> *Ibid.*, p. 111, para. 212.

<sup>73</sup> *Island of Palmas (Netherlands, United States of America)* (1928), vol. II, R.I.A.A., p. 829.

<sup>74</sup> *Ibid.*, p. 839, see also P. Guggenheim, *Traité de droit international public tome I* (1953), p. 2; M. Giuliano, *I diritti e gli obblighi degli stati* (1956), p. 79; E. Bjorge, “*Island of Palmas (Netherlands v. United States of America)* (1928)” in E. Bjorge and C. Miles, *Landmark Cases in Public International Law* (2017), pp. 114–15.

<sup>75</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports*, p. 134, para. 160.

<sup>76</sup> Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus cogens), Yearbook of the International Law Commission, 2022, vol. II, Part Two.

and cultural development”.<sup>77</sup> An important part of the fundamental principle of self-determination is the principle that in no case may a people be deprived of its own means of subsistence.<sup>78</sup>

38. Every State shall, under the principle of self-determination, refrain from “any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples”.<sup>79</sup>

39. The right of peoples to self-determination is, as set out in Article 1, paragraph 2, of the Charter of the United Nations, one of the principles underlying the purposes of the Organization. It is codified in Common Article 1 of the International Covenant on Civil and Political Rights<sup>80</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>81</sup> Common Article 1, identically phrased in the two Covenants, provides in its first two sub-paragraphs:

- (1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- (2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

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<sup>77</sup> Common Article 1, paragraph 1, International Covenant on Civil and Political Rights, 16 December 1966, 999 *U.N.T.S.* 171, and International Covenant on Economic and Social Rights, 16 December, 999 *U.N.T.S.* 3.

<sup>78</sup> Common Article 1, paragraph 2, see also *Ethiopia's Damages Claims (Ethiopia/Eritrea)*, (2009), vol. 140, I.L.R., p. 396, para. 19; P. Cahier, “Changement et continuité du droit international” (1985), vol. 194, *Recueil des Cours*, p. 41; D. Akande, P. Akhavan, and E. Bjorge, “Economic Sanctions, International Law, and Crimes against Humanity” (2021), vol. 115, *American Journal of International Law*, pp. 504, 508.

<sup>79</sup> United Nations General Assembly resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 24 October 1970.

<sup>80</sup> 16 December 1966, 999 *U.N.T.S.* 171.

<sup>81</sup> 16 December 1966, 993 *U.N.T.S.* 3.

40. In 2009 the United Nations Human Rights Council recognised self-determination as one of the rights most affected by climate change.<sup>82</sup> The nature of this fundamental right makes it particularly relevant in the present proceedings. Three aspects of the right are relevant in that regard:

- (1) First, Common Article 1 reaffirms, as the Court observed in *Chagos Archipelago*, “the right of all peoples to self-determination”<sup>83</sup> and “the right to self-determination, as a fundamental human right, has a broad scope of application”.<sup>84</sup>
- (2) Secondly, the principle in Common Article 1, which provision makes up Part I of both of the two Covenants, is a *group* right, rather than an *individual* right. This means that, differently to most, if not all, individual human rights, this right is not an obligation owed by the territorial State only to individuals within its territory and subject to its jurisdiction. It is instead a right — and a correlative obligation — that applies in the relations between States.<sup>85</sup>
- (3) Thirdly, as suggested in (2) immediately above, the right set out in Common Article 1 precedes the individual rights in Part II of the two Covenants. As is evident from the structure of the two Covenants, Common Article 1 is not subject to the restrictions relating to territorial application, in Article 2, which apply only to the individual rights in Part II. The right in Common Article 1 is *not*, therefore, subject to the restriction, in relation to the territorial State, that the right in question applies only “within its territory and subject to its jurisdiction”. The obligation in Common Article 1 applies, to use the language of the Court in a similar context, “to the actions of a State party when it acts

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<sup>82</sup> Human Rights Council resolution, 10/4, Human Rights and Climate Change, 25 March 2009.

<sup>83</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 133, para. 154.

<sup>84</sup> *Ibid.*, 131, para. 144 (emphasis added).

<sup>85</sup> CCPR General Comment No 12: Article 1 (Right to Self-determination), 13 March 1984, para. 5.

beyond its territory”<sup>86</sup> with “no restriction ... relating to its territorial application”.<sup>87</sup>

41. All those aspects of the principle codified in Common Article 1 are relevant in the present context. As regards small island developing States such as Nauru, however, the part that is perhaps of the greatest relevance is the final provision of Common Article 1: “In no case may a people be deprived of its own means of subsistence.” One leading publicist observed that this particular principle lays down a prohibition against any act that is “such as to call into question the independent existence of a people”.<sup>88</sup> As he explained:

“This is a general principle resulting from the right of peoples to self-determination. Later on, it was explicitly formulated in Article 1 of the Covenants on Human Rights: ‘In no case may a people be deprived of its own means of subsistence.’”<sup>89</sup>

42. This principle is “a legal principle of *general application*”.<sup>90</sup> The Human Rights Committee made apparent, in its General Comment No. 12, that it is a right that “entails corresponding duties for all States and the international community”.<sup>91</sup> It is routinely relied on in international life, by United Nations appointed bodies<sup>92</sup> and by States in their practice.<sup>93</sup>

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<sup>86</sup> *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 386, para. 109.

<sup>87</sup> *Ibidem*.

<sup>88</sup> B. Graefrath, “Responsibility and Damages Caused: Relationship between Responsibility and Damages” (1984), vol. 185, *Recueil des Cours*, p. 92.

<sup>89</sup> *Ibidem*.

<sup>90</sup> ILC Yearbook 2001, II, Part 2, 66, para. 8(a), A/CN./SER.A/1996/Add.1 (Part 2) (emphasis added).

<sup>91</sup> CCPR General Comment No 12: Article 1 (Right to Self-determination), 13 March 1984, para. 5.

<sup>92</sup> e.g. “Human Rights and Population Transfer: Final Report of the Special Rapporteur, Mr. Al-Khasawneh”, E/CN.4/Sub.2/1997/23, 27 June 1997, paras. 49–50; Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 25 September 2009, A/HRC/12/48, paras. 938–39, 941, 1936.

<sup>93</sup> e.g. League of Nations Committee of Experts for the Progressive Codification of International Law, C.196.M.70, Annex II, “Norway. Questionnaire No. 2 — Territorial Waters, Letter of 3 March 1927”, 173 (Norway referring to the “means of subsistence” of its coastal population, “whose existence almost everywhere depends on fishery”; Considerations 1 and 3, Declaration on the Maritime Zone, 18 August 1952, 1006 *U.N.T.S.* 326; Letter dated 23 October 2007 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General, A/62/505–S/2007/630, 27 October 2007, 2; S/PV.3864, 3864th meeting, Security Council, 20 March 1998, 8 (Libya); “Note verbal

43. As regards more specific instances of this general principle, the International Law Commission's Special Rapporteur James Crawford pointed in 2000 to one instance of the principle when, in the context of State responsibility, he relied on it for the proposition that "measures taken in the framework of inter-state relations should not be such as to threaten starvation of the people of a State".<sup>94</sup> The Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Awn Al-Khasawneh, in 1997 relied on the principle in the context of human rights and population transfers,<sup>95</sup> and pointed in that regard to the problem of peoples being deprived of "their land, natural wealth and resources".<sup>96</sup>
44. Finally, the principle that in no case may a people be deprived of its own means of subsistence has, in different guises, played an important role in the Court's jurisprudence. In *Fisheries* the Court laid stress on the importance of "the vital needs of the population" of Norway.<sup>97</sup> In *Gulf of Maine* the Chamber of the Court similarly stressed the need to avoid that boundary delimitations should have "catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned".<sup>98</sup>

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dated 29 January 1996 from the Permanent Mission of Iraq to the United Nations", E/CN.4/1996/119, 19 March 1996, para. 41(d).

<sup>94</sup> *Third Report on State Responsibility*, UNILCOR, 52nd Sess., Agenda Item 3, UN Doc. A/CN.4/507 (2000), 20, para. 39.

<sup>95</sup> "Human Rights and Population Transfer: Final Report of the Special Rapporteur, Mr. Al-Khasawneh", E/CN.4/Sub.2/1997/23, 27 June 1997, para. 49

<sup>96</sup> *Ibid.*, para. 50.

<sup>97</sup> *Fisheries Case, Judgment of December 18th, 1951, I.C.J. Reports 1951*, p. 142; A. Pellet and B. Samson, "La délimitation des espaces marins" in M. Forteau and J.M. Thouvenin (eds.), *Traité de droit international de la mer* (2017), p. 589.

<sup>98</sup> *Delimitation of the Maritime Boundary in the Gulf of Maine Area, I.C.J. Reports 1984*, p. 342, para. 237; see also *Case Concerning Delimitation of Maritime Areas between Canada and the French Republic (St. Pierre and Miquelon)* (1992), vol. 95, I.L.R. p. 675, para. 84; *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, I.C.J. Reports 2009, p. 126, para. 198; *Abyei (Government of Sudan and the Sudan People's Liberation Movement/Army)* (2009), vol. XXX, R.I.A.A., p. 408, para. 754, fn. 1253; *Territorial and Maritime Dispute (Nicaragua v. Columbia)*, I.C.J. Reports 2012, p. 706, para. 223.

## VI. CONCLUSION

45. As Dr Maharaj concludes in her expert report, “climate change poses risks of serious harm to small islands, which already are experiencing climate impacts including sea-level rise, extreme climate events, disruption and decline of ecosystems and their services, submergence and destruction of coastal settlements and infrastructure, destruction of livelihoods, water and food insecurity, and reduced human health outcomes. Given that large proportions of settlements, infrastructure, and other economic assets on small islands are often located close to the coast, island populations have experienced a wide array of significant losses, ranging from loss of human lives to economic assets and cultural heritage”.<sup>99</sup>
46. The deleterious effects of climate change are threatening Nauru’s security: they threaten its very right to territorial integrity and the right of its people to self-determination. It is part of the legal obligations of States in respect of climate change not to engage, in their own territory, in activities that produce greenhouse gas emissions which have the effect of breaching the rights of small island developing States such as Nauru to territorial integrity and that of their peoples to self-determination.
47. It has been observed above that, in spite of being among the very worst affected by it, Nauru — in common with the other small island developing States specially mentioned in Question (b)(i) — is among the very least responsible for climate change.<sup>100</sup>
48. It has, throughout the history of anthropogenic climate change, been the case that it is the most powerful States that emit the most greenhouse gases, causing the most environmental damage, whereas the least powerful ones emit the least, yet are the worst affected. In the words of one prominent commentator, these least contributing — but worst affected — States “have not themselves contributed to climate change, nor benefitted from industrial or other technological revolutions. They have not had the

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<sup>99</sup> Expert Report of Shobha Maharaj on Impacts of Climate Change on Small Island States, 22 March 2024, para. 150.

<sup>100</sup> See para. 10 above.

opportunity to develop a thriving modern economy or assets to strengthen a bargaining position enabling them in the future to protect the interests of displaced populations.”<sup>101</sup>

49. As seen above,<sup>102</sup> the Court made it apparent already in *Corfu Channel* — its first case — that it is “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States”.<sup>103</sup> But the Court went further. It laid down in *Corfu Channel* an even more fundamental principle of fairness: there were certain activities, such as forcible intervention, which, unless international justice was properly administered, would “from the nature of things ... be reserved for the most powerful States”.<sup>104</sup> Such a situation, where powerful States did as they pleased, had, “in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law.”<sup>105</sup> The position is the same as regards the obligations of States in respect of climate change. If, in the past, the activities of industrialized powerful States have given rise to most serious abuses as regards causing significant harm to the climate system, such abuses cannot today find a place in international law. It is indispensable, in Nauru’s submission, that the Court addresses this fundamental point of “international justice”.<sup>106</sup>



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<sup>101</sup> R. E. Fife, “Sea-Level Rise in Relation to International Law: How to Protect Coastal State Rights by Operationalizing Legal Analysis” in *The International Legal Order in the XXIst Century: Essays in Honour of Professor Marcelo Gustavo Kohén* (2023), p. 781.

<sup>102</sup> See paras. 26, 28 above.

<sup>103</sup> *Corfu Channel (United Kingdom v. Albania)*, Merits, I.C.J. Reports 1949, p. 22; see also *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, I.C.J. Reports 2022, p. 648, para. 99, citing *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, I.C.J. Reports 2010, p. 55–56, para. 101; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996 (I), p. 242, para. 29; *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)*, I.C.J. Reports 2015, p. 706, para. 104.

<sup>104</sup> *Corfu Channel (United Kingdom v. Albania)*, Merits, I.C.J. Reports 1949, p. 35.

<sup>105</sup> *Ibidem*, see also M. Kohén, “État : besoin de personne” in *Dictionnaire des idées reçues en droit international* (2017), p. 232; M. Sørensen, “Principes de droit international public” (1960), vol. 101, *Recueil des Cours*, p. 243; H. Thirlway, “Concepts, principles, rules and analogies: international and municipal legal reasoning” (2002), vol. 294, *Recueil des Cours*, p. 362.

<sup>106</sup> *Corfu Channel (United Kingdom v. Albania)*, Merits, I.C.J. Reports 1949, p. 35.