INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

Written Comments of the

MELANESIAN SPEARHEAD GROUP (MSG)

14 August 2024

TABLE OF CONTENTS

I. INTRODUCTION

1. Pursuant to the Order of the President of the Court of 15 December 2023, the Melanesian Spearhead Group (**MSG**) hereby submits its Written Comments on the written statements presented in connection with the request for an advisory opinion contained in United Nations General Assembly (**UNGA**) Resolution 77/276, adopted by consensus on 29 March 2023.

2. MSG is an intergovernmental organisation whose members consist of the independent States of Papua New Guinea (**PNG**), Solomon Islands, the Republic of Vanuatu (**Vanuatu**), and the Republic of Fiji (**Fiji**), as well as the Front de Liberation National Kanak et Socialiste (in English, the Kanak Socialist National Liberation Front) of New Caledonia (**FLNKS**) (collectively, **MSG Members**).[1] New Caledonia is a non-self-governing territory administered by France, and FLNKS is an organisation representing indigenous Kanak people in their struggle for self-determination. Each of the MSG Members is located in the Melanesian subregion of the Pacific, which spans approximately one million square kilometres of ocean and is a hot spot of cultural diversity and biodiversity.

3. MSG was formed in 1988 out of a desire to achieve collective decolonisation and freedom for the peoples of Melanesia and to protect and strengthen Melanesian culture.[2] The organisation remains guided by the goals of self-determination and liberation from all forms of oppression, harmonious and sustainable economic development, promotion of human rights, and stewardship of the rich and intertwined cultural diversity and biodiversity that form the Melanesian subregion.[3]

4. Climate change has already undermined each of these objectives. MSG invites the Court to recall the first-hand accounts shared in MSG's Written Statement, describing the ways in which the adverse effects of climate change have unravelled Melanesian ways of life.

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[1] Although MSG at present consists of these Members, the peoples of West Papua and the Torres Strait are also ethnically of Melanesian origin and share the same cultures and traditions. For this reason, though not formal Members, the peoples of West Papua and the Torres Strait also participate in MSG cultural events.

[2] Melanesian Spearhead Group, *Agreed Principles of Co-operation among Independent States in Melanesia* (14 Mar. 1988) (link).

[3] Written Statement of the Melanesian Spearhead Group, Ex. 2, Revised Agreement Establishing the Melanesian Spearhead Group, art. 3 (2015).

Throughout the Melanesian subregion, climate change has already: caused permanent cultural loss; imperilled lives, including by causing sickness, starvation, and premature death; resulted in loss of territory and forced relocation; severed spiritual connections; caused collapse of economies, social structures, and systems of governance; and undermined efforts toward sustainable development.[4]

5. It is scientifically incontrovertible that this suffering is the consequence of human activities producing greenhouse gas (**GHG**) emissions and that these have primarily occurred under the jurisdiction and control of a few wealthy and powerful States. Just fourteen States, predominately developed States of the global North, plus the European Union (**EU**) are responsible for approximately 75% of cumulative warming to date.[5] When emissions produced during colonial periods are properly attributed to colonising powers, the disproportionate contribution of North American and European States becomes even more pronounced.[6]

6. From the Industrial Revolution onward, these same powers enriched themselves through the production and consumption of fossil fuels, and through the exploitation of land, resources, and peoples under their colonial rule.[7] Many former colonies, including all sovereign MSG Members, thus emerged as independent States into a world of deep inequity. That inequity is reinforced by climate change, which is a phenomenon both caused predominantly by the conduct of global North States in the process of building their wealth and power, and one that disproportionately impacts the least developed States and peoples of the global South.[8] This disproportionate vulnerability is due, in no small part, to the exploitation that many global South States suffered at the hands of their colonisers, which has left them more

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4 Written Statement of the Melanesian Spearhead Group, paras. 43-219.

5 Written Statement submitted by the Republic of Vanuatu, Ex. B, Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country, paras. 25-26.

6 S. Evans & V. Viisainen, *Revealed: How colonial rule radically shifts historical responsibility for climate change*, CARBON BRIEF (26 Nov. 2023) (link).

7 Written Statement of the Organisation of African, Caribbean, and Pacific States, App. B, Expert Report of Professor E. Tendayi Achiume on Racial Equality and Racial Non-Discrimination Obligations of States in Respect of Climate Change, paras. 4-7.

8 *See* Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement A.2 (2023).

vulnerable to climate impacts and with less capacity to adapt.[9] This is the case for all MSG Members.

7. This disproportionate suffering will only intensify as the planet continues to warm. Each incremental increase in temperature exacerbates the adverse impacts of climate change, with the magnitude of harm increasing exponentially should warming exceed 1.5°C above pre-industrial levels.[10] Thus, the level of suffering experienced by Melanesian and other vulnerable peoples is the direct consequence of the inadequate level of climate action taken by those few States whose historic GHG emissions are predominantly responsible for the climate crisis, and who continue to hold responsibility for the lion's share of anthropogenic GHG emissions today.[11]

8. Against this background, MSG supplies its Written Comments in response to the written statements submitted by States and other international organisations. As in its Written Statement, MSG focuses its Written Comments around three issues of particular relevance to MSG Members: culture, biodiversity, and rural communities (youth and children). These Written Comments will proceed as follows. First, MSG will provide endorsements of certain Written Statements submitted by other States and international organisations (**Part II**). MSG will then address the Court's jurisdiction (**Part III)**, the conduct at issue (**Part IV**), and the governing law (**Part V**), before turning to the scope and content of certain legal obligations of particular importance to MSG Members and peoples (**Part VI**), and then to the legal consequences that flow from breach of such obligations (**Part VII**). **Part VIII** will conclude.

9. MSG wishes to emphasise the significance of these historic proceedings, through which the Court can provide much needed legal clarity regarding States' obligations in respect of

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[9] E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Ecological crisis, climate justice and racial justice*, U.N. Doc. A/77/549, paras. 4-6 (25 Oct. 2022) ("[I]t is the global South and colonially designated non-white regions of the world that are most affected and least able to mitigate and survive global ecological crisis, in significant part owing to the colonial processes that caused historical emissions in the first place.").

[10] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statements B.3, B.4, B.6 (2022).

[11] *See* United Nations Environment Programme, *Emissions Gap Report 2022: The closing window*, p. 7 (2022); *see also* Written Statement submitted by the Republic of Vanuatu, Ex. B, Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country, para. 17.

climate change and the legal consequences that flow from breach of those obligations. In addition, these proceedings provide a forum in which the voices of States and peoples experiencing the worst impacts of climate change can be heard. This powerful fact is evidenced by the unprecedented number of written statements (91) submitted, including by many States and international organisations that have never appeared before the Court.[12] MSG further acknowledges the many peoples in the Pacific and throughout the world—including our Melanesian brothers and sisters of West Papua and the Torres Strait—who are suffering from the adverse effects of climate change but who remain subject to colonial rule, and whose voices will therefore go unheard in these proceedings.

10. In answering the questions before it, MSG respectfully encourages the Court to take particular note of the stories shared in MSG's Written Statement and its Exhibits, as well as the stories shared by other climate vulnerable States, including MSG Members Solomon Islands and Vanuatu, in order to understand the real-life stakes of these proceedings.[13] MSG further encourages the Court to grapple with the deep and multi-layered inequity that characterises the climate crisis, and to recall the fundamental purpose of the international legal order: to protect the "dignity and worth of the human person, in the equal rights of men and women and of nations large and small, to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom."[14]

II. ENDORSEMENTS

11. MSG offers its full endorsement of the Written Statement of MSG Member Vanuatu, which accurately sets forth the relevant facts and comprehensively and rigorously explicates the appropriate application of law to those facts. These facts and arguments are reinforced in the Written Statement of Solomon Islands.

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12 International Court of Justice, Press Release No. 2024/31 (12 April 2024) (link)

13 *See, e.g.*, Written Statement of the Melanesian Spearhead Group, Exs. 5-36; Written Statement Submitted by the Republic of Vanuatu, Exs. F-U; Written Statement of Solomon Islands, paras. 29.1-29.9; Written Statement of the Republic of Kiribati, Annex 2; Written Statement of the Kingdom of Tonga, Annex 2; Written Statement of the Cook Islands, Annex Nos. 4-17; Written Statement of Grenada, Annex 3.

14 U.N. Charter, pmbl. (1945).

12. MSG also offers its full endorsement of the Written Statement of the Organisation of African, Caribbean and Pacific States (**OACPS**). In particular, MSG wishes to highlight the important factual propositions advanced in the OACPS Written Statement, including the compounding and inseparable nature of the pre-existing injustices of racism, colonialism, and extractivism and the injustices of climate change. In addition, the OACPS Written Statement addresses sources of law which MSG submits are essential to answering the question before the Court, including the prohibition on genocide and the prohibition on racial and gender discrimination. MSG discusses each of these in detail in Part VI.

III. JURISDICTION

13. MSG reiterates the submission made in its Written Statement that the Court has jurisdiction to hear the question submitted to it in Resolution 77/276, that the question is clear and does not require reformulation, and that there are no compelling reasons to decline jurisdiction. States and international organisations broadly agree that the Court can and should exercise jurisdiction over the question as formulated.[15] Only Iran explicitly argues that the Court

[15] *See, e.g.*, Written Statement of the Portuguese Republic, paras. 26, 29; Written Comments of the Democratic Republic of the Congo, paras. 15-42; Written Statement of the Republic of Colombia, paras. 1.14-1.22; Written Statement of the Kingdom of Tonga, paras. 9-12; Written Statement of the Republic of Singapore, para. 2.4; Written Statement of the Republic of Peru, paras. 6-8; Written Statement of Solomon Islands, para. 11; Written Statement of the Government of Canada, para. 11; Written Statement of the Cook Islands, paras. 7-22; Written Statement of the Republic of Seychelles, paras. 6-12; Written Statement of the Republic of Kenya, paras. 4.5-4.15; Written Statement by the Governments of Denmark, Finland, Iceland, Norway and Sweden, paras. 11, 35-38; Written Statement of the Republic of the Philippines, paras. 13-22; Written Statement of the Republic of Albania, paras. 32, 38-42; Written Statement submitted by the Republic of Vanuatu, paras. 25-65; Written Statement of the Federated States of Micronesia, paras. 11, 17-21; Written Statement of the Republic of Sierra Leone, paras. 2.2-2.12; Written Statement by the Swiss Federation, paras. 9-12; Written Statement of the Principality of Liechtenstein, paras. 14-19; Written Statement of Grenada, paras. 9-10; Written Statement of Saint Lucia, paras. 11-15; Written Statement of Saint Vincent and the Grenadines, paras. 18-26; Written Statement of Belize, para. 4; Written Statement of the Kingdom of the Netherlands, para. 1.4; Written Statement of the Commonwealth of the Bahamas, paras. 79-80; Written Statement of the United Arab Emirates, paras. 5-7; Written Statement of the Republic of the Marshall Islands, paras. 9-13; Written Statement from the French Republic, paras. 5-6; Written Statement of the Republic of Slovenia, para. 7; Written Statement of the Republic of Kiribati, paras. 5-16; Written Statement of the People's Republic of China, para. 6; Written Statement of the Democratic Republic of Timor-Leste, paras. 13-14; Written Statement of the Republic of Korea, paras. 4-5; Written Statement by Republic of India, paras. 4-7; Written Statement of the Independent State of Samoa, para. 10; Written Statement of the Alliance of Small Island States, paras. 9-14; Written Statement of the Republic of Latvia, paras. 8-12; Written Statement of Mexico, paras. 8-9, 18-24; Written Statement of the Republic of Ecuador, paras. 2.4-2.9; Written Statement by the Republic of Cameroon, paras. 8-9; Written Statement of Barbados, paras. 22-36; Written Statement of the African Union, paras. 23-36; Written Statement of the Democratic Socialist Republic of Sri Lanka, paras. 7-13, 20; Written Statement of the Organisation of African, Caribbean and Pacific States ("OACPS"), paras. 12-17, 62; Written Statement of the Republic of Madagascar, paras. 6, 9-12, 20-22; Written Submission by the Oriental Republic of Uruguay, paras. 68-76; Written Statement of the Arab Republic of Egypt, paras. 15-19, 27-28; Written Statement of the Republic of Chile, paras. 8-26; Written Statement of the Republic of Namibia, paras. 7, 20-25; Written Statement of the People's Republic of Bangladesh, paras. 79-82; Written Statement of the European Union, para. 27; Written Statement of the Argentine Republic, para.

should decline to exercise jurisdiction, while a handful of other States suggest that jurisdiction should be exercised restrictively.[16] These minority arguments mischaracterise the question and inappropriately seek to persuade the Court to limit its judicial function.

14. First, a small number of States raise concerns about the language of the question itself, suggesting that the question should be reformulated because it is not precisely phrased.[17] The Court should reject these arguments, which depart from the Court's own jurisprudence regarding its advisory function, and which ignore the careful and consensus-driven process through which the text of the question was drafted and adopted by the UNGA.

15. As the Court has explained, reformulation of a question referred by the UNGA is only appropriate in "exceptional circumstances": where doing so is necessary to ensure that the Court can give a reply "based on law."[18] Here, the Court is first requested to clarify the operation of well-established principles of law to the factual situation of climate change—a request that goes to the core of the Court's judicial competency and that necessitates a legal answer.[19] The Court is then asked to determine the legal consequences under those obligations that flow from certain types of State conduct. This is a familiar formulation that

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12; Written Statement of the Republic of Mauritius, paras. 9-19; Written Statement of the Republic of Costa Rica, paras. 10-19; Written Statement Submitted by the Government of the Republic of Indonesia, paras. 9-22; Written Statement of the Russian Federation, pg. 3; Written Statement of the Republic of El Salvador, paras. 5-10; Written Statement of the Plurinational State of Bolivia, paras. 5-10; Written Statement of Australia, paras. 1.25-1.27; Written Statement of the Federative Republic of Brazil, paras. 6-9; Written Statement of the Government of the Socialist Republic of Viet Nam, paras. 6-7, 12-13; Written Submission of the Dominican Republic, paras. 3.3-3.8; Written Statement of Ghana, paras. 16-29; Written Statement of Germany, paras. 10-11; Written Statement of the Government of Nepal, paras. 3-7; Written Statement from Burkina Faso, paras. 52-60; Written Statement of the Republic of Gambia, para. 1.

16 Written Statement of the Organization of Petroleum Exporting Countries (OPEC), para. 19-20; Written Statement of the Government of Canada, para. 38; Written Statement of the Kingdom of Saudi Arabia, para. 3.11; Written Statement of the Islamic Republic of Iran, paras. 17-20; Written Statement submitted by the Government of the Republic of South Africa, para. 10.

17 Written Statement of the Islamic Republic of Iran, paras. 17-20; Written Statement submitted by the Government of the Republic of South Africa, para. 10; South Africa raises some concerns in relation to the process through which the text of the question was formulated, as well as the "broad" nature of the question, but does not argue that the question should be reformulated. *See* Written Statement Submitted by the Government of the Republic of South Africa, para. 10.

18 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 I.C.J. Rep., p. 95, para. 135.

19 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 I.C.J. Rep., p. 95, para. 137 (explaining that it is the Court's task to "state the law applicable to the factual situation referred to it by the General Assembly").

has consistently allowed the Court to provide answers "based on law" in the past.[20] Moreover, the resolution referring the question was co-sponsored by 132 States when introduced to the UNGA and then was adopted by consensus. There can therefore be no doubt that the question clearly and precisely expresses exactly what the UNGA wishes to ask the Court.

16. Next, a few States suggest that the Court should decline or limit its jurisdiction in deference to the political efforts of States to address climate change under the auspices of the United Nations Framework Convention on Climate Change (**UNFCCC**), the Kyoto Protocol, and the Paris Agreement (collectively, the **UN Climate Regime**).[21] But the existence of ongoing political processes provides no basis for the Court to decline its advisory jurisdiction or otherwise limit its judicial function. Only a "compelling reason" would permit the Court to decline jurisdiction over a request for advisory opinion referred by the UNGA,[22] and the Court has repeatedly made clear that ongoing negotiations or other political processes do not amount to such a reason, including in its recent Advisory Opinion on the *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*.[23]

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[20] *Accordance with International Law of the Universal Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 I.C.J. Rep., p. 403, para. 51 (citing *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. Rep., p. 136; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 1971 I.C.J. Rep., p. 16); *see also Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 I.C.J. Rep, p. 95, paras. 135-137.

[21] Written Statement of the Kingdom of Saudi Arabia, para. 3.11; Written Statement of the Government of Canada, para. 38; Written Statement of the Organization of Petroleum Exporting Countries (OPEC), para. 19-20.

[22] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 I.C.J. Rep, p. 95, para. 65.

[23] *See Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para 40 ("[T]he question of whether the Court's opinion would have an adverse effect on a negotiation process is a matter of conjecture. The Court cannot speculate about the effects of its opinion . . . the Court cannot regard this factor as a compelling reason to decline to respond to the General Assembly's request"); *see also Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Rep. 2019, p. 95, para. 176 (refusing to limit its authority to opine on the timeframe for decolonisation as a "matter for bilateral negotiations to be conducted between Mauritius and the United Kingdom"); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. Rep., p. 136, para. 54 (rejecting arguments that an advisory opinion with respect to the legality of Israel's conduct would "undermine the scheme" or "complicate negotiations" with respect to a planned two-State solution to address that same conduct); *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. Rep., p. 266, para. 17 (determining that ongoing nuclear disarmament

17. Equally unavailing are arguments that the Court should restrict its jurisdiction to consider only those obligations under the UN Climate Regime. As the Court has explained, it is for the UNGA to weigh the political usefulness and potential adverse consequences of the question it chooses to put to the Court.[24] Here, the UNGA has **by consensus** elected to refer a question that asks the Court to opine on legal obligations and consequences in respect of climate change without restriction and "having particular regard" for numerous sources of law beyond the UN Climate Regime. The UNGA has not asked the Court to shrink the scope of its inquiry in deference to the UN climate regime process, and the Court should not do so. Indeed, "[i]t is for the Court to state the law applicable to the factual situation referred to it by the General Assembly in its request for an advisory opinion. There is thus no need for it to interpret restrictively the questions put to it by the General Assembly."[25]

18. In any event, concerns raised about the negative impacts of a comprehensive advisory opinion are spurious. As numerous States expressed in their declarations adopting Resolution 77/276, by providing much needed legal clarity, a comprehensive advisory opinion will greatly assist the global community in tackling the climate crisis, including through the ongoing political process under the UN Climate Regime.[26]

19. Finally, Iran argues that the Court should decline jurisdiction because the question invites the Court to depart from established law and instead enter *lex feranda*.[27] This argument is itself a departure from the text of the question, which simply asks the Court, "having

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negotiations did not amount to a compelling reason to decline advisory jurisdiction over a question regarding the threat or use of nuclear weapons).

24 *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 I.C.J. Rep., p. 403, para. 35.

25 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 I.C.J. Rep., p. 95, p. 95, para. 137.

26 *See* Written Statement Submitted by the Republic of Vanuatu, para. 64 (reproducing 21 declarations of States underscoring the importance of the Court clarifying international law in the context of climate change in order to achieve global solutions); *see also Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, 1980 I.C.J. Rep., p. 73, para. 33 (opining that an advisory opinion may be "particularly necessary" to clarify "the legal principles applicable with respect to the matter under [political] debate").

27 *See* Written Statement of the Islamic Kingdom of Iran, paras. 21-24 ("[S]ince the obligation to ensure the protection of the climate system and other parts of the environment is not solidly rooted in the cited instruments, the Court would be obliged to enter *lex feranda* which departs from its function and precedents"). Other States make similar arguments, essentially asking the Court to restrict its opinion to application of the UN climate regime. *See* Written Statement of the Kingdom of Saudi Arabia, para. 3.11 ("[I]t is not the role of the Court to exercise a *political* function by creating new laws or obligations).

particular regard to" well-established rules of international law, to clarify the obligations of States "under international law" and then to determine "legal consequences under these obligations." This routine application of existing legal norms to a particular factual context (climate change) is at the core of the Court's judicial competency.

20. In sum, the arguments that a minority of States have raised challenging the exercise or scope of the Court's jurisdiction are entirely lacking in merit. MSG joins the vast majority of participants in submitting that the Court should take up the question in its entirety and render an opinion that considers State conduct in respect of climate change under all applicable sources of international law.

IV. THE CONDUCT AT ISSUE

21. An essential aspect of the question before the Court is the conduct to be evaluated. In short, that conduct, which is defined in the text of Resolution 77/276, consists of the acts and omissions of States over time that have resulted in anthropogenic GHG emissions causing significant harm to the climate system and other parts of the environment, thereby contributing to climate change and its adverse effects (**Relevant Conduct**).[28]

22. It is well understood that anthropogenic GHG emissions are released from human activities, predominantly "the burning of fossil fuels, deforestation, land use and land use changes, livestock production, fertilisation, waste management, and industrial processes."[29] Equally well understood is the definition of the climate system as consisting of "the atmosphere, the hydrosphere, the cryosphere, the lithosphere, and the biosphere."[30] The question thus asks the Court to evaluate State conduct in respect of such GHG-producing activities that have caused significant harm to any or all of these components of the climate system or other parts of the environment. The threshold of "significant harm" requires more than negligible

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[28] For a thorough explanation of the Relevant Conduct as defined in the text of Resolution 77/276, *see* Written Statement Submitted by the Republic of Vanuatu, paras. 137-151.

[29] *Anthropogenic Emissions*, IPCC Glossary (link) (abbreviation omitted).

[30] *Climate System*, IPCC Glossary (link).

contributions, but also much less than contributions constituting the sole or main cause of climate change.[31]

23. Reading the text of the question in tandem with preambular paragraph five, *in fine*, it is clear that the Relevant Conduct entails "the conduct of States over time in relation to activities that contribute to climate change and its adverse effects." This sentence establishes two key aspects of the conduct at issue.

24. First, the phrase "over time" confirms that historical conduct is included in the scope of the question. Past conduct must be evaluated because climate change is unequivocally the product of historic anthropogenic emissions of GHGs, beginning as early as 1750, which have increased the concentration of GHGs in the atmosphere over time.[32] It is this past accumulation of GHGs in the atmosphere that has caused the adverse effects of climate change that have already occurred.[33] Given that "[v]ulnerable communities who have historically contributed the least to current climate change are disproportionately affected,"[34] an evaluation of historic conduct is essential to address the issue of climate justice. Further, because future climate change is a function of cumulative emissions, current and future emissions cannot be evaluated without considering them together with historic emissions.[35]

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31 *See* Written Statement Submitted by the Republic of Vanuatu, para. 149; Written Statement of OACPS, para. 35.

32 Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6).Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement A.1 (2023) ("Human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900 in 2011-2020"); Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement A.1.1 (2021) ("Observed increases in well-mixed greenhouse gas (GHG) concentrations since around 1750 are unequivocally caused by human activities."); *see also id.* at Figure SPM.10.

33 Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement A.2 (2023) (explaining that as a consequence of historic cumulative emissions, "[w]idespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people (high confidence)").

34 Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement A.2 (2023).

35 Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on*

25. Second, the phrase "in relation to activities" makes clear that the Relevant Conduct concerns not only the direct acts and omissions of States but also those of private actors under their jurisdiction or control.[36] Thus, the Relevant Conduct includes (1) State subsidies for fossil fuel production; (2) authorization for expansion of fossil fuels; (3) adoption of laws, policies, and programmes with respect to energy policy that favour activities that substantially contribute to GHG emissions; (4) failure to adequately regulate the GHG emissions of private actors under the State's jurisdiction and control; and (5) failure to sufficiently assist developing States with financial and technical aid for mitigation and adaptation.

26. The question contained in Resolution 77/276 asks the Court to identify the international legal obligations of States to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions and determine whether States engaging in the Relevant Conduct are in conformity with these obligations (**question (a)**). The Court then must determine the legal consequences for States that, by engaging in the Relevant Conduct, have breached the determined obligations (**question (b)**). The two sub-questions must be read together. Evaluation of question (a) alone would not provide a responsive answer to the question before the Court, and evaluation of question (b) flows from evaluation of question (a).

27. MSG notes with concern that a small number of Written Statements—notably submitted by major GHG emitters or fossil fuel producers—appear to depart from the formulation of the question and to confuse or mischaracterise the conduct to be evaluated.[37] In essence, these States suggest that precise attribution of specific climate change impacts (e.g., a particular

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Climate Change, Summary for Policymakers, Statement B.1.1 (2023) ("Global warming will continue to increase in the near term (2021–2040) mainly due to increased cumulative CO2 emissions in nearly all considered scenarios and modelled pathways"); *see also* Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Figure SPM.10, Table SPM.2 (2021).

36 For a more detailed analysis, *see* Written Statement Submitted by the Republic of Vanuatu, paras. 137-170, 489-506.

37 *See* Written Statement of the Organization of Oil Producing Countries (OPEC), paras. 117; Written Statement by the Governments of Denmark, Finland, Iceland, Norway, Sweden, paras 29-30; Written Statement of the Kingdom of Saudi Arabia, para. 6.7; Statement of the United Kingdom of Great Britain and North Ireland, para. 137.4; Written Statement of New Zealand, para. 140; Written Statement of the People's Republic of China, paras. 117-118, 128-129, 136-138; Written Statement of the Islamic Republic of Iran, paras. 15-20; Written Statement of the Government of the Republic of South Africa, para. 10; Written Statement of the United States of America, paras. 2.20-2.26, 4.17-4.19, 5.7-5.10; Written Statement submitted by the Government of the Republic of Indonesia, para. 74-75; Written Statement of Australia, paras. 5.9-5.10.

natural disaster) to a given State's conduct (e.g., a particular release of GHGs from a particular point source on a particular date) is required to determine operative legal obligations and legal consequences. These same States further suggest that attributing such specific adverse effects of climate change to the conduct of specific States is too complex and uncertain to allow the Court to concretely determine whether State conduct breaches applicable obligations and, thus, to determine the legal consequences that flow from that breach. But the evaluative task suggested by such States is not what the question is asking of the Court. As explained, the question asks the Court to determine what obligations apply to the Relevant Conduct and what legal consequences would flow from their breach. This is a straightforward request that the Court is well-equipped to answer—with no need to delve into matters of attribution for specific injuries.

28. In order for the Court to give "a pertinent and effectual reply," the question should be evaluated "in the light of the actual framework of fact and law in which it falls for consideration."[38] Here, the Court has been furnished with ample factual and legal information to provide a responsive advisory opinion. This information has been conveyed to the Court in the dossier transmitted to the Court by the UN Secretariat and extensively discussed in the Written Submissions of several States and international organisations, including MSG Member Vanuatu.[39] Much of this information can also be found in the Intergovernmental Panel on Climate Change's (**IPCC**) Summary for Policy Makers, which MSG reminds the Court represents both scientific and political consensus on the causes and impacts of climate change.[40] Here, MSG will briefly survey the relevant information.

29. First, the IPCC Summaries for Policy Makers establish in no uncertain terms that anthropogenic GHG emissions have caused climate change, resulting in significant harm to

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38 *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, 1980 I.C.J. Rep., p. 73, para. 10.

39 *See* Written Statement Submitted by the Republic of Vanuatu, paras. 137-192; Written Statement of OACPS, paras. 39-42.

40 *See* Written Statement Submitted by the Republic of Vanuatu, paras. 68-72 (setting out the process through which the IPCC reports are drafted and approved).

the climate system and other parts of the environment.[41] Indeed, the well-established adverse effects of climate change, including disruption of seasonal weather patterns, increased frequency and intensity of extreme weather events, widespread deterioration of ecosystems, ocean acidification and warming, and sea level rise, provide clear evidence of this catastrophic harm—harm that goes beyond significant harm.[42] The science is equally clear that this unprecedented disruption of the climate system has already caused devastating impacts to environment and people, especially in small island developing States (**SIDS**) and least-developed countries (**LDCs**).[43] The scientific consensus is borne out by the lived experiences of the peoples of Melanesia.[44]

30. The science also definitively establishes that a small group of States is responsible for approximately 75% of global warming experienced to date due to their cumulative GHG emissions during the period 1851-2022. These countries are:

> United States (17.0% of the global warming in 2022 due to their historical GHG emissions; 0.28°C), China (12.5%; 0.21°C), the EU27 (10.3%; 0.17°C, including Germany 2.9%, France 1.3%, Poland 1.0% and Italy 0.9%), Russia (6.3%; 0.11°C), Brazil (4.9%; 0.081°C), India (4.7%; 0.078°C), Indonesia (3.7%; 0.061°C), the United Kingdom (2.4%; 0.040°C), Canada (2.1%; 0.035°C), and Japan (2.1%; 0.035°C) . . . Australia (1.5%; 0.025°C), Mexico (1.4%; 0.023°C), Ukraine (1.4%; 0.022°C), Nigeria (1.2%; 0.019°C), Argentina (1.2%; 0.019°C), and Iran (1.1%; 0.019°C).[45]

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41 Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement A.1 (2023).

42 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement B.1.2 (2022).

43 *See, e.g.*, Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement A.2 (2023); Intergovernmental Panel on Climate Change, "Chapter 15: Small Islands" *in Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Executive Summary (2022).

44 Written Statement of the Melanesian Spearhead Group, paras. 43-219; *see also* Written Statement of Solomon Islands, paras. 25-51.

45 Written Statement Submitted by the Republic of Vanuatu, Ex. B, Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country, paras. 25-26.

These same States remain responsible for the majority of current emissions.[46] In contrast, LDCs have contributed just 0.4% of total historic GHG emissions and SIDS have contributed just 0.5%.[47] Major emitting States were aware of the adverse impacts of GHG emissions by at least the 1960s,[48] if not earlier.[49] In light of this evidence, arguments advanced by major emitters, such as the United States, suggesting that all States bear undifferentiated responsibility for significant harm to the climate system caused by the "universal" emission of GHGs "from every country and every part of the world" are revealed as disingenuous and should be rejected.[50]

31. As the OACPS and Antigua and Barbuda rightly point out in their Written Statements,[51] the disparity becomes more extreme when GHG emissions produced during colonial periods are properly attributed to the coloniser rather than the colonised State. For example, when emissions from its colonies are attributed, the United Kingdom's contribution nearly doubles, to 5.1% of total global warming, while the contributions of its former colonies drop considerably.[52] Notably, India's share drops by 15% and Nigeria's share drops by 33%.[53]

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46 United Nations Environment Programme, *Emissions Gap Report 2022: The closing window*, Executive Summary, p. v (2022) ("The top seven emitters (China, the EU27, India, Indonesia, Brazil, the Russian Federation and the United States of America) plus international transport accounted for 55 per cent of global GHG emissions in 2020 . . . Collectively, G20 members are responsible for 75 per cent of global GHG emissions.").

47 Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statements B.3.1, B.3.2 (2022).

48 *See, e.g.*, Written Statement submitted by the Republic of Vanuatu, paras. 177-192 (detailing extensive evidence that demonstrates States were well-aware of the causes and adverse impacts of climate change by at least the 1960s, if not earlier).

49 *See* Written Statement of the Arab Republic of Egypt, paras. 305-314 (providing evidence that States were aware of the negative impacts of climate change since at least the 1950s); Written Statement from Burkina Faso, paras. 299-309 (same).

50 Written Statement of the United States of America, paras. 4.17-4.19 ([T]he emission of GHGs is a diffuse, universal activity, with countless sources in every country and every part of the world . . . Because GHGs from every particular source mix in the atmosphere with emissions from innumerable other sources, global effects cannot be linked to the location of any particular source of emissions").

51 Written Statement of OACPS, para. 41; Written Statement of Antigua and Barbuda, para. 491.

52 *See* S. Evans & V. Viisainen, *Revealed: How colonial rule radically shifts historical responsibility for climate change*, CARBON BRIEF (26 Nov. 2023) (link) (cited in Written Statement of OACPS, para. 41).

53 *See* S. Evans & V. Viisainen, *Revealed: How colonial rule radically shifts historical responsibility for climate change*, CARBON BRIEF (26 Nov. 2023) (link) (cited in Written Statement of OACPS, para. 41).

MSG agrees with the OACPS that this accounting is necessary, given that colonisers exercised total authority over the activities taking place in their colonies.

32. Most SIDS and LDCs were subject to colonial rule for much of the period over which anthropogenic GHG emissions have been released into the atmosphere (1800s to the present), meaning that when colonial emissions are properly attributed, their already negligible contributions become even more insignificant.[54] Indeed, MSG Member States did not achieve independence until the 1970s,[55] and New Caledonia remains colonised today.

33. As several Written Statements have stressed, this history reveals the double inequity of colonialism and climate change.[56] Since the industrial revolution, major emitting States have effectively caused the climate crisis, enriching themselves through carbonisation and entrenching a capitalist world order dependent on the extraction and consumption of fossil fuels.[57] At the same time, these States subjected much of the rest of the world to colonisation, undermining existing economic, social, political, and cultural institutions and imposing a capitalist development model contrary to the economic values and traditions of many colonised peoples.[58] This history has created a dichotomy of developed and developing States, with many of the latter trapped in a position of dependency within the capitalist system created by the former.[59] The legacies of colonialism, including in the realm of

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54 S. Evans & V. Viisainen, *Revealed: How colonial rule radically shifts historical responsibility for climate change*, CARBON BRIEF (26 Nov. 2023) (link) (cited in Written Statement of OACPS, para. 41).

55 Fiji gained independence in 1970, following 96 years of British colonial rule; Papua New Guinea gained independence in 1975, following 90 years of colonial rule by the British and Germans; Solomon Islands gained independence in 1978, following almost 100 years of British colonial rule; and Vanuatu gained independence in 1980, following 100 years subject to British and French colonial rule.

56 *See, e.g.*, Written Statement of OACPS, paras. 49-53; Written Statement of the Republic of Madagascar, paras. 84-85; Written Statement of the Federative Republic of Brazil, para. 81; Written Statement of the Republic of Namibia, paras. 115, 119; Written Statement of the Republic of India, paras. 71-7.

57 E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Ecological crisis, climate justice and racial justice*, U.N. Doc. A/77/549, para. 12 (25 Oct. 2022).

58 E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Ecological crisis, climate justice and racial justice*, U.N. Doc. A/77/549, paras. 13-14 (25 Oct. 2022).

59 E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Global extractivism and racial equality*, U.N. Doc. A/HRC/41/54, para. 8 (14 May 2019).

international development aid and climate finance,[60] have left LDCs and SIDS, in particular, disproportionately vulnerable and ill-equipped to respond to the adverse effects of climate change—a phenomenon for which they bear negligible responsibility.[61]

34. This double inequity is deeply felt across MSG Members. Francois Neudjen, Special Advisor to the Kanak Customary Senate of New Caledonia, puts it plainly: "We are already wounded by colonisation, so climate change is another blow that is landing on an open wound."[62] He further explains that the same States are largely responsible for both the harms of colonisation and the harms of climate change:

> We've already lost a lot because of colonisation by the French and climate change is causing additional loss on top of that . . . Here in the Kanaky islands, we can say that France is responsible for climate change. We have three nickel factories. We have many cars. That's not our plan. France is responsible for these things, and we didn't have a choice. But it is not only France. Other big countries are also to blame.[63]

35. These inequities are deepening now and into the future. While many of the adverse effects of climate change have already caused catastrophic and irreparable damage to the environment and to people, the scale at which catastrophic impacts will occur in the future can be significantly reduced by limiting warming to 1.5°C above pre-industrial levels. Above this level, the severity of existent climate hazards is anticipated to exponentially worsen, spelling doom for the most vulnerable, including the loss of entire physical territories for many SIDS.[64] The risk of reaching global tipping points that could fundamentally alter the

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60 *See, e.g.*, A.S. Bordner et al., *Colonial Dynamics Limit Climate Adaptation in Oceania: Perspective from the Marshall Islands*, 61 Global Environmental Change, 6-9 (2020).

61 E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Ecological crisis, climate justice and racial justice*, U.N. Doc. A/77/549, paras. 4-6 (25 Oct. 2022) ("[I]t is the global South and colonially designated non-white regions of the world that are most affected and least able to mitigate and survive global ecological crisis, in significant part owing to the colonial processes that caused historical emissions in the first place").

62 Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, para. 62.

63 Written Statement of the Melanesian Spearhead Group, Ex.11, Statement of Francois Neudjen, paras. 57, 64.

64 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statements B.4.5, B.6 (2022).

state of our planet also significantly increases at warming levels above 1.5°C, spelling doom for humanity more broadly.[65]

36. The science is clear: limiting warming to 1.5°C can only be achieved through deep, rapid, and sustained GHG emissions reductions in this decade.[66] Given their predominate contributions to overall emissions, this requires drastic emissions cuts from major GHG emitting States, coupled with scaled-up financial and technical support for low-carbon development in developing States. Despite the urgency of the situation, global GHG emissions have continued to increase. Many major emitting States—far from curtailing emissions—are actively supporting and subsidizing the expansion of fossil fuel production,[67] while also failing to provide sufficient finance and technology transfer.[68] Based on current global emissions reductions commitments, warming will not be limited to 1.5°C but, instead, is projected to reach between 2.1 and 2.9°C above pre-industrial levels by the end of this century.[69]

37. In sum, not only significant but catastrophic harm has *already* been done to the climate system and other parts of the environment, and the States that have caused this harm can be clearly identified. These States will continue to cause significant and even catastrophic harm into the future unless they take drastic action to curtail emissions and mobilize finance and

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65 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement C.3.2 (2022).

66 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement C.1.1 (2022).

67 *See, e.g.*, United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises*, pp. 4-5 (2023) ("While 17 of the 20 countries profiled have pledged to achieve net-zero emissions, and many have launched initiatives to reduce emissions from fossil fuel production activities, most continue to promote, subsidize, support, and plan on the expansion of fossil fuel production. None have committed to reduce coal, oil, and gas production in line with limiting warming to 1.5°C."). The 20 countries profiled are: Australia, Brazil, Canada, China, Colombia, Germany, India, Indonesia, Kazakhstan, Kuwait, Mexico, Nigeria, Qatar, Russian Federation, Saudi Arabia, South Africa, United Arab Emirates, United Kingdom and the United States.

68 Technical dialogue of the first global stocktake, Synthesis report by the co-facilitators on the technical dialogue, FCCC/SB/2023/9 (8 Sept. 2023), para. 44; Decision 1/CP.27, Sharm-el-Sheik Implementation Plan, FCCC/CP/2022/10/Add.1 (17 March 2023), para. 22.

69 Secretariat of the United Nations Framework Convention on Climate Change, *Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat*, U.N. Doc. FCCC/PA/CMA/2022/4, para. 17 (26 Oct. 2022).

technology transfer. This corpus of evidence readily allows the Court to determine which legal obligations govern, to evaluate the Relevant Conduct against those legal obligations, and to determine the legal consequences that arise in the case of breach. In other words—to answer the question before it.

38. The Court can engage in this inquiry at the level of individual States that have significantly contributed to overall anthropogenic GHG emissions, as well as at the level of that small group of States whose combined GHG emissions are predominantly responsible for the phenomenon of climate change. The Court could also evaluate the question against a general or theoretical conduct evaluated for conformity with international law in principle.[70] MSG respectfully requests that the Court disregard those submissions that seek to distract from the true evaluative task at hand and simply answer the question referred to it by the UNGA.

V. GOVERNING LAW

39. As MSG and the large majority of other States and international organisations have submitted, Resolution 77/276 asks the Court to render an advisory opinion on legal obligations and legal consequences in respect of climate change under the entirety of international law.[71] This is expressly provided by the language of the question, which

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[70] *See Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. Rep., p. 226, paras. 24-25, 60-63 (addressing the conduct at issue, the threat or use of nuclear weapons, in general); *see also* Written Statement submitted by the Republic of Vanuatu, paras. 151-157.

[71] *See, e.g.*, Written Statement of the Melanesian Spearhead Group, paras. 231, 290; Written Statement submitted by the Republic of Vanuatu, paras. 203-207; Written Statement of the Solomon Islands, paras. 53-55; Written Statement of the Portuguese Republic, para. 39; Written Statement from the Democratic Republic of the Congo, para. 122; Written Statement of the Republic of Colombia, paras. 3.2, 3.5; Written Statement of the Republic of Palau, paras. 3, 14; Written Statement of the Kingdom of Tonga, paras. 124, 127; Written Statement of the International Union for the Conservation of Nature, para. 87; Written Statement of the Republic of Singapore, paras. 3.1, 3.27, 3.44; Written Statement of the Republic of Peru, paras. 68-73; Written Statement of the Cook Islands, paras. 132-147; Written Statement of the Republic of Seychelles, para. 64; Written Statement of the Republic of Kenya, para. 2.8; Written Statement of the Republic of the Philippines, para. 49; Written Statement of the Republic of Albania, paras. 63-64; Written Statement of the Federated States of Micronesia, para. 42; Written Statement of the Republic of Sierra Leone, para. 3.5; Written Statement of the Principality of Liechtenstein, para. 25; Written Statement of Grenada, para. 19; Written Statement of Saint Lucia, paras. 39-42; Written Statement of Saint Vincent and the Grenadines, para. 94; Written Statement of the Kingdom of the Netherlands, para. 3.2.; Written Statement of the Commonwealth of the Bahamas, para. 83; Written Statement of the Republic of the Marshall Islands, paras. 103, 124; Written Statement of the Republic of Slovenia, paras. 9-10; Written Statement of the Republic of Kiribati, paras. 108-109; Written Statement of the Independent State of Samoa, paras. 85-86; Written Statement of the Republic of Latvia, para. 15; Written Statement of Mexico, para. 37; Written Statement of the Republic of Ecuador, paras. 3.2-3.3; Written Statement of the Republic of Cameroon, para. 12; Written Statement of Barbados, para. 197; Written Statement of the African Union, paras. 40-41; Written Statement of the Democratic Socialist Republic of Sri Lanka, paras. 90-91; Written Statement of OACPS, paras. 59-60; Written Statement of the Republic of Madagascar, para. 17; Written Statement of the Oriental Republic of Uruguay, paras. 81-83; Written Statement of the Arab Republic of

requests the Court to evaluate the Relevant Conduct "under international law" as a whole, "having particular regard"—but not limited to—the sources specifically referred to in the chapeau paragraph.[72] The expansive scope of the question reflects the reality that the Court, as the principal judicial organ of the United Nations, is the only international tribunal capable of assessing the issue of climate change under the entire corpus of international law.

40. Departing from the plain language of the question, however, a minority of States—mostly major GHG emitters or fossil fuel producers—have raised arguments suggesting either: (1) that the UN Climate Regime is *lex specialis*, excluding other sources of law from governing in the context of climate change;[73] or (2) that to the extent other legal rules do apply, they should not be interpreted as imposing obligations that go beyond those found in the UN Climate Regime.[74] These positions are contrary to the text of the question. Moreover, neither position is tenable as a matter of law.

Egypt, paras. 68-75; Written Statement of the Republic of Chile, para. 33; Written Statement of the Republic of Namibia, paras. 40-41; Written Statement of Tuvalu, para. 72; Written Statement of Romania, paras. 97-98; Written Statement of the People's Republic of Bangladesh, paras. 84-85; Written Statement of the Argentine Republic, paras. 33-34; Written Statement of the Republic of Mauritius, para. 219; Written Statement of the Republic of Costa Rica, paras. 32-36; Written Statement of the Islamic Republic of Pakistan, para. 28; Written Statement of Antigua and Barbuda, para. 230; Written Statement of the Commission of Small Island States on Climate Change and International Law, paras. 64-65; Written Statement of the Republic of El Salvador, paras. 27-28; Written Statement of the Plurinational State of Bolivia, paras. 13-42; Written Statement of the Government of the Socialist Republic of Viet Nam, para. 15; Written Statement of the Dominican Republic, para. 4.1; Written Statement of Ghana, para. 26; Written Statement of the Kingdom of Thailand, paras. 3-4; Written Statement of the Government of Nepal, paras. 17-21; Written Statement of Burkina Faso, para. 68.

[72] The non-exhaustive character of the phrase "having particular regard" is confirmed by preambular paragraph 5, which "[e]mphasiz[es] the importance" of additional treaties and rules "to the conduct of States over time in relation to activities that contribute to climate change and its adverse effects."

[73] Written Statement of the Organisation of Petroleum Exporting Countries (OPEC), para. 17(a); Written Statement of the Kingdom of Saudi Arabia, paras. 4.95, 4.97-4.99; Written Statement of the Government of Japan, para. 14; Written Statement of the Government of the Republic of South Africa, para. 14; Written Statement of the United States of America, paras. 3.1-3.4. 4.1; Written Statement of the State of Kuwait, paras. 3, 61-62.

[74] Written Statement by the Governments of Denmark, Finland, Iceland Norway, Sweden, para. 61; Written Statement of the United Arab Emirates, paras. 16-17; Written Statement from the French Republic, paras. 11, 13; Written Statement of New Zealand, paras. 21, 30; Written Statement of the People's Republic of China, paras. 19-20; Written Statement of the Democratic Republic of Timor-Leste, paras. 83, 88-89; Written Statement of the Republic of Korea, paras. 14, 51; Written Statement of the Russian Federation, p. 8; Written Statement of the Federative Republic of Brazil, para. 10; Written Statement of Australia, paras. 2.61-2.62; Statement of Germany, paras. 37, 42 *cf.* Written Statement of the United Kingdom of Great Britain and North Ireland, para. 4.3 (arguing that the only applicable source of law in addition to the UN Climate Regime are sector-specific regimes related to aviation and shipping; pollutant-specific regimes such as the Montreal Protocol, Gothenburg Protocol; and the United Nations Convention on the Law of the Sea).

41. First, an interpretation that focuses on the UN Climate Regime as the exclusive governing law circumvents both the spirit and the letter of the question. MSG reiterates that the question's chapeau paragraph expressly asks the Court to consider a wide range of international law sources beyond the UN Climate Regime and that this request was adopted by consensus. In addition, the question contemplates State conduct that began long before the entry into force of the UNFCCC in 1994[75] (let alone the entry into force of the Paris Agreement in 2016).[76] The preambular language of Resolution 77/276 indicates that the Court should evaluate the question with respect to "the conduct of States **over time** in relation to activities that contribute to climate change and its adverse effects."[77] This conduct began as early as the1750s, and much of the harm that has been caused to the climate system to date is the consequence of historic emissions.[78] An interpretation focusing exclusively on the UN Climate Regime would fail to evaluate the Relevant Conduct over most of its temporal scope, contravening the plain meaning of the question and the intent of the UNGA in referring it.

42. With respect to the argument that the UN Climate Regime is *lex specialis*, MSG notes that this same argument was roundly rejected by the International Tribunal for the Law of the Sea (**ITLOS**) in its recent unanimous advisory opinion on State obligations in respect of climate change under the United Nations Convention on the Law of the Sea (**UNCLOS**). The Tribunal explained that:

> While the Paris Agreement complements the Convention in relation to the obligation to regulate marine pollution from anthropogenic GHG emissions, the former does not supersede the latter . . . **In the Tribunal's view, the Paris Agreement is not l*ex specialis* to the Convention and thus, in the present context, *lex specialis derogat***

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75 United Nations Framework Convention on Climate Change, (adopted 9 May 1992, entered into force 21 Mar. 1994), U.N.T.S. 107 [hereinafter UNFCCC].

76 Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 Dec. 2015, entered into force 4 Nov. 2016.), T.I.A.S. No. 16-1104 [hereinafter Paris Agreement].

77 GA Res. 77/276, preambular para. 5 (emphasis added).

78 *See* Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statements A.1-A.1.3 (2023); Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement A.1.1 (2021).

***legi generali* has no place in the interpretation of the Convention**.[79]

43. While the findings of the ITLOS are not legally binding on this Court, MSG invites the Court to ascribe "great weight" to these findings, in line with its own jurisprudence concerning the interpretative practice of authoritative bodies established under relevant treaties.[80] MSG submits that the ITLOS has articulated the correct interaction between the UN Climate Regime and the UNCLOS (and other sources of international law more generally).

44. Indeed, the text of the UN Climate Regime confirms that it is not intended to operate as *lex specialis*. The preamble of the UNFCCC, for example, expressly recalls the prevention principle as operable in the context of conduct under States' jurisdiction or control that contributes to climate change.[81] Likewise, the preamble of the Paris Agreement confirms the applicability of human rights law to the context of climate change, providing that State parties "'should, when taking action to address climate change, respect, promote and consider their **respective obligations** on human rights."

45. More generally, the UN Climate Regime cannot operate as *lex specialis* because the nature of obligations under the UN Climate Regime differs from the nature of obligations under other relevant sources of international law, both in terms of temporal scope (*ratione temporis*) and subject matter (*ratione materiae*).

46. The proposition that the climate treaties are *lex specialis* is untenable from a *ratione temporis* perspective. As discussed, State conduct began contributing to climate change as early as 1750, and major emitting States were aware of the catastrophic risks associated with

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79 *Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, ITLOS, para. 223-224 (link) (emphasis added).

80 *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, 2010 I.C.J. Rep., p. 639, paras. 66–67 (explaining that the Court accords interpretations of the ICCPR by the Human Rights Committee great weight because the Human Rights Committee is the "independent body that was established specifically to supervise the application of that treaty").

81 UNFCCC, preambular para. 8 ("Recalling also 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").

anthropogenic GHG emissions no later than the 1960s,[82] yet the UNFCCC did not enter into force until 1994 and the Paris Agreement not until 2016. Thus, for much of the timespan over which States have engaged, including knowingly, in the Relevant Conduct, the UN Climate Regime did not govern at all. In contrast, many of the other sources of law referenced in the chapeau paragraph were in operation for most, if not the entirety, of the relevant time period.[83] It is thus clear that the UN Climate Regime could not have excluded these sources of law from governing the Relevant Conduct over most of the time period in question.

47. Moreover, given their departure in terms of substantive scope (*ratione materiae*), it is not plausible to conclude that the UN Climate Regime displaced these sources of law even after its entry into force.

48. For example, the UN Climate Regime and the human rights regime depart from each other in terms of *ratione materiae*. Whereas the former concerns horizontal relations between States, the latter governs vertical relations between States and individuals and peoples.[84] Thus, as numerous international and regional human rights tribunals and bodies have confirmed, while the UN Climate Regime and human rights regime may inform each other in the context of climate change, both customary human rights law and human rights treaties impose substantive obligations on States in respect of climate change that fall outside the

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82 *See* Written Statement Submitted by the Republic of Vanuatu, paras. 177-192; *see also id.*, Ex. D, Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change, para. 4.

83 For example, as set forth in detail in the Written Statement of MSG Member Vanuatu, the duty of due diligence has governed State conduct as a principle of customary international law since at least 1872. *See* Written Statement Submitted by Republic of Vanuatu, paras. 235-243. Further, self-determination has been operable in international law at least since it was enshrined in the UN Charter in 1945 and operated as a customary norm in the context of decolonisation since at least 1960. *See Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 I.C.J. Rep., p. 95, para. 160. Certain human rights obligations have been operable as customary international law since at least the promulgation of the Universal Declaration of Human Rights in 1948, and State parties have been bound by human rights treaty obligations since the entry into force of various human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1976. *See* International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976), 993 U.N.T.S. 3 [hereinafter [ISECR].

84 Including in the extraterritorial context, as MSG will discuss in Part V, *infra*.

scope of their obligations under the UN Climate Regime.[85] The ITLOS has confirmed the same with respect to State obligations under the UNCLOS.[86]

49. Self-determination, as a right held by peoples, also concerns the vertical relationship between peoples and the State—even if realising that right may entail independent statehood in some cases. Moreover, the norm imposes *erga omnes* obligations on States to respect, protect, and fulfil the rights of peoples to enjoy permanent sovereignty over natural resources, territorial integrity, and the ability to be economically, culturally, and politically self-determining.[87] These rights and obligations fall outside the scope of the UN Climate Regime, and thus, that regime does not pre-empt the self-determination norm in the context of climate change.

50. As another example, the norms of due diligence and prevention of significant harm to the environment are broader in scope than the UN Climate Regime, meaning that they govern conduct that falls outside its ambit.[88] In any event, to the extent that these—or indeed any other customary norms—overlap with specific rules under the UN Climate Regime, "this would not be a reason for the Court to take the view that the operation of the treaty process must necessarily deprive the customary norm[s] of [their] separate applicability."[89]

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85 *See e.g.*, Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, paras. 8.3-8.5 (22 Sept. 2022); Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016: Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, para. 9.5 (23 Sept. 2020); *Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany*, CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019, paras 10.10–10.11 (11 Nov. 2021); 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*, U.N. Doc. CRC/C/GC/26, para. 10 (22 Aug. 2023); Human Rights Council, Res. 50/9, Human Rights and Climate Change, U.N. Doc. A/HRC/RES/50/9, preambular para. 7 (14 July 2022); *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20, ECtHR, paras 546-547 (9 Apr. 2024) (link); *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R., paras. 47, 140 (17 Nov. 2017).

86 *Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, ITLOS, para. 223 (link).

87 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, paras. 231-233.

88 *See* Written Statement of the Republic of Vanuatu, paras. 245-246; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. Rep., p. 226, paras. 27-29.

89 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, 1986 I.C.J. Rep., p. 14, para. 175 ("[E]ven if a treaty norm and a customary norm relevant to the present dispute were to have exactly the same content, this would not be a reason for the Court to take the view that the operation of the treaty process must necessarily deprive the customary norm of its separate applicability"). MSG further notes that even if the principles of due diligence and prevention could be considered to be incorporated entirely into the UN Climate Regime as *lex specialis*, that regime still imposes a high standard of due diligence. This is evident not only in the treaties themselves—including through commitments to highest possible ambition, the

51. Certain States have argued in the alternative that the principle of systemic integration applies, such that States discharge their obligations under other rules of international law simply through good faith compliance with their obligations under the UN Climate Regime.[90] This is a mischaracterisation of the systemic integration principle. Systemic integration requires overall harmonisation among different sources of law, such that each source is "interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation."[91] Thus, one rule of law may inform the content of another and vice versa. But as the ITLOS recently explained, while rejecting these same arguments in respect of the relationship between the UN Climate Regime and the UNCLOS, systemic integration **does not** mean that the varied obligations under different sources of international law collapse into one unitary standard.[92] Each obligation continues to govern independently.[93] Thus, if State conduct does not conform with its obligations under a particular rule, then that State is in breach of those obligations, regardless of whether the State is in compliance with its obligations under other international legal rules. Arguments that compliance with the UN

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global temperature goal, the principle of common but differentiated responsibilities and respective capabilities, and the general operation of the principle to execute treaty obligations in good faith—but also, as the ITLOS has clarified, because of the severity and foreseeability of the harm that is threatened (and indeed that has already occurred) as a result of climate change. *See Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, ITLOS, para. 241 (link).

90 *See, e.g.*, Written Statement of the People's Republic of China, para. 19; Written Statement by the Governments of Denmark, Finland, Iceland, Norway and Sweden, para. 73-74; Written Statement of Australia, paras. 2.61-2.62; *see also* Written Statement of the United States of America, para. 4.1 (arguing in the alternative to its primary argument that the UN Climate Regime is *lex specialis* that "To the extent other sources of international law, such as customary international law, might establish obligations in respect of climate change, these obligations would be, at most, quite general. Any such obligations would be satisfied in the climate change context by States' implementation of their obligations under the climate change-specific treaties they have negotiated and joined, which embody the clearest, most specific, and most recent expression of their consent to be bound by international law in respect of climate change.").

91 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, 1971 I.C.J. Rep., p. 16, para. 53.

92 *Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, ITLOS, paras. 223-224 (link) (explaining that "the Tribunal does not consider that the obligation under article 194, paragraph 1, of the Convention would be satisfied simply by complying with the obligations and commitments under the Paris Agreement" and that "[e]ven if the Paris Agreement had an element of *lex specialis* to the Convention, it nonetheless should be applied in such a way as not to frustrate the very goal of the Convention."); *see also id.*, para. 311 ("The obligation of cooperation set out in article 197 of the Convention is of a continuing nature. It requires States to make an ongoing effort to formulate and elaborate rules, standards and recommended practices and procedures. The adoption of a particular treaty, such as the UNFCCC or the Paris Agreement, does not discharge a State from its obligation to cooperate.").

93 *Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, ITLOS, paras. 223-224 (link); Human Rights Committee, *General Comment No. 36: Article 6: Right to Life*, U.N. Doc. CCPR/C/GC/36, para. 62 (3 Sept. 2019).

Climate Regime is sufficient to satisfy all other obligations in respect of climate change seek to strip distinct international legal rules of their content and applicability in contravention of the ordinary functioning of international law.[94] These arguments should be rejected.

52. In sum, given the plain language of the UN Climate Regime itself, as well as the differences both in terms of *ratione materiae* and *ratione temporis* between the UN Climate Regime and other applicable sources of international law, the argument that the UN Climate Regime excludes the operation of other sources of law—either as *lex specialis* or as a result of systemic integration—is simply untenable. MSG respectfully submits that the Court should provide an answer that is responsive to the question referred to it by the UNGA by evaluating State conduct in relation to climate change under the entire corpus of international law.

VI. LEGAL OBLIGATIONS

53. In this Part, MSG provides brief comments on the content of certain legal obligations, which MSG submits govern the Relevant Conduct. These include (1) the duty of due diligence; (2) obligations arising from the customary norm of self-determination; (3) human rights obligations; (4) obligations arising from the prohibition on genocide; and (5) obligations arising from the prohibitions of racial and gender discrimination. MSG has chosen to focus its comments on these sources of law because their application in the context of climate change is of great importance to the survival and well-being of the peoples of Melanesia, in particular our and youth, cultures, and biodiversity.

A. Due Diligence

54. The duty of due diligence is a well-established rule of customary international law. The duty obligates all States to take reasonable care to prevent harm to both the territories of other States and areas beyond national jurisdiction stemming from conduct under their jurisdiction or control.[95] The duty of due diligence exists both as a stand-alone rule of customary international law and establishes a standard of care against which States' compliance with

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94 *See* Written Statement Submitted by the Republic of Vanuatu, paras. 217-230 (setting forth the correct application of the systemic integration principle as reflected in this Court's jurisprudence); *see also* Written Statement by the Swiss Federation, paras. 70-71.

95 *See Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, 1949 I.C.J. Rep., p. 22.

other substantive legal obligations is evaluated. While many written statements discuss the duty of due diligence as a standard of conduct for other obligations, most commonly the prevention principle and obligations under the UN Climate Regime, few explicitly address the direct operation of the duty of due diligence in the context of climate change.[96]

55. MSG submits that it is imperative that the Court evaluate the duty of due diligence not only as a standard of care but also as a source of primary legal obligations governing the Relevant Conduct. This is because due diligence has several distinct characteristics that are highly relevant in this context. First, unlike the prevention principle, which vests States with an obligation to prevent "significant harm" stemming from activities under their jurisdiction or control, the duty of due diligence is not triggered by any minimum threshold of harm. Rather, a State is always under the duty to exercise due diligence—even in the absence of scientific certainty.[97] The level of diligence required is mediated by the degree of risk associated with a given activity as well as the capacity and capability of the State.[98] Second, the duty of due diligence has been operating as a primary source of legal obligations over most, if not all of the temporal period of relevance. Indeed, it is a corollary to "the fundamental principle of State sovereignty, on which the whole of international law rests."[99] While thus always

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96 *See, e.g.*, Written Statement of Saint Vincent and the Grenadines, para. 108; Written Statement of the Republic of Korea, para. 22; Written Statement of the Independent State of Samoa, para. 100-102; Written Statement of the Republic of Ecuador, paras. 3.23-3.24; Written Statement of the European Union, para. 83; Written Statement of the Republic of Colombia, para. 3.19; Written Statement of the International Union for the Conservation of Nature, para. 343; Written Statement of the Republic of the Seychelles, paras. 96, 101; Written Statement of the Republic of Kenya, para. 5.10; Written Statement of Grenada, para. 41; Written Statement of Belize, para. 35; Written Statement of the Republic of the Marshall Islands, paras. 23, 27; Written Statement of Mexico, paras. 40, 43; Written Statement by the Government of the Republic of South Africa, para. 74; Written Statement of the Democratic Socialist Republic of Sri Lanka, paras. 95-96; Written Statement of the People's Republic of Bangladesh, para. 90; Written Statement of the Kingdom of Tonga, paras. 146-148; Written Statement by the Governments of Denmark, Finland, Iceland, Norway and Sweden, paras. 73-74; Written Statement of the Republic of Nauru, para. 30; Written Statement of Australia, para. 4.13; Written Statement of the Government of the Socialist Republic of Viet Nam, para. 28; Written Statement of the Republic of Singapore, para. 3.2; Written Statement of the United Arab Emirates, para. 93; Written Statement of the Arab Republic of Egypt, paras. 97-100. Some States, did, however discuss the duty of due diligence as a primary legal obligation. *See, e.g.*, Written Statement submitted by the Republic of Vanuatu, paras. 235-248; Written Statement of OACPS, paras. 96-100; Written Statement of the Republic of Sierra Leone, para. 3.13; Written Statement of the Republic of Costa Rica, paras. 37-38 (all discussing due diligence as a primary obligati

97 *See, e.g.*, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Case No. 17, Advisory Opinion of 1 February 2011, ITLOS, p. 10, paras. 131-132 (referring further to *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan)*, Order of 27 August 1999, ITLOS, p. 274, para. 77).

98 *Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, ITLOS, paras. 239, 241 (link).

99 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits Judgment, 1986 I.C.J. Rep., p. 14, para. 263.

integral to the international legal system, the duty of due diligence crystallised as a primary obligation of international law no later than the end of the 19th Century.[100]

56. Taken together, these characteristics have significant implications in the context of climate change. Having crystallised by the late 1800s, the duty of due diligence has applied for much of the relevant time period, imposing an ongoing obligation on States to exercise care commensurate with an evolving understanding of the risks. As early as the 1830s, scientific knowledge about the risks associated with fossil fuel combustion was emerging, suggesting that States were subject to an obligation to act with due diligence and exercise precaution.[101] By the 1960s, when the causal link between anthropogenic GHG emissions and climate change was firmly established, and the potentially catastrophic impacts of climate change were well-understood, the level of diligence required of States had become "stringent."[102]

57. Finally, States' due diligence obligations apply not only in the context of environmental harm, but in respect of all types of harm contemplated in international law.[103] As such, due diligence vests States with obligations to take care to prevent all forms of material and moral harm stemming from climate change.

58. MSG respectfully requests the Court to clarify the application of the duty of due diligence to State conduct in respect of climate change not only as a standard of care, but as a primary legal obligation under general international law. MSG invites the Court to affirm that State conduct over time that has caused significant harm to the climate system and other parts of the environment, in principle, constitutes a breach of the duty of due diligence.

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100 Written statement Submitted by the Republic of Vanuatu, paras. 235-243 (detailing the history of due diligence in international law, including its recognition in *Alabama Claims of the United States of America against Great Britain*, Award rendered on 14 September 1872 by the tribunal of arbitration established by Article I of the Treaty of Washington of 8 May 1871, XXIX Reports of International Arbitral Awards, p. 125 (link)); *Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, ITLOS, para. 242 (link) ("The obligation of due diligence is also closely linked with the precautionary approach.").

101 Written Statement submitted by the Republic of Vanuatu, para. 247 (citing CHARLES BABBAGE, ON THE ECONOMY OF MACHINES AND MANUFACTURES, p. 17 (Cambridge University Press 2009)).

102 *Cf. Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, ITLOS, para. 241 (link) (explaining that the due diligence standard of care applicable to State obligations under article 194 of the UNCLOS should be "stringent" in view of the foreseeability and severity of harm to the marine environment posed by climate change).

103 *See* Written Statement Submitted by the Republic of Vanuatu, para. 245.

B. Self-determination

59. Clarification of States' self-determination obligations in respect of climate change is a matter of vital importance to MSG Members and to the peoples of Melanesia. Already the self-determination rights of peoples across Melanesia have been violated by climate impacts, which have deprived our peoples of their traditional territories and resources, interfered with their self-governance, and undermined their continued existence.[104] MSG Members and other SIDS are projected to lose the entirety of their habitable territories as a result of rising seas, permanently foreclosing their ability to enjoy full expression of their self-determination.[105] The prospect of this loss is harrowing given that nearly all SIDS have only recently attained self-determination as sovereign States after long periods of colonial rule.

60. MSG observes that approximately one-third of written statements address the issue of self-determination.[106] This somewhat limited treatment of self-determination in the written statements should not be taken to mean that the norm holds anything less than supreme importance in the present context. Given the grievous violations that have already occurred, as well as the existential threats posed by future climate change, there is an urgent need for the Court to clarify States' self-determination obligations in respect of climate change and the legal consequences of breaching those obligations. To be sure, the peoples of most of the

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104 *See* Written Statement of the Melanesian Spearhead Group, paras. 43-219.

105 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement B.4.5 (2022); *see also* Report of the Office of the High Commissioner for Human Rights on the relationship between climate change and human rights, U.N. Doc. A/HRC/10/61, para. 40 (15 Jan. 2009).

106 Written Statement of the Melanesian Spearhead Group, paras. 233-241; Written Statement of Solomon Islands, para. 171-173, 214-217; Written Statement submitted by the Republic of Vanuatu, paras. 294-306; Written Statement of the Republic of Singapore, para. 3.81; Written Statement of the Cook Islands, paras. 342-354; Written Statement of the Republic of Kenya, paras. 5.66-5.68; Written Statement of the Republic of the Philippines, para. 106; Written Statement of the Republic of Albania, para. 96b; Written Statement of the Federated States of Micronesia, para. 82; Written Statement of the Republic of Sierra Leone, paras. 3.88-3.92; Written Statement of the Principality of Liechtenstein, paras. 27-31; Written Statement of Saint Vincent and the Grenadines, para. 109; Written Statement of the Republic of Kiribati, para. 141; Written Statement of the Democratic Republic of Timor-Leste, paras. 333-345; Written Statement of the African Union, para. 198; Written Statement of OACPS, paras. 64-69; Written Statement of the Republic of Madagascar, paras. 59-60; Written Statement of Tuvalu, paras. 75-89; Written Statement of the People's Republic of Bangladesh, para. 119-122; Written Statement of the Republic of Mauritius, paras. 167-169; Written Statement of the Republic of Nauru, paras. 37-46; Written Statement of the Republic of Costa Rica, paras. 72-74; Written Statement of Antigua and Barbuda, para. 195; Written Statement of the Commission of Small Island States on Climate Change and International Law, paras. 74-78; Written Statement of the Dominican Republic, para. 4.43; Written Statement of Burkina Faso, paras. 201, 208-210.

States that made submissions in relation to self-determination have, like the peoples of Melanesia, experienced violations of their right to self-determination in the past as a result of colonial subjugation, and now because of climate change. Here, MSG briefly reminds the Court of the numerous ways in which climate impacts have undermined the self-determination of peoples throughout Melanesia.

61. First, the adverse effects of climate change have divested Melanesian peoples of their right to permanent sovereignty over natural resources (**PSNR**). PSNR, which is itself a peremptory norm, is also an integral part of the right to self-determination.[107] It guarantees all peoples the right to "freely dispose of their natural wealth and resources" and provides that "[i]n no case may a people be deprived of its own means of subsistence."[108] Across Melanesia—and indeed in many climate-vulnerable geographies throughout the world—peoples, including peoples of sovereign States, are being deprived of PSNR as both terrestrial and marine natural resources are degraded and destroyed by the adverse effects of climate change.

62. To take one example, the Ouara Tribe lives on a small island off the coast of mainland New Caledonia. The Tribe was formed from various communities forcibly displaced from their lands by French colonisers in the late 1800s. Although coming from different backgrounds, the Tribe identifies as a people, with their identity tied to the island that has become their home.[109] In their own words:

> Even though our ancestors were moved here against our will, this island is our home now. And even though we came from different clans and different places, now we are one. We are the Ouara Tribe from Ouara Island. It is who we are.[110]

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107 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 240 (confirming that PSNR is both an "element" of self-determination and "a principle of customary international law"); *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgement, 2005 I.C.J. Rep., p. 168, para. 244.

108 ICCPR, art. 1(2); ICESCR, art. 1(2).

109 Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, paras. 8-11.

110 Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, para. 12.

63. The resources of their island are being taken from the Tribe due to climate change, depriving them of their right to PSNR. Most crops are failing due to increased rainfall and saltwater inundation, fruit trees are dying for the same reason, and for many years now, the Tribe has been unable to grow taro—a crop that is both a staple food and essential for custom:

> We have been forced to stop growing Water Taro entirely because of the rising seas. The Taro plantations and gardens that used to be here by the village are gone entirely. The salt water has infiltrated the soil and made it too salty for the Taro to survive. We still grow small quantities of Mountain Taro, but very little, and the Water Taro is gone altogether. This occurred long ago. It was getting worse and worse, and by 1975 it was gone altogether . . .
>
> The loss of the Taro was terrible. We no longer can perform custom with it and there is nothing we can use to replace it.[111]

64. Rising seas are swallowing the coast of the island and regularly flooding the village, while increasingly intense rains have been triggering ever-more-frequent and severe landslides from the mountain.[112] These impacts have substantially reduced the land available to the Tribe for subsistence gardening and threatens their ability to continue to inhabit their island:

> We're worried about the rising seas and how that affects our ability to live on this island. The seas have been flooding our village and houses. The flooding has gone up as much as one meter in the house. And [] the space we have available for gardening is getting smaller and smaller because of the saltwater getting into the soil, and because of the landslides coming down more and more from the mountains.
>
> We know these things are making it harder and harder to live here. But for us, moving is not an option.
>
> Because of the colonisation, we have already lost our lands and been forced to move. We do not want to move again.[113]

65. The story of the Ouara Tribe is representative of experiences of peoples throughout Melanesia, including those contained in the statements MSG supplied to the Court as exhibits

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111 Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, paras. 38-40.

112 Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, paras. 30-37, 56-59.

113 Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, paras. 49-51.

to its Written Statement.[114] Climate change is robbing peoples across Melanesia of natural resources they rely on for subsistence, as well as the natural resources necessary for cultural survival. As this Court has recently confirmed, such deprivation of PSNR amounts to a clear violation of the right to self-determination.[115]

66. This is also true at the level of a sovereign nation of people. For example, climate impacts in the Republic of Vanuatu have decimated agricultural resources, leaving much of the nation's people struggling to meet subsistence needs and crippling the commercial agricultural sector, which is a mainstay of the nation's economy.[116]

67. Throughout Melanesia, the adverse effects of climate change, and in particular sea-level rise, have already rendered traditional territories and ancestral lands uninhabitable.[117] This not only further violates affected peoples' right to PSNR by depriving them of the resources found on those lands, but additionally violates their right to territorial integrity, which is both a "corollary" and an "essential element" of the right of self-determination.[118]

68. The impacts of climate change are additionally undermining self-determination by interfering with the ability of peoples to determine their own political status and to be self-governing.[119] For the peoples of Melanesia, political status and self-governance are directly

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114 *See, e.g.*, Written Statement of the Melanesian Spearhead Group, Ex. 27, Statement of the Women of Yakel Village, Vanuatu, paras. 9-34 (explaining how climate impacts including extreme weather events, increased rain, and increased heat have compromised all natural resources relied upon by the people of Yakel, resulting in starvation and stunted growth); Written Statement of the Melanesian Spearhead Group, Ex. 16, Statement of Hilary Fioru, paras. 28-35 (explaining that sea-level rise, heavy rain, and flooding have destroyed traditional fishing grounds and near-shore reef, which were relied upon for sustenance).

115 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 240 ("[I]n depriving the Palestinian people of its enjoyment of the natural resources in the Occupied Palestinian Territory for decades, Israel has impeded the exercise of its right to self-determination.").

116 Written Statement submitted by the Republic of Vanuatu, Ex. R, Impact Statement of Antoine Ravo, Director of the Department of Agriculture, Republic of Vanuatu, paras. 7-30, 37-40.

117 *See, e.g.*, Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, paras. 9, 20; Written Statement of the Melanesian Spearhead Group, Ex. 8, Statement of Sailosi Ramatu, paras. 20-21.

118 *See, e.g.*, *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, paras. 237-238.

119 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 241 ("[A] key element of the right to self-determination is the right of a people freely to determine its political status and to pursue its economic, social and cultural development.").

tied to the natural world, and so, climate-induced loss of natural resources and collapse of natural systems equates to the collapse of ancestrally developed political systems and means of self-governance—systems of governance that have been in place for thousands of years. For example, the people of Yakel on Tanna Island, Vanuatu select their highest leader during their most important ceremony, a four-day ceremony of dance called the *Naukial*. Many dances are performed at the ceremony, the most important of which is called the *Toka*. As Mangau Iokai, an elder and leader of Yakel explains:

> **The *Toka* is essential to our governance**. It is during the *Toka* that we decide who is the *Ialmalu*, the high chief of our village. . . . To perform the *Toka*, we must have Yam. It is only the Yam that is used in the *Toka*, that is how important it is.
>
> The Yam plays a vital role because the Yam is the chief of the crops and the *Toka* is the dance to decide the *Ialmalu*. The Yam also gives us energy to dance for all four days.[120]

Due to increasingly erratic seasonal weather patterns, especially intensifying rain, the Yam has been struggling to grow in Yakel (and indeed in many places throughout Melanesia) for over a decade. For the past four years, the people of Yakel—despite their best efforts—have been unable to grow the Yam altogether.[121] Mangau Iokai explains that the loss of the Yam has undermined Yakel's system of governance: "Now that the Yam is gone, the *Naukial* is not being done as much anymore. I am not sure it can survive into the future."[122]

He further explains that it would be no solution to import Yams from other regions, where the climate still allows them to be grown:

> The Kastom [we are] practicing is here. It is for this place. . . I can't go get Yams from another place to use in the Kastom ceremonies. It wouldn't be connected to our place or our spirits.[123]

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120 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, paras. 53-54 (emphasis added).

121 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, paras. 33-46.

122 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, paras. 56-57.

123 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, para. 58.

69. The significance of where the Yam is grown, who grows it, how it is grown and the safekeeping of the Yam, the knowledge associated with it and its central place in Yakel culture is all held within the wisdom of Mangau Iokai because he is the *Tupunis* of the Yam. This means he is the caretaker of the Yam, the one who has a special relationship with the Yam and holds sacred knowledge of it, including the knowledge of the Yam as an ancestor.[124] This role was passed down to Mangau Iokai through a Chiefly lineage,[125] which also makes him on of the leaders of Yakel, participating in its political governance.

70. By depriving the people of Yakel of an essential component of their governance structure, the adverse effects of climate change have deprived them of an equally essential aspect of their right to self-determination. The violation is all the more egregious because Yakel is a *kastom* village, meaning that the people have "chosen not to adopt Western ways of living but maintain our traditional ways," even in the face of often violent outside influences over centuries, including colonialism, missionaries, and capitalism.[126] Now, the people of Yakel are being forced to abandon the ancestral ways of life they have fought so hard to maintain—including their sophisticated governance systems developed over time and generations—as a consequence of climate change.

71. Climate change is also undermining this aspect of self-determination at the level of sovereign States. For example, MSG Member Vanuatu established itself as a sovereign State in 1980 as an act of self-determination following a century of colonial rule by the British and French. Evidence provided in connection with Vanuatu's Written Statement demonstrates that over the past decade, intensifying cyclones and other natural disasters have thrown Vanuatu into a near-constant state of emergency, preventing the government from taking steps toward achieving any of its national priorities or objectives, including its development policies.[127]

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124 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, paras. 16-26.

125 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, paras. 27-32.

126 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, para. 7.

127 Written Statement submitted by the Republic of Vanuatu, Ex. T, Impact Statement of Abraham Nasak, para. 7 ("[I]n recent years it has been hard for us to implement any of our goals because we are always in disaster response. While we can plan big, we can only implement projects that can be implemented on say a one-month, two-month, three-month window, because that is the most time we have before we are hit with another disaster."); Written Statement submitted by the Republic of Vanuatu, Ex. P, Impact Statement of Rothina Ilo Noka, Director for the Department of Women's Affairs, Republic of Vanuatu, para. 16 ("Because the Department is constantly in emergency response

72. Peter Korisa Kamil, Head of the Disaster Recovery Coordination Unit within the Republic of Vanuatu Department of Strategic Policy, Planning and Aid Coordination has explained, "when we have unforeseen disasters happening so frequently, they disturb the Government's normal planning process and we have to constantly re-focus and re-prioritise."[128] He further explains that Vanuatu's national policy is guided by the country's National Sustainable Development Plan, but that:

> It is very difficult to stick to our policy objectives as we are required to continuously adjust them in line with the continuous disruption caused by intense tropical cyclones . . .
>
> Not only do these climate change induced disasters throw us off our policy objectives, they also destroy work completed during peace times in pursuit of our sustainable development policy objectives. For example, as part of policy implementation, a sealed road may be built around one of the islands, and then a cyclone hits and damages that road and it has to be built again. This disrupts economic progress, stresses our finances, and for many of these infrastructure projects, places us further in debt.[129]

73. This near-constant occurrence of climate-induced disasters, including five intense (category 4 or 5) cyclones between 2017 and 2023, has also required the diversion of much of Vanuatu's national budget to relief and recovery efforts while simultaneously destroying the nation's most lucrative sectors—tourism and agriculture. These twin harms have drained Vanuatu's limited resources, leaving the country with neither the funds nor the capacity for disaster-response, let alone achieving its development priorities. As a result, Vanuatu has been forced to increase its reliance on outside aid, which often comes in the form of loans

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mode, we cannot carry out our development work and advance the strategic areas in the National Gender Equality policy. 2023 has been an especially difficult year for my colleagues. Everybody is tired. Every time we attempt to look at development plans, another cyclone happens and we have to drop everything and go into emergency response mode again.").

128 Written Statement submitted by the Republic of Vanuatu, Ex. Q, Impact Statement of Peter Korisa Kamil, Head of the Disaster Recovery Coordination Unit within the Department of Strategic Policy, Planning and Aid Coordination, Republic of Vanuatu, para. 31.

129 Written Statement submitted by the Republic of Vanuatu, Ex. Q, Impact Statement of Peter Korisa Kamil, Head of the Disaster Recovery Coordination Unit within the Department of Strategic Policy, Planning and Aid Coordination, Republic of Vanuatu, paras. 32-33.

that impose restrictive conditions on the use of funds.[130] As Rothina Ilo Noka, Director for the Vanuatu Department of Women's Affairs notes:

> The last thing we want to do is make our people become dependent on aid. To become dependent on aid that may have strings attached to it. I am scared of the strings that may be attached to the aid we are receiving. Are Ni-Vanuatu suffocating ourselves with all this aid coming in?[131]

74. In its Written Statement, MSG Member Solomon Islands likewise explains that the devastating impacts of climate change on its natural resources, peoples, and institutions "has been a key factor undermining Solomons' sustainable development."[132]

75. MSG submits that the constant need to respond to climate disasters, and thus abandon other national priorities, has deprived Vanuatu, Solomon Islands, and other climate-vulnerable nations of their ability to "freely pursue their economic, social and cultural development" in violation of their right to self-determination.[133] The state of dependency forced on these nations as a result of ceaseless climate-induced disasters further violates their right to self-determination, depriving them of autonomy over their own climate response, development aspirations, and, indeed, ability to freely determine their own futures.[134]

76. Finally, MSG submits that the adverse effects of climate change infringe on the right to self-determination of peoples across Melanesia by undermining their very existence as peoples. Self-determination, at its core, protects the fundamental right of peoples to exist, including

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130 Written Statement submitted by the Republic of Vanuatu, Ex. Q, Impact Statement of Peter Korisa Kamil, Head of the Disaster Recovery Coordination Unit within the Department of Strategic Policy, Planning and Aid Coordination, Republic of Vanuatu, paras. 34-35.

131 Written Statement submitted by the Republic of Vanuatu, Ex. P, Impact Statement of Rothina Ilo Noka, Director for the Department of Women's Affairs, Republic of Vanuatu, para. 45.

132 Written Statement of Solomon Islands, para. 89 (citing Honourable Manasseh Damukana Sogavare, Prime Minister of the Solomon Islands, *A Watershed Moment: Transformative Solutions to Interlocking Challenges*, Speech, Opening Debate of the 77th Session of the United Nations General Assembly (23 Sept. 2022)).

133 ICCPR, art. 1(1); ICESCR, art. 1(1).

134 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 241; *see also* A.S. Bordner et al., *Colonial dynamics limit climate adaptation in Oceania: Perspectives from the Marshall Islands*, 61 Global Environmental Change, p. 8 (2020) (citing W.E. MURRAY ET AL., AID OWNERSHIP AND DEVELOPMENT: THE INVERSE SOVEREIGNTY EFFECT IN THE PACIFIC ISLANDS (Routledge 2019)).

through political, economic, social, and cultural dimensions.[135] The rich and distinct identities of the peoples of Melanesia have developed out of and are indivisible from their territories and biodiversity. The peoples of Melanesia are inseparable from their environments; they are one and the same. For example, the Biangai people of Papua New Guinea are known as "placepersons," a term which indicates the deep connections between people and their place, such that "it is hard to distinguish persons from place and vice versa in terms of what it means to be Biangai."[136] The same holds true for many peoples throughout Melanesia and the broader Pacific.[137]

77. Jean-Yves Poedi is a member of the Kanak Customary Senate in New Caledonia, in which capacity he serves as the referent for everything related to the sea. He was appointed to this role because of his expert knowledge of Kanak culture and the marine environment. He provides knowledge, advice, and expertise to inform the Senate's activities with respect to the sea.[138] He explains:

> In the West, they see a separation between man and the environment. In the Kanak world, there is no space. We are all of these things. We are them. We are one of the elements that make up the environment. We are the sharks, we are the trees, we are the stones, we are all that. There is no space, so when we disturb or hurt the environment, we hurt ourselves.[139]

He further explains that several marine species traditionally found in his area have disappeared due to warming ocean temperatures and that this fundamentally threatens Kanak existence, which is inseparable from those species. Indeed, these species are part of the genealogy that "is at the core of Kanak life." He explains further that:

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135 ICCPR, art. 1(1); ICESCR, art. 1(1).

136 Written Statement of the Melanesian Spearhead Group, Ex. 33, Expert Statement of Professor Jamon Halvaksz, para. 8.

137 Written Statement of the Melanesian Spearhead Group, Ex. 32, Expert Statement of John Aini, paras. 13-19.

138 Written Statement of the Melanesian Spearhead Group, Ex. 9, Statement of Jean-Yves Poedi, para. 3.

139 Written Statement of the Melanesian Spearhead Group, Ex. 9, Statement of Jean-Yves Poedi, para. 52.

> Now that the species have disappeared there is a link missing in the genealogy. The genealogy is incomplete. Part of who we are is gone.
>
> The biodiversity around us creates our world and is also how we understand the world . . . the entire culture is in danger of collapsing and disappearing as a result of the loss of these species.[140]

78. Sailosi Ramatu, the former headman of Vunidogoloa Village, Fiji, likewise explains that communal identity is linked to the *Vanua*, the land, and that his people's identity was broken when they were forced to relocate from their land due to rising seas:

> The *Vanua* is our identity because we are registered under it. It is like our mother. It gives us everything. When we die, we become one with the *Vanua* again. Our ancestors who have passed away are already part of the *Vanua*. When the land is destroyed and washed away by the sea water coming in, it is like killing us. Because of this, we have had to move from our land to a foreign land.[141]

79. The connection between the peoples of Melanesia and their places is deeper than can be expressed in the English language. Nevertheless, these few stories provide surface-level examples of the ways in which the existence of the peoples of Melanesia cannot be separated from the well-being and integrity of their territories, environments, and biodiversity. Climate change has already fundamentally altered the environment and forced many peoples throughout the Melanesian subregion to leave the lands and waters that are inseparable from their collective identities and existence. As MSG has demonstrated, these ruptures between people and place have undermined the very existence of peoples throughout Melanesia in clear violation of their right to self-determination.

80. These and other climate-induced violations of self-determination occurring across the Melanesian subregion are the direct consequence of the Relevant Conduct. MSG recalls that self-determination is a *jus cogens* norm of international law,[142] generating *erga omnes*

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140 Written Statement of the Melanesian Spearhead Group, Ex. 9, Statement of Jean-Yves Poedi, paras. 23, 28.

141 Written Statement of the Melanesian Spearhead Group, Ex. 8, Statement of Sailosi Ramatu, para. 20.

142 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 232.

obligations to protect, respect, and uphold the right of all peoples to self-determination.[143] It is "one of the essential principles of contemporary international law"[144] and has been operational since at least 1945, when it was enshrined in the UN Charter as one of the fundamental purposes of the United Nations.[145] As such, MSG submits that pursuant to their obligations under the norm of self-determination, States have been required—since at least 1945—to avoid and prevent the adverse effects of climate change on the self-determination of all peoples. MSG further submits that discharging these obligations requires States to, *inter alia*, refrain from causing (further) significant harm to the climate system and other parts of the environment; provide adaptation assistance to impacted peoples to avoid climate impacts that impinge on their exercise of self-determination; and provide reparation for harm that has already occurred as a consequence of their conduct, in accordance with the general rules of State responsibility.

81. As the foregoing examples demonstrate, the adverse effects of climate change have **already** caused grievous violations of the right to self-determination of peoples throughout the Melanesian subregion. In light of the severity and gravity of these violations, MSG respectfully requests that the Court pay particular attention to self-determination in rendering its advisory opinion, and to confirm that States that have engaged in the Relevant Conduct have breached their obligations to respect, protect, and fulfil the right to self-determination, triggering legal consequences.

82. Finally, MSG stresses that the impacts of climate change are particularly severe for colonised peoples, including the Kanak people of New Caledonia (represented by MSG Member FLNKS), as well as the Melanesian peoples of West Papua and the Torres Strait, who have not yet attained self-determination.[146] MSG thus further urges the Court to consider the

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143 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 241 (citing *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 155; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 I.CJ. Rep., p. 95, para. 180).

144 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 241 (quoting *East Timor (Portugal v. Australia)*, Judgment, 1995 I.C.J. Rep., p. 90, para. 29).

145 U.N. Charter, art. 1(2) (1945).

146 Written Statement of the Melanesian Spearhead Group, paras. 17-19, 246-251.

struggles of colonised peoples experiencing the adverse impacts of climate change in providing its answer.

C. Human Rights

i. State human rights obligations apply extraterritorially in the context of climate change

83. MSG reiterates the submissions made in its Written Statement that States' hold both customary and treaty-based human rights obligations, that these apply extraterritorially in the context of climate change, and that States engaged in the Relevant Conduct have breached these obligations—having already contributed to serious human rights violations, including of the rights of peoples throughout Melanesia.[147]

84. The majority of States and international organisations in these proceedings that made submissions in respect of human rights take the same view as MSG,[148] but a minority of submissions suggest either (1) that human rights law does not apply in the context of climate change at all;[149] or (2) that human rights law applies to domestic climate action (such as domestic adaptation measures), but that States' human rights obligations do not extend

147 *See* Written Statement of the Melanesian Spearhead Group, paras. 252-264.

148 *See, e.g.*, Written Statement submitted by the Republic of Vanuatu, paras. 253, 260; Written Statement of Solomon Islands, paras. 164, 200; Written Statement of OACPS, paras. 112-128; Written Statement of the Republic of Singapore, para. 3.75; Written Statement of the Republic of the Marshall Islands, paras. 49-50; Written Statement of the Republic of Kiribati, paras. 155-170; Written Statement of the Republic of Ecuador, paras. 3.97-3.98, 3.113; Written Statement of the Arab Republic of Egypt, paras. 198-205, 244-247; Written Statement of the Republic of Chile, paras. 68-70; Written Statement of Tuvalu, paras. 98-102; Written Statement of the Republic of Costa Rica, paras. 66-67, 110; Written Statement of Burkina Faso, paras. 190-194; Written Statement of the Democratic Republic of Congo, para. 189; Written Statement of the Republic of Colombia, paras. 3.69-3.72; Written Statement of the Republic of Peru, paras. 88-89; Written Statement of the Republic of Kenya, paras. 5.51-5.53; Written Statement of the Bahamas, paras. 141-175; Written Statement of the Independent State of Samoa, paras. 180-186; Written Statement of the African Union, paras. 208-209; Written Statement of the Republic of Namibia, paras. 79-81; Written Statement of the Republic of the Marshall Islands, paras. 49-50; Written Statement of the European Union, paras. 243-284; Written Statement of Antigua and Barbuda, paras. 171-196, 358; Written Statement of the Plurinational State of Bolivia, paras. 13-14; Written Statement of the Dominican Republic, para. 5.1; Written Statement of the Kingdom of Thailand, paras. 27-28; Written Statement of the Republic of Latvia, paras. 65-67; Written Statement of the Government of Nepal, paras. 19, 31.

149 Written Statement of the United States of America, para. 4.43; Written Statement from the French Republic, paras. 111-112; Written Statement of the Russian Federation, pg. 11; Written Statement of Australia, para. 3.64-3.67; Written Statement of Germany, para. 94; Written Statement of the United Kingdom of Great Britain and North Ireland, paras. 122-123; *cf.* Written Statement by the Swiss Federation, para. 62; Written Statement by the Governments of Denmark, Finland, Iceland, Norway and Sweden, paras. 84-89; Written Statement Submitted by the Government of the Republic of Indonesia, para. 35.

extraterritorially.[150] As MSG will explain, these arguments are not legally correct and should be rejected.

85. First, certain States contend that human rights obligations do not apply in the context of climate change because human rights instruments do not "have as [their] objective the protection of the climate system and other components of the environment"[151] nor do they contain any "express or implied requirements for State Parties to mitigate GHG emissions."[152]

86. Human rights law has, as its straightforward objective, the protection and fulfilment of the human rights of all peoples. States' human rights obligations thus apply in respect of any issue that would infringe on human rights, be it climate change, poverty, disease, or any of the myriad sources of harm which could imperil human rights. None of these sources of harm can be characterised as the "object" or "purpose" of the international human rights regime. Thus, if taken to its logical conclusion, this problematic argument would render human rights law inapplicable to virtually all real-world contexts in which States' acts and omissions violate human rights. This position is untenable, as it would effectively gut the human rights regime, leaving it utterly ineffectual. The argument is, moreover, contrary to the well-established views of human rights tribunals, treaty bodies, and the UN Human Rights Council, which have all consistently determined that States' human rights obligations apply in the climate change context.[153]

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150 Written Statement of New Zealand, paras. 116-117; Written Statement of the People's Republic of China, paras. 117-124; Written Statement by the Governments of Denmark, Finland, Iceland, Norway and Sweden, para. 86; Written Statement of the Kingdom of the Netherlands, para. 3.35; Written Statement from the French Republic, paras. 133-134; Written Statement of the United States of America, paras. 4.48, 4.53; Written Statement of the Russian Federation, pp. 9-11; Written Statement of Australia, paras. 3.64-3.65; Written Statement of Germany, paras. 92-94; Written Statement of the Government of Canada, paras. 25-26.

151 Written Statement from the French Republic, para. 111; *See also* Written Statement of the United Kingdom of Great Britain and North Ireland, paras. 122-123.

152 Written Statement of the United States of America, paras. 4.43, 4.50; Written Statement of New Zealand, para. 114 ("[T]he international human rights law framework does not contain provisions requiring States to take steps to protect the climate system and other parts of the environment from anthropogenic climate change").

153 *See, e.g.*, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20, ECtHR, paras. 544-554, 573-574 (9 Apr. 2024) (link); Human Rights Committee, *General Comment No. 36: Article 6: Right to Life*, U.N. Doc. CCPR/C/GC/36, para. 62 (3 Sept. 2019); Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy and others v. Australia*, CCPR/C/135/D/3624/2019, para. 8.13 (22 Sept. 2022); Committee on the Rights of the Child, *Chiara Sacchi et. al. v. Argentina, Brazil, France, and Germany*, CRC/C/88/D/l 04/2019, CRC/C/88/D/l 05/2019, CRC/C/88/D/106/2019,

87. Certain States also argue that to the extent human rights law governs the Relevant Conduct, that application is limited to the domestic context. But as MSG and others have explained in their Written Statements, both customary and treaty-based human rights obligations have a clear extraterritorial application in the climate change context.[154] MSG will focus here on rights contained in customary law, the International Covenant on Civil and Political Rights (**ICCPR**), and the International Covenant on Economic, Social and Cultural Rights (**ICESCR)**, though much of the analysis applies equally to rights found in other human rights instruments. MSG endorses the positions advanced in MSG Members Solomon Islands and Vanuatu's Written Statements addressing the application of other human rights instruments, including the Convention on the Rights of the Child (**CRC**).[155]

88. First, the sources of law themselves suggest extraterritorial application is appropriate—or at least do not foreclose such application. The rights enshrined in the UDHR have crystallised into customary norms of international law.[156] These rights belong to "all human beings" and the UDHR imposes no territorial restriction on State obligations.[157] Indeed, States' customary human rights obligations are held *erga omnes*.[158]

89. Likewise, the rights enshrined in the ICESCR are not bounded by a jurisdictional provision, the treaty itself suggests an international character,[159] and States' treaty obligations have

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CRC/C/88/D/107/2019, para. 10.13 (11 Nov. 2021); *see also* Summary Report of the Office of the United Nations High Commissioner for Human Rights on the Outcome of the Full-Day Discussion on Specific Themes Relating to Human Rights and Climate Change, U.N. Doc. A/hrc/29/19, para. 77 (1 May 2015); Ian Fry (Special Rapporteur on the promotion and protection of human rights in the context of climate change), *Promotion and protection of human rights in the context of climate change,* U.N. Doc. A/78/225 (26 July 2022); Human Rights Committee, Res. 7/23, Human Rights and Climate Change (28 Mar. 2008).

154 *See* Written Statement of the Melanesian Spearhead Group, paras. 257-261; Written Statement submitted by the Republic of Vanuatu, paras. 333-336; Written Statement of OACPS, para. 118.

155 *See* Written Statement Submitted by the Republic of Vanuatu, paras. 468-478; Written Statement of Solomon Islands, paras. 186-197.

156 *See* Written Statement of the Melanesian Spearhead Group, para. 257; *see also* Written Statement submitted by the Republic of Vanuatu, paras. 249-253.

157 G.A. Res. 217(III)A, Universal Declaration of Human Rights (10 Dec. 1948).

158 *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment, 1970 I.C.J. Rep., p. 3, para. 34 (deriving obligations *erga omnes* "from the principles and rules concerning the basic rights of the human person"); *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, 2012 Judgment, I.C.J. Rep., p. 422, paras. 64-70.

159 *See* ICESCR, arts. 2(1), 11, 15, 22, 23.

been interpreted to apply extraterritorially by the Committee on Economic, Social and Cultural Rights.[160]

90. As for the ICCPR, Article 2(1) obligates States to respect and uphold the rights enshrined in the Convention with respect to **both** (1) persons within their territory; and (2) persons subject to their jurisdiction.[161] The Human Rights Committee has interpreted "jurisdiction" to encompass persons "under the power or effective control of that State Party, even if not situated within the territory of the State Party."[162] The rationale is that a State should not be allowed "to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory."[163] Thus, in *Chiara Sacchi et. al. v. Argentina, Brazil, France, and Germany*, the Committee on the Rights of the Child interpreted the analogous jurisdictional clause of the CRC to extend States' human rights obligations extraterritorially to all children harmed by climate change. Specifically, the Committee held that "rightsholders fall within a State's jurisdiction" based on the State's ability to "regulate activities that are the source of [GHG] emissions and to enforce such regulations" by virtue of which "the State party has effective control over the emissions."[164]

91. Recent jurisprudence in regional human rights tribunals, as well as interpretations issued by human rights bodies, have likewise overwhelmingly confirmed that human rights obligations apply extraterritorially—particularly in the case of environmental harm.[165] Notably, in its

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160 Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, E/C.12/2000/4, para. 39 (11 Aug. 2000); Committee on Economic, Social and Cultural Rights, *General Comment No. 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food (article 11)*, E/C12/1999/5, paras. 36-37 (12 May 1999); *see also* Written Statement submitted by the Republic of Vanuatu, para. 336.

161 *Legal Consequences of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. Rep., p. 136, para. 111; Human Rights Committee, *General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add. 13, para. 5 (26 May 2004).

162 Human Rights Committee, *General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add. 13, para. 10 (26 May 2004).

163 Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication R12/52 ('Sergio Euben Lopez Burgos v. Uruguay')*, UN Doc. CCPR/C/OP/1, para. 12.3 (29 July 1981).

164 Committee on the Rights of the Child, *Chiara Sacchi et. al. v. Argentina, Brazil, France, and Germany*, CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019, para. 10.9 (11 Nov. 2021).

165 *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R., para. 101-110 (17 Nov. 2017); *Issa and Others v. Turkey*, App. No. 31821/96, ECtHR, para. 71 (30 Mar. 2005) (link) ("Article 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the

Advisory Opinion on the Environment and Human Rights, the Inter-American Court of Human Rights determined that, under the American Convention on Human Rights:

> In cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory. The potential victims of the negative consequences of such activities are under the jurisdiction of the State of origin for the purposes of the possible responsibility of that State for failing to comply with its obligation to prevent transboundary damage.[166]

92. MSG acknowledges the recent decision of the European Court of Human Rights (**ECtHR**) in *Duarte Agostinho v. Portugal*, in which the ECtHR rendered inadmissible an application alleging violations of State parties' obligations under the European Convention on Human Rights vis-a-vis victims of climate change-induced human rights violations located outside of the territories of the respondent States.[167] For the reasons set forth below, MSG submits that this decision is consistent with the conclusion that international human rights obligations apply extraterritorially.

93. First, *Agostinho* was a decision on admissibility and did not consider the scope or content of State obligations in respect of human rights violations that have already occurred, nor the legal consequences that may flow from breach of those obligations. As such, the decision is

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territory of another State, which it could not perpetrate on its own territory."); Joint statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Human rights and climate change*, HRI/2019/1, para. 3 (14 May 2019) ("Under the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Rights of the Child, and the International Convention on the Rights of Persons with Disabilities, States parties have obligations, including extraterritorial obligations, to respect, protect and fulfil all human rights of all peoples. Failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations.").

166 *The Environment and Human Rights*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R., paras. 101-110 (17 Nov. 2017).

167 *Duarte Agostinho v. Portugal*, App. No. 3971/20, ECtHR, paras. 184-213 (9 Apr. 2024) (link). This was the determination in respect of claims against all respondent States except for Portugal, which was rendered inadmissible for failure to exhaust domestic remedies.

of limited relevance to the present question. Moreover, while the ECtHR considered the notion of "jurisdiction" as expressed in the European Convention is narrow,[168] it also noted that "other instruments of international law may provide for a different scope of protection than the Convention."[169] The Court specifically referenced the "Inter-American Court's approach in its Advisory Opinion and that of the CRC in *Sacchi and Others*," explaining that "both are based on a different notion of jurisdiction."[170]

94. MSG submits that the more expansive notion of jurisdiction applied in *Sacchi* is particularly relevant in the present case, as it reflects the broader jurisdictional clauses contained in international human rights treaties. Moreover, some human rights treaties, including the ICESCR and—as recently acknowledge by this Court—the International Convention on the Elimination of All Forms of Racial Discrimination (**ICERD**) do not contain any provisions expressly restricting its territorial application. To the contrary, these instruments contain provisions expressly confirming their applicability "to conduct of a State party which has effects beyond its territory."[171] Human rights obligations under customary law, which are owed to "all people," cannot be credibly understood as territorially confined.

95. These points have significant justice implications in the present case. Indeed, understanding human rights obligations as merely requiring each State to protect its own people against the adverse effects of climate change would entrench and, over time, gravely exacerbate fundamental injustices. As has been well established, those States least responsible for climate change are also worst impacted and least able to respond,[172] often due to legacies of racism, colonialism, and extractivism that have left them with limited resources and

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168 *Duarte Agostinho v. Portugal*, App. No. 3971/20, ECtHR, para. 208 (9 Apr. 2024) (link).

169 *Duarte Agostinho v. Portugal*, App. No. 3971/20, ECtHR, para. 209 (9 Apr. 2024) (link).

170 *Duarte Agostinho v. Portugal*, App. No. 3971/20, ECtHR, para. 212 (9 Apr. 2024) (link).

171 *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, Advisory Opinion, I.C.J. Reports 2024, para. 101.

172 Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement A.2 (2023).

capacity.[173] It would therefore be extremely unjust to hold these States solely responsible for protecting their citizens against the human rights violations caused by climate change—a phenomenon for which they bear negligible responsibility, and which is simultaneously undermining their ability to safeguard the human rights of their citizens. Such an interpretation not only runs counter to well-established rules of treaty interpretation, but also undermines the United Nations' goals of eradicating inequity, effectuating sovereign equality, and enabling justice.[174]

96. The justice question at stake is exemplified by the situation of Vanuatu, which, as discussed above, has been unable to fulfil its sustainable development objectives or advance enjoyment of economic and social human rights due to near-constant climate change-induced cyclones and other natural disasters. Simultaneously, these same events impair the human rights of Vanuatu's citizens, through no fault of the State.[175]

97. In short, failure to properly attribute responsibility for climate change-induced human rights violations to those States that have significantly contributed to the climate crisis will only further entrench inequity and compromise the human rights of the most vulnerable. This is well understood by the peoples of Melanesia, whose human rights, as discussed below, have already been violated. Francois Neudjen, Special Advisor to the Kanak Customary Senate of New Caledonia, explains:

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173 *See generally* E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Ecological crisis, climate justice and racial justice*, U.N. Doc. A/77/549, paras. 4-6 (25 Oct. 2022).

174 U.N. Charter, pmbl. (1945). MSG observes that all but one of the States (China) advancing the argument that human rights obligations are restricted to the domestic context is a colonial power from the global North, which has benefited immensely from carbonisation, and thus is comparatively well-equipped to protect the rights of its own citizens. As such, these States (the United States, Canada, Australia, New Zealand, The Netherlands, France, Germany, Denmark, Finland, Iceland, Norway and Sweden, and Russia) may be less aware or concerned with the justice considerations in relation to this issue, but that does not make these considerations any less essential.

175 *See, e.g.*, Written Statement Submitted by the Republic of Vanuatu, Ex. R, Impact Statement of Antoine Ravo, Director of the Department of Agriculture, Republic of Vanuatu, paras. 41-43 (explaining that climate-induced severe and recurrent cyclones have left many citizens in Vanuatu without sufficient food, while the constant need to respond to damage caused by the cyclones has drained the government's resources and impeded it—despite best efforts—from being able to ensure that all citizens enjoy "the fundamental right to eat").

> We know what is causing all of the changes we are experiencing. It's on the other side of the world, but we know what is going on. We know that the major, primary reason for this is excessive industrialization. It's these fumes. They disturb everything. We must point the finger at who is really responsible. And it's not our stoves. It's not the fumes from our cooking pots causing the damage. Who is responsible for the changes? It's the industrialists and it's the machine that sucks us into this economy. But it is us here in our villages that suffer the consequences.[176]

Likewise, Mangau Iokai, the *Tupunis* for the Yam of Yakel Village, Tanna, Vanuatu shares:

> In 2008, I visited the United States of America. I went to New York, Montana, and Illinois. When I was in Illinois, I saw factories. I saw smoke going up from them that was very thick, the same as clouds.
>
> When I saw the smoke, I knew it was bad, l knew it was affecting the gardens in my area. I knew my place was affected more than in the United States. In the United States, the products from the factory are going into the houses and are protected. But here we depend on our gardens which are outside. They are directly affected by the smoke. When it goes up into the atmosphere, its effect comes down here and harms us.[177]

Ara Kouwo, the headman of Veraibari Village, in the Kikori District of Papua New Guinea, further explains:

> After learning more about [climate change], I spent time overseas and in one city I saw the smoke in the skies from the factories. I could not see blue sky, only for 30 minutes each day. I then realised that we do not have any factories in my village. We do not have any factories in Kikori. We are innocent. We need help.[178]

98. MSG submits that extraterritorial application of human rights obligations is not only legally correct, but required by the fundamental principles of justice and equity that undergird our international legal system.

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176 Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, para. 63.

177 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, paras. 77-78.

178 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 80.

ii. The Relevant Conduct has violated human rights in Melanesia

99. As MSG demonstrated in its Written Statement, the adverse effects of climate change have already caused grave violations of the human rights of peoples throughout the Melanesian subregion. As such, States that have engaged in the Relevant Conduct have breached their obligations to protect, respect, and fulfil human rights, triggering legal consequences.[179] Here, MSG reminds the Court of the magnitude and severity of human rights violations that the peoples of Melanesia have already experienced as a result of climate change. MSG focuses on cultural rights, though these are by no means the only rights that have been violated. Indeed, as demonstrated in the Written Submissions of MSG Members Vanuatu and Solomon Islands, our peoples have already experienced severe violations of myriad human rights, including the right to life, right to health, right to privacy, family and home, right to an adequate standard of living, and rights of the child.[180]

100. MSG fully sets out the content of cultural rights, which are found in customary international law and various human rights instruments, in its Written Statement.[181] Here, MSG reminds the Court that the UDHR guarantees everyone the right "freely to participate in the cultural life of the community"; that the cultural rights enshrined in the ICESCR include the right to "take part in cultural life," including through "access to essential aspects of their culture, including not only language, traditions, and customs," but also "nature's gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there"[182]; that the cultural rights contained in the ICCPR protect the rights of minorities and indigenous peoples to "enjoy their own culture, to profess and practise their own religion, [and] to use their own language"[183]; and that the peoples' right to pursue cultural development is an essential component of the right to self-determination.[184] Variously

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179 *See* Written Statement of OACPS, paras. 119-128.

180 *See* Written Statement Submitted by the Republic of Vanuatu, paras. 343-376; Written Statement of Solomon Islands, paras. 165-204.

181 Written Statement of the Melanesian Spearhead Group, paras. 273-282; *see also* WILLIAM A. SCHABAS, THE CUSTOMARY INTERNATIONAL LAW OF HUMAN RIGHTS, pp. 321-323 (Oxford University Press 2021).

182 Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, para. 16(a) (21 Dec. 2009).

183 ICCPR, art. 27.

184 ICCPR, art. 1; ICESCR, art. 1.

overlapping cultural rights are also enshrined in several other international treaties and instruments, including the ICERD[185] and CRC.[186] Cultural rights are violated when an act or omission has caused a substantial interference with or substantial impact on culture.[187]

101. Further, MSG recalls that indigenous peoples—including the peoples of Melanesia—are guaranteed special protections for cultural rights, in recognition of the intertwined cultural and spiritual identities of indigenous peoples and their lands, waters, and biodiversity. Indeed, as the Human Rights Committee has explained:

> The close ties of Indigenous Peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival; **their relations to the land are a material and spiritual element that they must fully enjoy to preserve their cultural legacy and transmit it to future generations and are, therefore, a prerequisite to prevent their extinction as a people**.[188]

102. Accordingly, the cultural rights of indigenous peoples enshrine "the inalienable right to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity"[189] as well as the right of indigenous peoples to transmit

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185 The ICERD guarantees the rights of minority groups to engage in cultural life and enjoy cultural rights free from discrimination. *See* International Convention on the Elimination of All Forms of Racial Discrimination, 21 Dec. 1965, 660 U.N.T.S. 195, art. 5.

186 The CRC protects the rights of indigenous children, as well as children belonging to ethnic, religious, or linguistic minorities, "in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language," as well as to generally "participate freely in cultural rights." Convention on the Rights of the Child, 20 Nov. 1989, 1577 U.N.T.S. 3, art. 30-31.

187 Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, para. 8.14 (22 Sept. 2022).

188 Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2552/2015* (*Ailsa Roy v. Australia)*, CCPR/C/132/D/2552/2015, para. 8.6 (10 July 2023) (quoting Committee on the Elimination of Racial Discrimination, *Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 54/2013* (*Lars-Anders Ågren et al. v. Sweden)*, CERD/C/102/D/54/2013, para 6.6 (18 Dec. 2020)) (internal quotation marks removed).

189 Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, para. 8.13 (22 Sept. 2022); *see also* Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, para. 36 (21 Dec. 2009) ("Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity"); Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2552/2015 ('Benito Oliveira Pereira et al. Paraguay')*, CCPR/C/132/D/2552/2015, para. 8.6 (21 Sept. 2022) ("The strong communal dimension

their culture to future generations.[190] Indigenous peoples are also guaranteed the right to "not to be subjected to forced assimilation or destruction of their culture," in recognition of the cultural violence that they have experienced at the hands of their colonisers.[191]

103. In the context of the ICCPR, the Human Rights Committee has determined that the adverse effects of climate change on the lands, seas, and biodiversity of indigenous Torres Strait Islanders have already violated their cultural rights by undermining their ways of life and ability to transmit cultural knowledge and traditions to future generations.[192] Although under the jurisdiction of Australia, Torres Strait Islanders are culturally and ethnically Melanesian, and MSG wishes to express solidarity for the struggles they are enduring, including not only violations of their cultural rights, but the ongoing suppression of their right to self-determination while under colonial rule.

104. The diverse cultures and spiritual beliefs of the peoples of Melanesia are inseparable from their lands, waters, and biodiversity. In her expert report, Professor Paige West explains that there is "no separation between the natural world and the spiritual world and the cultural world."[193] She provides an example of the cultural hunting practices of Gimi-speaking peoples in the Eastern Highlands of PNG:

> [T]he relationship people have with where they hunt is about their relationship with the ancestors. They bury their dead or put the bones of the dead on traditional hunting grounds. And because of that, the thing that was the living human, what we would call the 'soul' in English, goes back into that land and it infuses that land.

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of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.").

190 Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, *CCPR/C/135/D/3624/2019*, para. 8.14 (22 Sept. 2022).

191 G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples, art. 8(1) (2 Oct. 2007).

192 Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, para. 8.14 (22 Sept. 2022).

193 Written Statement of the Melanesian Spearhead Group, Ex. 36, Expert Statement of Professor Paige West, para. 17.

> Then the marsupials and other kinds of plants and animals that live on that land take on the soul of the clan.[194]

105. Thus, for Gimi-speaking peoples, the practice of hunting is "a communing of the past, present and the future, and this transference of the soul of the clan into the soul of the forest."[195] Professor West goes on to explain that prolonged droughts caused by climate-change-induced frequent and severe El Nino events have so altered the ecosystems of the Eastern Highlands that animals can no longer be found in the hunting grounds, making it nearly impossible for Gimi-speaking peoples to engage in cultural hunting practices.[196] While elders are still attempting to do so, young people perceive this as pointless.[197] As such, the transmission of cultural knowledge, too, is being lost. Climate change is thus not merely foreclosing a cultural practice, it is disrupting "the meeting of the past, present and future" that is at the core of culture, as well as "the ability to transfer this knowledge and world view to the next generation."[198]

106. This story exemplifies the direct and devastating impacts that the adverse effects of climate change are having on the indivisible environments, spirits, and cultures of peoples throughout Melanesia. Indeed, not only for the Gimi-speaking peoples, but for many of the peoples of Melanesia, climate change has already rendered entire cultural practices unviable; destroyed and degraded natural resources at the centre of cultural life; severed connections to land, water, species, and spirits that are integral to cultural identity; and undermined relationships between communities. Each aspect of culture is interconnected, and so these impacts cannot be viewed in isolation. Rather, they are compounding to cause total cultural collapse, unravelling the fabric of life for many of the peoples of Melanesia. Here, MSG shares stories that exemplify these losses to help the Court understand the egregious cultural rights violations that have already been experienced by peoples across Melanesia. These excerpted stories do not fully express the richness of the cultures discussed, nor the

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194 Written Statement of the Melanesian Spearhead Group, Ex. 36, Expert Statement of Professor Paige West, para. 17.

195 Written Statement of the Melanesian Spearhead Group, Ex. 36, Expert Statement of Professor Paige West, para. 18.

196 Written Statement of the Melanesian Spearhead Group, Ex. 36, Expert Statement of Professor Paige West, paras. 19, 21.

197 Written Statement of the Melanesian Spearhead Group, Ex. 36, Expert Statement of Professor Paige West, para. 20.

198 Written Statement of the Melanesian Spearhead Group, Ex. 36, Expert Statement of Professor Paige West, para. 23.

compounding and cascading ways in which climate change has destroyed them. To gain a fuller (though still incomplete) understanding, MSG implores the Court to carefully read the statements appended to its Written Statement.

107. In Lilisiana Village, Malaita Province, Solomon Islands, rising seas and resulting intensifying storm surges have entirely destroyed the *E're*, the traditional fishing ground, and with it, not only customary fishing practices but communal cultural identity and worldviews tied to that place have been lost. Hilary Fioru, a fisherman from the village, explains:

> I was not able to partake in the communal fishing in our village as it stopped being practiced in our village when I was growing up. Even though our forefathers built the seawall to protect the *E're*, it did not protect it for long. All the mangroves on our shoreline were eventually uprooted by the strong seas and so too, all the sea creatures that lived at their roots.[199]
>
> However, I was told by my grandfather and father of how they used to do communal fishing and about the *E're* and its importance. **They explained to me that the cultural significance of communal fishing in our village is that it brings unity, peace, and harmony.**[200]

108. Communal fishing was more than a customary activity, it was a cornerstone of how the community was organised and of their cultural and collective identity. Hilary explains the significance of the loss:

> I feel sad to lose these practices, practices that used to unite and hold our community and people together. **It is devastating for our people to lose our way of living that breeds unity in our village.**[201]

109. The loss of the *E're* is much more than a "significant impact" on enjoyment of culture. The community has lost natural resources and intertwined cultural practices that were at the heart of their culture, constituting a foundational pillar of their communal cultural identity. As a

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199 Written Statement of the Melanesian Spearhead Group, Ex. 16, Statement of Hilary Fioru, para. 28.

200 Written Statement of the Melanesian Spearhead Group, Ex. 16, Statement of Hilary Fioru, para. 29 (emphasis added).

201 Written Statement of the Melanesian Spearhead Group, Ex. 16, Statement of Hilary Fioru, para. 45 (emphasis added).

result, the community is wholly unable to take part in these essential aspects of cultural life. These deprivations amount to serious violations of cultural rights.

110. Hilary explains further that the *E're* was an essential site for the transmission of culture and that with its destruction, the ability of elders to pass on their knowledge, too, has been lost:

> It was very hard to practice these [fishing] traditions, where there are no fishing grounds to practice on and so the elders are not passing on the knowledge and it is being lost. . . .
>
> **The generational skill of communal fishing has died out**.
>
> When we lost this communal fishing practice, our women's traditional way of weaving big coconut nets for communal fishing was also lost . . . **this skill of weaving coconut nets for communal fishing is now dead and women today in our village no longer have this knowledge and skill.** [202]

This loss of the ability to engage in and transmit cultural practices to future generations represents further violations of cultural rights.

111. For the Tapi and Bule Tribes in North Pentecost, Vanuatu, pandanus is an essential cultural resource required to make *Bwana*: intricate woven and dyed red mats. Jeanette Lini Bolenga, a member of the Tapi Tribe, explains that *Bwana*, which are only created by women, are required for "all of our important ceremonies—weddings, births, deaths, peace, ranking and other ceremonies."[203] The bodies of the dead are wrapped in *Bwana*, which are needed to lay them to rest. *Bwana* are also required for ranking ceremonies, which are essential to community structure and governance—they are the means by which both men and women "acquire titles to have authority and be recognized in the community."[204] And an exchange of *Bwana* between families at a wedding is:

> A means of paying respect to and acknowledging the Creator for your heritage, your lineages, clans, the extended families and your father. It is acknowledging support received since birth, the new life

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202 Written Statement of the Melanesian Spearhead Group, Ex. 16, Statement of Hilary Fioru, paras. 38-40 (emphasis added).

203 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, para. 6.

204 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, para. 10.

> you will enter and the future. The exchange is showing reciprocity and creating a connection, a relationship between the two families and the many clans that make up the Tabi and Bule tribes. . . . So it is about building bonds, maintaining relationships, and strengthening community cohesion.[205]

Thus, just like communal fishing for Hilary's people, for Jeanette's people, the *Bwana* are central to cultural identity: "*Bwana* are just essential to our kastom. They are what bind us together. They are our relationships and identity."[206] Correspondingly, the cultural practice of weaving *Bwana* is "central to a woman's life."[207]

112. Climate change has resulted in increasingly extreme sea-surface temperatures, which in turn have increased the frequency of severe cyclones in Vanuatu.[208] Over the past four decades cyclones have become so severe they have destroyed virtually all pandanus trees in North Pentecost, where Jeanette Bolenga is from.[209] In the past ten years, these severe cyclones have become so frequent that the pandanus trees have been unable to recover before the next cyclone hits.[210] The cyclones have also virtually eradicated the *Labwe* plant, which is the source of red dye used to colour the *Bwana*. As a result of this constant destruction of vital resources, carrying on the tradition of weaving *Bwana* has become "futile."[211] Women are no longer planting pandanus trees, weaving the *Bwana*, or passing that knowledge on to their daughters.[212] Instead, the peoples of North Pentecost must pay for mats sourced from other areas—but the damage caused by severe cyclones have made the resource is so scarce throughout the entire country that it often impossible to purchase enough *Bwana* for the ceremonies.[213] As a result, the essential cultural practices of creating and using the *Bwana*

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205 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, para. 9.

206 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, para. 11.

207 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, para. 41.

208 Written statement submitted by the Republic of Vanuatu, Ex. O, Impact Statement of Robson Tigona, Lecturer in Environmental Sciences at the Vanuatu National University, Republic of Vanuatu, paras. 14, 16-27 (explaining that climate change causing more frequent and extreme El Nino events, which result in higher sea-surface temperatures that induce more severe cyclones).

209 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, para. 35.

210 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, paras. 37-39.

211 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, para. 43.

212 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, paras. 40-43.

213 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, para. 44.

in ceremonies are dying out, and knowledge is being lost, violating the rights of the Tabi and Bule peoples to engage in the traditions and customs that mark their cultural identity, as well as pass on these practices and associated cultural knowledge to future generations. The same type of loss has been experienced by peoples across Melanesia.[214]

113. For many peoples of Melanesia, the heart of culture is the Yam. Francois Neudjen is the special advisor to the Kanak Customary Senate of New Caledonia, a position to which he was appointed because of his deep knowledge of Kanak custom and culture. He explains that for the Kanak people, "[w]e say that the Yam is Man. The Yam is us. Our lives are intertwined . . . **the Yam is custom**."[215] Likewise, Mangau Iokai, *Tupunis* for the Yam of Yakel Village, explains "the Yam is the most important crop in our Kastom . . . We consider it to be the king of the crops. Out of all of the crops in the garden, I need to have the Yam."[216]

114. The Yam holds this central position not only because it is a staple food, but because it is sacred. Some peoples believe the Yam was a gift from God, a primary ancestor, and hold rich creation stories centred on the Yam.[217] Other peoples' migration stories are connected to the Yam.[218] For peoples that hold these beliefs, "our seasons, our cultures, and our lives are centred around the life and growth of the Yam."[219] All cultural practices, including

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214 *See, e.g.*, Written Statement of the Melanesian Spearhead Group, Ex. 17, Statement of Faye Mercy Saemala, paras. 38-54 (explaining that loss of coral reef habitat due to flood-induced run-off and ocean acidification has caused the disappearance of shells essential to creating *Tafuliae*, shell money, which is used in the cultural legal system as a means of compensation and reconciliation, as well as ceremonial exchange to build bonds and ensure community cohesion); Written Statement of the Melanesian Spearhead Group, Ex. 36, Expert Statement of Professor Paige West, paras. 17-23 (explaining that climate-induced drought has resulted in disappearance of marsupials from hunting grounds and thus loss of traditional hunting practices, as well as transmission of those practices for the Gimi-speaking communities in the Eastern Highlands of PNG).

215 Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, para. 23 (emphasis in original); *see also* Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, para. 18 ("The Yam is everything. It is the centre of our lives. It is sacred. It is who we are."); Written Statement of the Melanesian Spearhead Group, Ex. 9, Statement of Jean-Yves Poedi, para. 39 ("We have to have the Yam to perform our customs. Yam is part of us. It's our family. It's a relationship.").

216 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, para. 16.

217 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, paras. 17-26; Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, paras. 74-80.

218 Written Statement of the Melanesian Spearhead Group, Ex. 10, Statement of Yvon Kona, para. 32; Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, para. 24.

219 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, para. 73; Written Statement of the Melanesian Spearhead Group, Exhibit 11, Statement of Francois Neudjen, para. 25 (explaining that the cycle of the Yam "is also the cycle of our year, of our lives."); Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, para. 21 ("Our lives are centered around the cycle of the Yam and the

agriculture, fishing, conservation, ceremony and ritual, weddings, funerals, and governance, depend on the growing cycle of the Yam, which in turn is interconnected with the cycle of hot and cold seasons, moon phases and the stars, the tides, the cycle of fisheries, the flowering and fruiting of native plants, and the migration of certain animals.[220] Special Advisor to the Kanak Customary Senate, Francois Neudjen explains "**because the Yam depends on the predictable temperatures, weather, rain, and seasons, these are all essential factors of our culture**."[221]

115. Climate change has disrupted these predictable seasonal patterns by forcing more frequent and intense El Nino and La Nina events, resulting in erratic weather oscillations between extreme heat and extreme rainfall.[222] These changes have caused the Yam to struggle throughout the subregion. Francois Neudjen explains that, in New Caledonia, "there has been an upheaval. Something has gone wrong. The seasonal cycle has been disrupted. We haven't been able to plant as we should."[223]

116. Expert gardeners across impacted communities observe that there is now too much rain and too much sun, and this is causing the Yam to fail.[224] The rain especially is impacting the

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seasonal calendar, which as we explained are related to all elements of the land and the sea. The Yam cycle has always been the organizing principle of Kanak life."); Written Statement of the Melanesian Spearhead Group, Ex. 8, Statement of Sailosi Ramatu, para. 24.

220 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, paras. 79-93; Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, paras. 23-25; Written Statement of the Melanesian Spearhead Group, Ex. 18, Statement of Francis Hickey, paras. 14-31; Written Statement of the Melanesian Spearhead Group, Ex. 9, Statement of Jean-Yves Poedi, paras. 38-46; Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, paras. 13-21.

221 Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, para. 27 (emphasis added).

222 Written Statement submitted by the Republic of Vanuatu, Ex. O, Impact Statement of Robson Tigona, Lecturer in Environmental Sciences at the Vanuatu National University, Republic of Vanuatu, paras. 19-34 (explaining that climate change causing more frequent and extreme El Nino and La Nina events, which cause both erratic and extreme weather conditions and increasingly intense cyclones, in Vanuatu, "Climate change has increased the frequency and intensity of El Nino events; meaning extremely low rainfall. At the same time, climate change has led to the increase in frequency and intensity of La Nina events meaning extremely high rainfall. So you either have a lot of rainfall that causes flooding and landslides or you have drought. In between this, you have severe tropical cyclones. All of this affects people's lives and livelihoods. That's the reality in Vanuatu right now because of climate change"); Written Statement of the Melanesian Spearhead Group, Ex. 37, Expert Report prepared by the Pacific Community, p. 9-11 (explaining the same changes are occurring as a result of climate change throughout the Melanesian subregion).

223 Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, para. 28.

224 *See, e.g.*, Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, para. 9; Written Statement of the Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, paras. 30-32; Written Statement of the Melanesian Spearhead Group, Ex. 29, Statement of Werry Narua, para. 35.

Yam. For example, Mangau Iokai of Yakel, Tanna, Vanuatu, who is 78 years old and has been growing Yam since he was a child, observes that "[w]e are getting too much rain and coming at the wrong times. It is causing the Yam to shrink and die."[225] Compounding these changes, increasing extreme events, including sea-level-rise-induced flooding, flooding-induced landslides, and increasingly severe cyclones, are destroying the Yam gardens.[226]

117. As explained in relation to the right to self-determination, in Yakel, these changes have rendered the Yam unviable. For the past four years, it has no longer been able to grow. This has not only undermined political self-determination, but **all aspects** of culture. The Yam is essential to cultural identity and to all customary ceremonies and rituals. The community is still going through the motions of these rituals, but as Mangau Iokai explains, "although I am still preforming the ceremony, it doesn't feel right in my heart. **The ceremonies are worthless without the Yam**."[227] He worries about the continued viability of his culture without the Yam: "We have stayed with our beliefs, even though other religious beliefs have come to Tanna. Now it is hard for us without the Yam."[228] Likewise, women of the community explain that the English language does not contain a word suitable to express the depth of cultural loss they have experienced:

> We have a word to describe the way it feels to perform the ceremony without the Yam, but there is no English translation. The best way we can describe it is to say the ceremony is devalued. But that doesn't really capture the depth of our feeling or the meaning of doing the ceremony without the Yam.[229]

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225 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, para. 34; Written Statement of the Melanesian Spearhead Group, Ex. 27, Statement of the Women of Yakel, paras. 9-10; Written Statement of the Melanesian Spearhead Group, Ex. 9, Statement of the Jean-Yves Poedi, paras. 46-67; Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, paras. 29-33.

226 Written Statement of the Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, paras. 27-29 (cyclones and landslides); Written Statement of the Melanesian Spearhead Group, Ex. 27, Statement of the Women of Yakel, paras. 13-21 (cyclones and landslides); Written Statement of the Melanesian Spearhead Group, Ex. 33, Expert Statement of Professor Jamon Halvaksz, paras. 17-21 (flooding); Written Statement of the Melanesian Spearhead Group, Ex. 10, Statement of Yvon Kona, paras. 21-22 (flooding and landslides); Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, paras. 25-36 (sea-level rise, flooding, and landslides).

227 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, para. 57 (emphasis added).

228 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, para. 59.

229 Written Statement of the Melanesian Spearhead Group, Ex. 27, Statement of the Women of Yakel, para. 34.

118. In other places, the Yam has not yet vanished, but changing weather and climate conditions have resulted in such poor yields that there often are not enough Yam to perform culturally vital ceremonies. For example, communities in New Caledonia have been forced to replace the Yam with purchased food. Yvon Kona, a member of the Kanak customary senate, explains that the use of purchased food voids the ceremonies of value, prevents transmission of culture, and undermines the spiritual relationships that are core to Kanak culture and ways of being:

> An important part of the ceremony is the discourse, the speech, that describes our relationship to the Yam. When we use purchased food, the sense is gone. The spirit is gone. The relationship is gone. It feels despicable. It isn't right.
>
> The ceremonial speech is itself a discourse on the state of the Yam, a way to explain our practices to the next generation. For example, that we are going to cut off the head of the Yam and replant it for next year, to have in the future. That we keep the rest to eat. So, when we are forced to replace the Yam with purchased food, the speech no longer makes sense and no longer fulfils its purpose.[230]

119. As these stories demonstrate, without the Yam, essential cultural and religious practices cannot be meaningfully performed, meaning that impacted peoples are unable to engage in their traditions and customs. The loss of the Yam has also severed spiritual connections and relationships that form an essential aspect of culture, and has prevented the transmission of culture knowledge. Each of these harms represents clear cultural rights violations. But more than that, because the Yam **is custom**, it is central to the cultural identity and existence of many of the distinct cultures across the Melanesian subregion.[231] Its loss thus imperils cultural survival. As Kanak Customary Senate member, Yvon Kona explains: "Now because of the changes in the weather, we are left with money, with sugar, with rice, instead of our customs. **We lose our traditions**."[232]

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230 Written Statement of the Melanesian Spearhead Group, Ex. 10, Statement of the Women of Yvon Kona, paras. 39-40.

231 Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, para. 23 (emphasis in original).

232 Written Statement of the Melanesian Spearhead Group, Ex. 10, Statement of Yvon Kona, para. 41 (emphasis added).

120. Other crops, including taro, coconut, and banana form essential aspects of culture, and these too are disappearing because of climate change.[233] For example, changing weather conditions—too much rain and too much sun—have caused the loss of traditional medicinal plants in many communities. The practice of traditional medicine has become impossible, as has the ability to pass that knowledge on to future generations.[234] Werry Narua, an expert banana cultivator and knowledge holder from Port Resolution, Vanuatu, explains the impact of such loss:

> Traditional medicine is still very important in my village and the whole of Tanna . . . The Banana is one of the medicines. Because my family and I have a special relationship to and knowledge about the Banana, they will come to us to ask for the medicine. There is a whole Kastom exchange that accompanies this request. They will take the traditional medicine, which will cure their sickness.
>
> The loss of the varieties of banana means that we are unable to fulfil this traditional and important function as custodian of the Banana and this means that without traditional medicine, the sickness cannot be cured.[235]

121. Certain customary resources are essential for maintaining connections to the spiritual realm. The Malangan people of PNG engage in a practice known as the *Vala*, whereby "people with deep ritual knowledge and experience call on that knowledge, their relationships with their ancestors, their ecological knowledge and their relationships with certain marine species in the work they do to create favourable conditions on a reef."[236] Lime powder serves as the

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233 Written Statement of Melanesian Spearhead Group, Ex. 10, Statement of Yvon Kona, paras. 36-37 ("Taro is also one of our most important crops. For inland people, whereas Yam is man, Taro is woman. We only eat the tuber of the Yam, but the Taro we can eat every part of it—the tuber, the stem, the leaves. Taro grows in damp places. It needs water to grow. It is our staple. We depend upon Taro for life. So we say Taro is woman because women are essential to life. If there are no women, we simply eat, we consume ourselves, we don't exist. Taro is life, plain and simple. In this way, it can be said that Taro is even more important than Yam. Our Taro is failing. We plant it near the river because it needs the damp, watery area to grow. But because of all the rain, the river is flooding and destroying the Taro. It is too wet now, and the Taro is rotting. We plant but then we have to abandon the gardens because they are ruined."); Written Statement of Melanesian Spearhead Group, Ex. 12, Statement of Ouara Tribe, paras. 38-40 (loss of taro); Written Statement of Melanesian Spearhead Group, Ex. 8, Statement of Sailosi Ramatu, paras. 27-31 (loss of taro); Written Statement of Melanesian Spearhead Group, Ex. 17, Statement of Faye Mercy Saemala, paras. 55-62 (loss of coconut).

234 Written Statement of Melanesian Spearhead Group, Ex. 16, Statement of Hilary Fioru, paras. 67-70; Written Statement of Melanesian Spearhead Group, Ex. 22, Statement of Naus Iaho, paras. 5-15; Written Statement of Melanesian Spearhead Group, Ex. 25, Statement of Sera Nawahta, paras. 2-10.

235 Written Statement of Melanesian Spearhead Group, Ex. 29, Statement of Werry Narua, paras. 37-38.

236 Written Statement of Melanesian Spearhead Group, Ex. 32, Expert Statement of John Aini, para. 27.

vehicle to commune with the spirits when performing the *Vala* and other rituals. In the past, lime powder was sourced from coral, but the coral is struggling to survive as high tides break the reef apart and ocean acidification cause them to bleach and die. The people have turned to dead giant clam and kina shells to source the lime powder. But these organisms, which live in the shallows, are being impacted by high tides too.[237] John Aini, a Malangan cultural expert explains that "[i]f we lose the giant clam and the kina shells and, therefore, our source of lime, we lose our ability to carry on these ceremonies, including those essential to our revitalised traditional conservation methods and to our sustenance."[238]

122. Likewise, in Yakel, Johnny Loh, a gardener, explains that kava, called *Nikkaowah* in his language, is "how we access the spirits. It is the gateway to the spirits."[239] It is customary for the boys and men of Yakel to go to the *Imalul*, the spiritual heart of the village, in the late afternoon each day to drink *Nikkaowah*. "It is our way of life. When the sun moves to a certain point in the sky, it is time for the men and boys to come to the *Imalul* and drink *Nikkaowah*."[240] This ritual also forms "an important bond between elders and children. This is where the young boys and men meet to learn about the Kastom and ways of life."[241]

123. During these daily gatherings, the men used to perform a ceremony called the *Tamafah*, in which they "drink the *Nikkaowah* and commune with the spirits to ask them to look after our crops. [It] is like a prayer. We pray for the garden crops."[242] But changes to the weather have caused the *Nikkaowah* crop to fail. The rain is too hard, the sun is too hot, and the plant cannot tolerate these conditions. Gardeners are trying everything that they can to keep the plants alive, but they continue to fail.[243] Although the men pool all of the *Nikkaowah* they have grown, there still is often not enough to perform the *Tamafah*. Johnny Loh explains: "We used to perform the *Tamafah* [daily], as is our Kastom, as it has always been. But now,

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237 Written Statement of Melanesian Spearhead Group, Ex. 32, Expert Statement of John Aini, paras. 41-50

238 Written Statement of Melanesian Spearhead Group, Ex. 32, Expert Statement of John Aini, para. 51.

239 Written Statement of Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, para. 35.

240 Written Statement of Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, para. 42.

241 Written Statement of Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, para. 37.

242 Written Statement of Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, para. 38.

243 Written Statement of Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, paras. 22, 30-32.

because there is not enough *Nikkaowah*, the *Tamafah* is an on and off thing."[244] Johnny explains that as a result of this change, his connection to the spirits has broken: "Before, when I was doing the *Tamafah* daily, I felt like my prayer was something meaningful. But now, because I am not doing it as much as I did, I do not feel like I am connecting with the spirits. Something feels broken."[245]

124. These examples demonstrate further violations of cultural rights. By depriving peoples of these and other spiritually powerful natural resources, climate change (and the State conduct responsible for it) is disrupting spiritual connections, thereby foreclosing essential aspects of culture life, preventing peoples from engaging in religious beliefs and other cultural practices, and transmitting the same to future generations.

125. Climate change has resulted in additional irreparable violations of cultural rights by destroying sacred sites. For the people of Veraibari in the Kikori District of PNG, climate change-induced sea-level rise has already claimed all but one of their sacred sites. Headman Ara Kouwo explains the loss: "Our ability to commune with the spirits are gone. The communal spirit in the village is also affected. We have lost our traditional knowledge and the kastom that is being associated to our secret places because we can no longer go there."[246]

126. In the Solomon Islands, grave sites are one of three important cultural sites that every community maintains. They are the site of connection to land and ancestors, and are also the resting place of spirits, who "are still around us, protecting our land, ensuring our safety, and giving us goodwill or fortune."[247] In the Malaita Province, rising seas have washed away huge swathes of graves. Hilary Fioru explains:

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244 Written Statement of Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, para. 40.

245 Written Statement of Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, para. 41.

246 Written Statement of Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 59.

247 Written Statement of Melanesian Spearhead Group, Ex. 16, Statement of Hilary Fioru, para. 57.

> When these graveyards are being destroyed by sea level rise, it basically destroys our connection to the land and to people that have passed on. **It also destroys our community life as one of the three parts that make up our community identity is now destroyed.**[248]

127. In New Caledonia, the mountains are sacred. Yvon Kona, a member of the Kanak customary senate explains that "[t]he Mountains are sacred. They are tabu. They contain medicines, totems, and . . . powerful stones that connect us to the cosmos."[249] He explains further that the Mountains are the final resting place for the spirits of the dead from inland tribes, and are also connected to the sea mounds, which are the resting place of the dead from coastal tribes.[250] The spirits of dead from the inland tribe leap from the mountain peaks to join their kin below the sea.[251] The dual injuries of French colonialism and climate change have destroyed these sacred sites. Before colonialism, "the mountains were all green. But now, when you pass by the mountains, you see how [French] nickel mining has bled them dry. They are red and scratched. They look like they've been flayed."[252] This conduct left the mountains susceptible to the adverse impacts of climate change:

> [T]he French stripped the Mountains. Mined them for nickel and removed the trees for logging. And now, the injured Mountains are vulnerable. They are collapsing because of all the rain we have been experiencing.[253]

128. In some cases, climate change has not only destroyed sacred sites, but forcibly displaced peoples from their ancestral land. For example, the people of Vunidogoloa Village in Fiji were forced to abandon their ancestral lands, which were rendered uninhabitable by severe and frequent flooding caused by a combination of rising seas and intense rainfall. As discussed in the context of self-determination, cultural identity is one with the land, and so

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248 Written Statement of Melanesian Spearhead Group, Ex. 16, Statement of Hilary Fioru, paras. 62, 65 (emphasis added); *see also* Written Statement of the Melanesian Spearhead Group, Ex. 6, Statement of Simione Botu, para. 18; Written Statement of the Melanesian Spearhead Group, Ex. 28, Statement of Jimmy Namile, paras. 16-17 ("All of the rain from Cyclone Pam caused graves to be washed away. Graves belonging to my grandfather, my father, and my brothers all washed away. My heart was broken when the graves were washed away. I cried. The grave sites are tabu because that's where the spirits live. By washing away the graves, the cyclones disturbed the spirits.").

249 Written Statement of Melanesian Spearhead Group, Ex. 10, Statement of Yvon Kona, para. 25.

250 Written Statement of Melanesian Spearhead Group, Ex. 10, Statement of Yvon Kona, para. 26.

251 Written Statement of Melanesian Spearhead Group, Ex. 10, Statement of Yvon Kona, para. 27.

252 Written Statement of Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, para. 59.

253 Written Statement of Melanesian Spearhead Group, Ex. 11, Yvon Kona, para. 28.

this rupture of the connection between people and their place inflicted a deep and permanent cultural wound. Without adaptation, many other peoples throughout Melanesia, too, face the prospect of permanent forced removals from their ancestral lands.[254]

129. As discussed, cultural rights protect the rights of indigenous peoples, in particular to, maintain ways of life closely associated with their territory and to "enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity."[255] In Melanesia, the adverse impacts of climate change have already violated this aspect of cultural rights by depriving peoples of their territories and sacred sites, which for many are inseparable from cultural identity.

130. Each of these examples demonstrates distinct, numerous, and unequivocal violations of cultural rights. But because of the cultural and spiritual indivisibility of people and place, these impacts combine and compound to cause a much broader and more serious loss: it has caused the very fabric of culture to unravel for many of the peoples of Melanesia, placing their cultural survival in jeopardy. MSG reiterates that culture, for many of the peoples of Melanesia is, precisely, the interconnectedness they share with the living world. Cultural expert John Aini explains:

> Our connection to the environment is hard to explain, but we have lived with these things since our forefathers, since generations. The connection is there and I may not be explaining well but every day I am living within the interconnectedness of things and I'm part of it every day, sometimes in a big way, other times in a little way. For example, when the sun comes, the tree is already beginning to tell me to come and sit under it. It is providing shade for me.[256]

131. Therefore, explains Francis Hickey, the Coordinator of the Traditional Resource Management Program at the Vanuatu Culture Centre: "the most treasured thing, the most

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254 *See, e.g.*, Written Statement of Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, paras. 51-56; Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, paras. 49-54; Written Statement of the Melanesian Spearhead Group, Ex. 17, Statement of Faye Mercy Saemala, paras. 63-67; Written Statement of the Melanesian Spearhead Group, Ex.14, Statement of Ara Kouwo, paras. 75-77.

255 Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2552/2015 ('Benito Oliveira Pereira et al. v. Paraguay')*, CCPR/C/132/D/2552/2015, para. 8.6 (21 Sept. 2022).

256 Written Statement of the Melanesian Spearhead Group, Ex. 32, Expert Statement of John Aini, para. 13.

important thing in the culture, is the knowledge of the environment, how to live with it sustainably as has been done for 1000's of years, the people who live off the land and the sea. It is such precious knowledge."[257]

132. This connection to nature is inherently spiritual, allowing access to the cosmos. Now, Francois Neudjen explains, this connection to the cosmos has been lost:

> What was so powerful is that although our grandparents didn't do any science, they knew the power of the cosmos. They received it directly. They could feel it. They could see it. They could smell it. They knew how to read the harmony of nature and understand their world.
>
> But our grandfathers could also see that things would change with industry. And now things have changed so much. The weather is unpredictable, the rains don't come, the seasons are disrupted. We can't understand our world and we can't connect with the cosmos. We deplore this lack, but our grandfathers already knew it would happen.[258]

133. Likewise, the flora and fauna that make up Melanesian worlds are ancestors and relatives. Losing even one species thus causes a further cultural unravelling. For example, as set forth above, in New Caledonia each species forms an integral part of Kanak genealogy. The loss of marine species that has **already occurred** as a result of ocean acidification and warming thus places the "entire culture [] in danger of collapsing."[259]

134. Much more than a substantial impact, climate changing is causing many of the diverse and rich cultures of Melanesia to break down entirely. This is not merely a violation of cultural rights; it is cultural genocide.[260]

135. For many in Melanesia, whose cultures have survived centuries of onslaught by forces of colonialism, Christianity, and capitalism, the collapse of those cultures in the face of climate change is crushing. Kanak customary senate member, Jean-Yves Poedi explains: "Our

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257 Written Statement of the Melanesian Spearhead Group, Ex. 18, Statement of Francis Hickey, para. 62.

258 Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, paras. 38-39.

259 Written Statement of the Melanesian Spearhead Group, Ex. 9, Statement of Jean-Yves Poedi, para. 28.

260 *See, e.g.*, Tony de Brum, *Marshalls likens climate change migration to cultural genocide*, RADIO NEW ZEALAND (6 Oct. 2015) (link).

culture has already been damaged severely by French colonialism. We are working hard to revitalize the culture and to build a basket of Kanak culture and Kanak vision to bring back to the country. But at the same time, we are losing elements of cultural importance . . . so it is difficult to fill the basket and carry our culture forward."[261]

136. In sum, climate change has already violated the cultural rights of the peoples of Melanesia by depriving them of the ability to engage in cultural life, including cultural and religious practices; robbing them of access to culturally essential resources and spaces; and foreclosing possibilities of transmitting cultural knowledge to future generations. More fundamentally, climate change has ruptured the interconnection of peoples with their lands, waters, biodiversity, and spirits that is the foundation of culture, causing culture itself to unravel. MSG invites the Court to thus affirm that those State engaging in the Relevant Conduct have violated their duties to respect, protect, and uphold cultural rights, triggering legal consequences.

D. Genocide

137. MSG emphatically endorses OACPS's position that the obligation of States to prevent genocide applies in the context of climate change.[262] This position aligns with the views of Melanesian and other Pacific leaders,[263] and, as set out in this section, is supported by overwhelming factual and legal evidence.

138. The prohibition of genocide exists as a *jus cogens* norm of general international law and is codified in the Genocide Convention.[264] At its core, genocide is "a denial of the right of existence of entire human groups,"[265] a crime so egregious that it "shocks the conscience of

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261 Written Statement of the Melanesian Spearhead Group, Ex. 9, Statement of Jean-Yves Poedi, para. 27.

262 Written Statement of OACPS, paras. 72-80.

263 *Melanesian nations question global responses to climate change*, GUAM DAILY POST (25 Mar. 2017) (link); *see also* Nick O'Malley & Natassia Chrysanthos, *Pacific community pleads for Australian climate action amid regional tension*, THE SYDNEY MORNING HERALD (1 May 2022) (link).

264 *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, 1951 I.C.J. Rep., p. 15, p. 23 ("[T]he principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation."); *Armed Activities on the Territory of the Congo (New Application 2002) (Democratic Republic of the Congo v. Rwanda)*, Judgment, 2006 I.C.J. Rep., p. 6, para. 64.

265 G.A. Res. 96(I), The Crime of Genocide (11 Dec. 1946).

mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations."[266] The Genocide Convention's object is to "safeguard the very existence of certain human groups" and "to confirm and endorse the most elementary principles of morality."[267]

139. Genocide is defined as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group."[268] This includes "[d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."[269] The element of intent consists of "the intent to discriminate: to attack persons on account of their ethnic, racial, or religious characteristics . . . accompanied by the intention to destroy, in whole or in part, the group to which the victims of the genocide belong."[270]

140. MSG submits, as suggested by the Written Statement of OACPS, that the definition of genocide should be interpreted broadly to include actions that knowingly lead to the destruction of populations, even if that destruction is not the primary intent. This interpretation allows intent to be inferred from foreseeability and action, in line with the long-established principle in common law that "foresight and recklessness are evidence from which intent may be inferred."[271] While some may worry about "diluting" the legal and moral force of genocide as a crime, MSG submits that the proposed construction is not only consistent with the text of Article 2 of the Genocide Convention read in light of the Convention's object and purpose, but is in fact necessary to fulfil the Convention's aims in the face of modern, complex threats to human groups.

141. The Court itself has recognized that the method of literal interpretation of an instrument's text cannot be validly relied upon where it results in a meaning incongruent with the purpose

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266 G.A. Res. 96 (I), The Crime of Genocide (11 Dec. 1946).

267 *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, 1951 I.C.J. Rep., p. 15, p. 23 (28 May 1951).

268 Convention on the Prevention and Punishment of the Crime of Genocide, 9 Dec. 1948, 78 U.N.T.S. 277, art. 2.

269 Convention on the Prevention and Punishment of the Crime of Genocide, 9 Dec.1948, 78 U.N.T.S. 277, art. 2(c).

270 *Prosecutor v. Kupreškic´ et al.*, Case No. IT-95-16-T, Judgment, I.C.T.Y., para. 636 (14 Jan. 2000).

271 J. Wien in *R. v. Belfon*, 3 All ER 46 (1976).

or spirit of the instrument.[272] A purpose-based understanding of genocide that locates wrongfulness primarily in a perpetrator's mental state ultimately rests on the untenable premise that the objective destruction of a group is sometimes justifiable. Such an interpretation would severely undermine the Convention's fundamental goal of prevention.

142. Indeed, an overly narrow understanding of genocidal intent risks rendering the Genocide Convention's protections ineffective. This is true in general, but even more so in the face of modern, systemic threats such as climate change. As genocide scholars have long argued, understanding genocide as a "structural process"[273] rather than a purely ideological crime is necessary to achieve "sustainable prevention."[274] This broad interpretation allows the Convention to address complex, multi-causal threats to group existence that may not fit neatly into traditional notions of genocidal intent but are no less destructive in their outcomes. It also unlocks a more robust framework for prevention, allowing for earlier intervention in both slow-onset disasters like climate change and rapidly escalating conflicts with genocidal potential. Rather than diluting the gravity of genocide as a crime, such an interpretation ensures that the Genocide Convention remains a relevant and effective instrument for protecting vulnerable groups in the face of evolving global threats and persistent forms of group destruction.

143. Under Article I of the Convention, States hold a "distinct" positive obligation to prevent genocide.[275] This Court has clarified that the obligation to prevent genocide "is not territorially limited by the Convention,"[276] but rather requires each individual State to do all

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272 *South West Africa (Liberia v. South Africa)*, Judgment, 1962 I.C.J. Rep., p., 319, p. 336.

273 Martin Crook & Damien Short, *Marx, Lemkin and the genocide-ecocide nexus*, 18 J. Int'l Human Rights, p. 311 (2014).

274 Jürgen Zimmerer, *Climate change, environmental violence and genocide*, 18 Int'l J. of Human Rights, p. 277 (2014).

275 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Rep., p. 43, paras. 425-427 ("The obligation on each contracting State to prevent genocide is both normative and compelling. It is not merged in the duty to punish, nor can it be regarded as simply a component of that duty"); *id.* at para. 432.

276 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Rep., p. 43, para. 153 (quoting *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 1996 I.C.J. Rep., p. 43, para. 31, and explaining that this declaration relates, *inter alia*, to the duties of States contained in Article I of the Convention, including the duty to prevent genocide); *id.*at para. 183 ("The substantive obligations arising from Articles I and III are not on their face limited by territory. They apply to a State wherever it may be acting or may be able to act in ways appropriate to meeting the obligations in question.").

it reasonably can to prevent genocide beyond its borders.[277] The Court has also repeatedly affirmed that the obligations under the Genocide Convention are owed *erga omnes*—to any group, wherever located, that is facing genocide.[278]

144. The duty to prevent genocide attaches when a State becomes aware, or should have been aware, of "the existence of a serious risk that genocide will be committed."[279] The existence of risk alone triggers the duty; certainty of genocidal intent is not required. Indeed, "a State may be found to have violated its obligation to prevent, even though it had no certainty, at the time when it should have acted, but failed to do so, that genocide was about to be committed or was underway."[280]

145. To discharge the duty to prevent genocide, each State must "employ all means reasonably available to them, so as to prevent genocide as far as possible."[281] States must take direct action and use their influence to dissuade third parties likely to commit genocide.[282] State responsibility is triggered where a State "manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide."[283]

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277 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Rep., p. 43, para. 430; *see also* L. Glanville, *The Responsibility to Protect Beyond Borders*, 12 Human Rights L. Rev., p. 27 (2012).

278 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgement, 2015 I.C.J. Rep., p. 43, para. 87; *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 2012 I.C.J. Rep., p. 422, para. 68; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Uganda)*, Judgment, 2005 I.C.J. Rep., p. 168, para 64.

279 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.CJ. Rep., p. 43, para. 431.

280 *See* Written Statement of OACPS, para. 77 (citing *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.CJ. Rep., p. 43, para. 432).

281 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.CJ. Rep., p. 43, paras. 162-165 (assessing the text of the Convention, its purpose, and the circumstances around its drafting to conclude that "Article I, in particular its undertaking to prevent, creates obligations distinct from those which appear in the subsequent Articles."); *id.* at para. 427 ("The obligation on each contracting State to prevent genocide is both normative and compelling. It is not merged in the duty to punish, nor can it be regarded as simply a component of that duty.").

282 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Rep., p. 43, para. 430.

283 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Rep., p. 43, para. 430.

146. Compliance with the obligation to prevent genocide is evaluated against a due diligence standard. Factors to be considered include "the capacity to influence effectively the action of persons likely to commit, or already committing, genocide."[284] This leads to differentiated standards, with a higher standard of diligence applicable to States with greater capacities to act. In other words, States with greater authority or influence over responsible actors hold heightened obligations.[285]

147. The individual ability of a State to prevent genocide is "irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result—averting the commission of genocide—which the efforts of only one State were insufficient to produce."[286]

148. MSG agrees with OACPS's submission that State obligations to prevent genocide are triggered by the serious risk of genocide against the peoples of SIDS and peoples of African descent posed by climate change. As OACPS explains, this is because of the "existential threats" climate change poses to these groups and the "discrete and disproportionate impacts of climate change on these groups, compared to all other groups."[287]

149. MSG further submits that the peoples of Melanesia hold rights under the Genocide Convention as protected ethnical groups. The peoples of Melanesia are predominately indigenous peoples to their lands and waters, many with plant and animal ancestors. Each peoples' collective identity is inseparable from their environment.

150. Moreover, the concept of the Melanesian subregion—and the corresponding group identity of "Melanesian peoples"—was positively constructed by colonial powers. These powers

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284 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Rep., p. 43, para. 430.

285 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Rep., p. 43, para. 430; *see also* M. Longobardo, *Genocide, obligations* erga omnes*, and the responsibility to protect: remarks on a complex convergence*, 19 Int'l J. of Human Rights, p. 1201 (2015).

286 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Rep., p. 43, para. 430.

287 Written Statement of OACPS, paras. 77-79.

designated our islands as "Melanesia," meaning "black islands," based on the dark skin colour of their inhabitants.[288] This racist notion was used to designate Melanesian peoples as inferior and justified colonial subjugation and oppression for over a century.[289] Despite its repugnant origins, the peoples of Melanesia have reclaimed the term, including through formation of the MSG. In the words of one of our great leaders, Bernard Narokobi:

> Our Melanesian ways stem from the unquestionable fact that we are an ancient people, born to liberty, born to ancient culture and civilisation . . . Melanesians are guided by a common cultural and spiritual unity. Though diverse in many cultural practices, including languages, still we are united, and are different from Asians or Europeans.
>
> We are a united people because of our common vision. True enough, it has never been written, but has evolved over thousands of years.[290]

151. MSG submits that the peoples of Melanesia are not only at serious risk of genocide, but have **already** begun to experience the genocidal effects of climate change. This is occurring primarily through the infliction of "conditions of life calculated to bring about its physical destruction in whole or in part." These conditions include "subjecting the group to a subsistence diet; failing to provide adequate medical care; systematically expelling members of the group from their homes; and generally creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing, sanitation, or subjecting members of the group to excessive work or physical exertion."[291]

152. The peoples of Melanesia are already enduring these conditions as a result of climate change. Here, MSG offers stark and undeniable evidence in the form of testimonies from communities across Melanesia who have been struggling to survive the destructive impacts

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288 Stephanie Lawson, *'Melanesia': The history and politics of an idea*, 48 J. Pacific History, p. 2 (2010).

289 BERNARD NAROKOBI, THE MELANESIAN WAY, p. 4 (Institute of Papua New Guinea Studies 1983); *see also* Epeli Hau'ofa, *Our Sea of Islands*, 6 The Contemporary Pacific, p. 149-150 (1994).

290 BERNARD NAROKOBI, THE MELANESIAN WAY, pp. 6-7 (Institute of Papua New Guinea Studies 1983).

291 *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-A, Judgment, Appeals Chamber, Judgment, I.C.T.Y., para. 225 (8 Apr. 2015) (collecting cases).

of climate change. These testimonies exemplify the experiences of peoples across the subregion.[292]

153. The people of Yakel on the island of Tanna, Vanuatu, have been struggling to survive in the face of worsening climate change. Climate impacts have compromised virtually all of the community's food sources. In 2015, landslides destroyed the arable land near the village. As a result, for the past 9 years, the women of the community have been required—daily—to undertake a gruelling day-long journey up a mountain and across a ravine in order to access space to grow food.[293] One woman, Jenny Toata, explains that:

> Before I was a healthy person because my garden was nearby. After the landslide destroyed my garden everything changed . . . The walk is very steep. It takes me almost a full day to go there and come back, and I have only 30 minutes to 1 hour to garden. I must load the produce on my back and walk back with it and that affects my knees and hurts my back also . . . I used to go to the garden daily, but now sometimes I feel too tired and cannot go up anymore. This affects my ability to feed myself and my families.[294]

154. Changes to the weather—in particular increasingly intense rain and heat—have also undermined the ability of the community to grow food. Landslides, which are triggered by more intense cyclones and rains, have also destroyed the community's hunting and fishing grounds. Cumulatively, these impacts have deprived the people of Yakel of **all** of their staple food sources.[295] The women of Yakel explain that "as a result of all these changes, we don't have enough food."[296] They have been without these staples for nine years.[297] This extreme lack has resulted in stunting and premature death:

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292 MSG further notes that these conditions amount to grave violations of human rights, including the right to an adequate standard of living, the right to privacy, family and home life, the right to health, and the right to life. For analysis of the content of those rights, *see* Written Statement Submitted by the Republic of Vanuatu, paras. 343-357, 366-376.

293 Written Statement of the Melanesian Spearhead Group, Ex. 27, Statement of the Women of Yakel, para. 7.

294 Written Statement of the Melanesian Spearhead Group, Ex. 24, Statement of Jenny Toata, paras. 24-25, 27.

295 Written Statement of the Melanesian Spearhead Group, Ex. 27, Statement of the Women of Yakel, paras. 13-17, 24-26.

296 Written Statement of the Melanesian Spearhead Group, Ex. 27, Statement of the Women of Yakel, para. 9.

297 Written Statement of the Melanesian Spearhead Group, Ex. 27, Statement of the Women of Yakel, para. 17.

> [The lack of food] affects our health. It is affecting the growth of both our children and adults. We are getting smaller . . . **Our lifespans are getting shorter. The women are dying younger and they are not reaching the age when they are supposed to die.**[298]

155. These changes are all the more devastating because, "Tanna has always been an island with plenty. Our land is naturally fertile. Our people were never hungry. We always had food in the garden. Our people were very self-sufficient in terms of subsistence farming. But it is very different now."[299]

156. More intense rain has also killed herbs that are essential to traditional medicine, depriving the community of access to critical healthcare.[300] The community's homes have traditionally been able to withstand cyclones, but in the past 10 years, the cyclones have become so intense that homes are routinely damaged or destroyed.[301] The intense cyclones are also destroying the natural materials used to construct homes, constraining the ability of people to rebuild and rehouse themselves after each of the now-frequent disasters.[302] Yakel has been grappling with these changes for decades, since Cyclone Uma in 1987, with the situation becoming much more dire since Cyclone Pam in 2015.[303] As a result of all of these changes, many worry for the continued survival of their community and their children.[304]

157. Similarly, the people of Veraibari in the Kikori District of Papua New Guinea have been stripped of their homes, safety, sanitation, food, and health as a consequence of rising seas and other climate impacts. The entire village of Veraibari has already been forced to relocate

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298 Written Statement of the Melanesian Spearhead Group, Ex. 27, Statement of the Women of Yakel, paras. 15, 21 (emphasis added).

299 Written Statement of the Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, para. 25.

300 Written Statement of the Melanesian Spearhead Group, Ex. 22, Statement of Naus Iaho, paras. 9-12; Written Statement of the Melanesian Spearhead Group, Ex. 25, Statement of Sera Nawahta, para. 10.

301 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, paras. 64-66; Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Alpi Nangia, paras. 33-36.

302 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, paras. 68-69.

303 Written Statement of the Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, paras. 23, 27.

304 *See, e.g.*, Written Statement of the Melanesian Spearhead Group, Ex. 26, Statement of Johnny Loh, paras. 43-44 ("I am worried too because we are losing all of our arable land, which we use for gardening. When all of the arable land is gone, where will our people garden in the future? How will they survive. I am worried for my children and my grandchildren.").

four times due to rising seas, most recently in 2020.[305] The window between relocations has become shorter and shorter as the sea rises ever more rapidly. Headman of the village, Ara Kouwo explains, "[w]e can't keep up with the rising sea, it is coming in so fast now. In the last three years, it has been rapid."[306] Already, in the newest location, the seas are again "coming into our houses, which are already built on tall wooden post foundations."[307]

158. Ara Kouwo explains that "[t]he sea keeps coming in closer and it endangers our lives and homes."[308] In particular, monthly high tides and king tides cause logs and heavy debris to smash against the wooden post structures of the homes, which causes them to collapse. The rising seas are also destroying the materials needed to rebuild. As a result, multiple families are forced to share homes. Often fifteen people or more must occupy a single small home.[309]

159. In order to save at least some of the homes, boys and men—and sometimes everyone in the village—must jump into the water and physically prevent the debris from smashing into the houses. Ara Kouwo worries that this situation could turn deadly because "[t]here are saltwater crocodiles where we live. . . I worry that one of the children or even the adults will be attacked by a crocodile, especially at night when we are in the water trying to save our homes from collapse. In 2018, a young boy was caught by a crocodile at the shoreline, so this worry is always at the forefront of my mind during high tides and king tides."[310]

160. On top of this, rising seas have turned the community's freshwater wells permanently salty, and destroyed most coconut trees, which provided another important source of hydration.[311] As a result, the people of Veraibari "regularly run out of water," especially during the dry season.[312] When this occurs, they are forced to drink water from the swamp, which "quite

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305 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 9.

306 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, paras. 10, 25.

307 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 9.

308 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 41.

309 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 46.

310 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, paras. 43-44.

311 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, paras. 28, 72-74.

312 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 29.

often [] is the only water source on the island."[313] Drinking this water causes stomach problems, coughs, and diarrhoea.[314] Rising seas have also created a "food security problem."[315] Ara Kouwo explains that this community is "heavily reliant on our environment for our food. 97% of our food we catch or grow. Only 3% we buy."[316] Traditional gardens have been washed out by rising seas, and efforts to institute 'climate resilient' alternatives have failed, also washed away by king tides.[317]

161. These challenges have made it impossible for the people of Veraibari to survive in its current location. They are preparing, once again, to relocate. If this relocation fails, they will have nowhere else to go. As Ara Kouwo explains, "[t]his will be the final relocation. We cannot relocate further. This is the boundary of our customary land and the last place the island can hold us."[318] However, he worries that this relocation, just like the past four, will fail: "I worry that the water will keep rising and rising and we will have nowhere left to go because the other side of the river is a swamp . . . What will become of us?"[319]

162. Life for the people of Tench Island in the New Britain province of PNG, too, has become untenable. As in Veraibari, saltwater inundation has destroyed the island's freshwater sources and rendered the land inarable.[320] As a result, Tench Islanders are unable to survive on their island and have been forced to relocate to urban centres where—deprived of the fisheries that were their source of income—they cannot afford to buy adequate food.[321] Changes to the climate and weather have also induced serious outbreaks of malaria, exacerbating the health impacts arising from malnutrition.[322] The situation is so hopeless that

313 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 34.

314 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 34.

315 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 69.

316 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, paras. 15, 68.

317 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 69.

318 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 75.

319 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, paras. 76-77.

320 Written Statement of the Melanesian Spearhead Group, Ex. 36, Expert Statement of Professor Paige West, para. 27.

321 Written Statement of the Melanesian Spearhead Group, Ex.36, Expert Statement of Professor Paige West, paras. 27-32.

322 Written Statement of the Melanesian Spearhead Group, Ex. 36, Expert Statement of Professor Paige West, paras. 33-34.

people from the Tench Islands often express that they no longer have the will to live: "We wish that we were dead so we didn't have to deal with this . . . We wish that our children weren't alive right now because the island is gone."[323]

163. These and other stories contained in the statements and expert reports attached to MSG's Written Statement[324] exemplify the dire circumstances peoples are enduring throughout Melanesia. Experts have characterised this as the "slow death" of the peoples of Melanesia.[325] MSG submits that these conditions constitute not merely a risk but an ongoing genocide resulting from climate change. Our peoples are being deprived of their homes, safety, and sanitation; subjected to starvation and sickness; and robbed of their will to live. Conditions, in short, that are inexorably bringing about their physical destruction. What is at stake is "not simply violence but actual death and extinction . . . it is as if we are skipping the violence and turning to the end of things."[326]

164. As OACPS correctly suggests, the ideological element of genocide lies in the persistent racial hierarchies that have informed the conduct of the major polluting States over time—justifying the continued emission of huge quantities of GHGs with full knowledge that such conduct virtually guarantees the destruction of the most climate-vulnerable groups, including

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323 Written Statement of the Melanesian Spearhead Group, Ex. 36, Expert Statement of Professor Paige West, para. 36.

324 *See, e.g.*, Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, paras. 36-37, 46-54, 58-59; Written Statement of the Melanesian Spearhead Group, Ex. 16, Statement of Hilary Fioru, paras. 47-55, 67-70; Written Statement of the Melanesian Spearhead Group, Ex. 17, Statement of Faye Mercy, paras. 14-26, 30-35; Written Statement of the Melanesian Spearhead Group, Ex. 31, Expert Statement of Professor David Lipset, paras. 7-13; Written Statement of the Melanesian Spearhead Group, Ex. 33, Expert Statement of Professor Jamon Halvaksz, paras. 16-25, 34-36; Written Statement of the Melanesian Spearhead Group, Ex. 34, Expert Statement of Jerry Jacka, paras. 31-35.

325 Written Statement of the Melanesian Spearhead Group, Ex. 33, Expert Statement of Professor Jamon Halvaksz, para. 25.

326 Written Statement of the Melanesian Spearhead Group, Ex. 33, Expert Statement of Professor Jamon Halvaksz, para. 25. MSG further notes with concern the extreme ethnic violence that the Melanesian people of West Papua are already experiencing at the hands of Indonesia. Over the past 60 years, an estimated 500,000 West Papuans have been killed by Indonesian forces. The Indonesian campaign of direct violence against them, as well as ecological destruction stemming from Indonesia's policies of rapacious extraction of gold, palm oil, and other natural resources, appear calculated to bring about the physical destruction of West Papuans. Climate change only exacerbates these harms. Thus, genocidal conditions may be considered underway in West Papua as well. *See Joint Allegation Letter from the Special Rapporteur on the rights of indigenous peoples, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of internally displaced persons to Indonesia*, AL IDN 11/2021 (27 Dec. 2021); Elizabeth Brundige et al., *Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control* (Allard K. Lowenstein International Human Rights Clinic Yale Law School 2004); Jim Elmslie & Camellia B. Webb-Gannon, *A slow-motion genocide: Indonesian rule in West Papua*, 1 Griffith J. of L. & Human Dignity, pp. 142-166 (2013).

the peoples of Melanesia. To be sure, "the slow death from climate change speaks to the ways that drivers of climate [change] and structural power relations make people sacrificable or killable even if slowly."[327]

165. From the first instance of Western contact, colonial powers have constructed discriminatory racial hierarchies to designate certain groups, including Melanesian peoples, as other and inferior,[328] dehumanising them and placing them "outside the sphere of moral responsibility."[329]

166. The dehumanisation of Melanesian peoples and other groups deemed racially inferior has allowed for the subordination, erasure and destruction of our peoples and territories, including through resource exploitation, industrialization, and militarization.[330] Island peoples, in particular, were (and remain) characterised as peripheral and insignificant to justify their treatment "as disposable sites of extraction and experimentation."[331] Colonial domination thus "established a global economic system premised on sacrificing non-white territories and peoples for the benefit of white colonial metropoles."[332] Today, our peoples

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327 Written Statement of the Melanesian Spearhead Group, Ex. 33, Expert Statement of Professor Jamon Halvaksz, para. 25. This is evidenced, for example, by the disdainful remarks made by Australia's then-acting Immigration Minister, Peter Dutton, in 2015 regarding a roundtable with PNG leaders that ran over time, callously joking that "[t]ime doesn't mean anything when you're, you know, about to have water lapping at your door." *See* Calla Wahlquist, *Peter Dutton apologises for 'water lapping at your door' jibe*, THE GUARDIAN (13 Sept. 2015) (link).

328 E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Ecological crisis, climate justice and racial justice*, U.N. Doc. A/77/549, para. 12 (25 Oct. 2022); *see also* Dylan Asofo, *The racism in climate change law: Critiquing the law on climate change-related displacement with critical race theory*, 39.2 Berkeley J. Int'l Law, p. 274-277 (2021); Epeli Hau'ofa, *Our Sea of Islands*, 6 The Contemporary Pacific, p. 149-150 (1994).

329 Jürgen Zimmerer, *Climate change, environmental violence and genocide*, 18 Int'l J. of Human Rights, p. 273 (2014).

330 *See, e.g.*, E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Global extractivism and racial equality*, U.N. Doc. A/HRC/41/54, paras. 22-28 (14 May 2019); *see generally, e.g.*, KATERINA TEAIWA, CONSUMING OCEAN ISLAND: STORIES OF PEOPLE AND PHOSPHATE FROM BANABA (Indiana Univ. Press 2014); Matthew G. Allen, *Islands, extraction and violence: Mining and the politics of scale in Island Melanesia*, 57 Political Geography (2017); GABRIELLE HECHT, ENTANGLED GEOGRAPHIES: EMPIRE AND TECHNOPOLITICS IN THE GLOBAL COLD WAR (MIT Press 2011); WALTER RODNEY, HOW EUROPE UNDERDEVELOPED AFRICA (Bogle-L'Ouverture Publications 1972).

331 Charlotte Kate Weatherhill, *Sinking Paradise? Climate change vulnerability and Pacific Island extinction narratives*, 145 Geoforum, p. 4 (2023) ("Pacific Islands have historically been positioned as disposable sites for extraction and experimentation, based on the racial classifications made in the days of European 'discovery'"); *see also* Epeli Hau'ofa, *Our Sea of Islands*, 6 The Contemporary Pacific, p. 150 (1994); A.S. Bordner, *Climate Migration and Self-determination*, 51 Columbia Human Rights L. Rev., p. 187 (2019).

332 Written Statement of OACPS, para. 49.

remain "disproportionately concentrated in global 'sacrifice zones' – regions rendered dangerous and even uninhabitable owing to environmental degradation."[333]

167. This dehumanising conception of island peoples as fit for sacrifice persists today in the context of climate change—with the "drowning" of island nations due to rising seas treated discursively treated as inevitable.[334] While it is true that many island nations face existential threats,[335] adaptation measures that could ensure the continued survival of Melanesian and other island nations and peoples are technically feasible.[336] However, such measures are prohibitively expensive for island nations trapped in a position of dependency within the inequitable global economy shaped by colonial powers.[337] Island nations thus have no choice but to rely on outside support to adapt,[338] and currently-available levels of climate finance

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333 E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Ecological crisis, climate justice and racial justice*, U.N. Doc. A/77/549, para. 1 (25 Oct. 2022). Notably, the term "sacrifice zone" was initially coined to describe the "sacrifice" of the inhabited territories of indigenous and colonized peoples to test nuclear weapons in the Cold War, including the use of the Marshall Islands by the United States, French Polynesia by France, and Kiritmati (Christmas Island) by the United Kingdom. *See id.* at para. 18.

334 Charlotte Kate Weatherhill, *Sinking Paradise? Climate change vulnerability and Pacific Island extinction narratives*, 145 Geoforum, p. 2 (2023) (demonstrating that persistent colonial narratives that characterize islands as naturally fragile have justified "extinction narratives" through which "island loss and uninhabitability is justified as natural and inevitable, thereby obscuring the violence of continued emissions behind the colonial myth of the vulnerable island paradise."); A.S. Bordner, *Climate migration and self-determination*, 51 Columbia Human Rights L. Rev., p. 187 (2019) ("The accepted loss of islands reflects imperial narratives that portray islanders as passive victims and islands as peripheral places fit for sacrifice.").

335 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement B.4.5, figure SPM.3(f) (2022); Intergovernmental Panel on Climate Change, "Chapter 15: Small Islands" *in Climate Change 2022: Impacts, Adaptation and Vulnerability*. *Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report, Statements 15.3.4.6, 15.3.4.9.2 (2022).

336 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement C.3.1 (2022); *see also e.g.*, Deltares, *Long-term climate adaptation options, costing and financing for the Republic of the Marshall Islands Building Resilience in Pacific: Atoll Island Countries – Phase II*, p. 49-60 (2021) (detailing generic adaptation interventions that would allow continued habitability for atoll States).

337 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement C.3.2 (2022).

338 *See e.g.*, Written Statement submitted by the Republic of Vanuatu, Ex. Q, Impact Statement of Peter Korisa Kamil, Head of the Disaster Recovery Coordination Unit within the Department of Strategic Policy, Planning and Aid Coordination, Republic of Vanuatu, paras. 30-33; Intergovernmental Panel on Climate Change, "Chapter 15: Small Islands" *in Climate Change 2022: Impacts, Adaptation and Vulnerability*. *Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report, Statements 15.5.3, 15.5.4,

are insufficient to meet adaptation needs.[339] Meanwhile, adequate resources are being invested in adaptation for similarly vulnerable places in the White metropole. For example, The Netherlands, which sits below sea-level, is investing up to 80 billion euros on adaptation for flood risks alone.[340] Unless major emitting States make drastic and immediate reductions in emissions, hard limits to adaptation are likely to be reached, making continued survival for SIDS not only financially prohibitive but technically impossible.[341]

168. The annihilation that all island peoples face, and the physical destruction already befalling the peoples of Melanesia "cannot be divorced from the racially unjust hierarchies and regimes of colonial and imperial extraction and exploitation."[342] By employing racist constructs, colonial powers subordinated and marginalized certain groups, thereby manufacturing much of their vulnerability to the climate crisis. These powers also hold the power to decide whether island peoples will survive or be exterminated by the adverse effects of climate change. As established, these powers are responsible for the vast majority of past, present, and projected emissions.[343] Despite clear knowledge that swift and drastic GHG emission reductions are required to allow for the continued survival of SIDS, they have failed

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15.6.3, 15.6.4, 15.6.5; see *also* A.S. Bordner et al., *Colonial Dynamics Limit Climate Adaptation in Oceania: Perspective from the Marshall Islands*, 61 Global Environmental Change, p. 8 (2020).

339 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement C.3.2 (2022); *see also, e.g.*, Deltares, *Long-term climate adaptation options, costing and financing for the Republic of the Marshall Islands Building Resilience in Pacific: Atoll Island Countries – Phase II (2021)*, p. 97 (quantifying adaptation costs for the Republic of the Marshall Islands to be between USD $4 billion and $10 billion and determining that the globally available climate financing is insufficient to meet this need); Manal Faud et al., *Unlocking Access to Climate Finance for Pacific Island Countries*, p. 26 (International Monetary Fund, 2023) (quantifying Fiji's adaptation needs at USD $4.5 billion).

340 Jereon Aerts, *Adaptation cost in the Netherlands: Climate Change and flood risk management*, Climate Research Netherlands, p. 34 (Climate Changes Spatial Planning and Knowledge for Climate 2009) (link).

341 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement C.3 (2022).

342 E. Tendayi Achiume, (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Ecological crisis, climate justice and racial justice*, U.N. Doc. A/77/549, para. 3 (25 Oct. 2022); *see also* Jürgen Zimmerer, *From the Editors: Environmental genocide? Climate change, mass violence and the question of ideology*, 9 J. of Genocide Research, p. 350 (2007) (suggesting that the ideological element of genocide may be found in the "the conviction that there is 'life unworthy of living' or that the life of some groups is more valuable than the life of others").

343 United Nations Environment Programme, *Emissions Gap Report 2022: The closing window*, Executive Summary, p. v (2022).

to do so.[344] They have also failed to mobilize urgently needed resources for the climate adaptation measures on which the continued existence of island nations and peoples depends.[345] This course of action, pursued with full knowledge of the consequences for island peoples,[346] constitutes a judgement that our peoples are not worthy of life, amounting to an implicit intent to destroy us.

169. While MSG maintains that genocidal intent can be found here, it recalls that in order to trigger the obligation to prevent, there need only be a serious risk of genocide. Where there are "objective indicia relating to the possible commission of genocide,"[347] States must take preventative action to preserve the rights of the protected group. The genocidal situation already unfolding in Melanesia unequivocally engages this duty to prevent.

170. Major emitting States have "undeniable influence"[348] to prevent climate-induced genocide. Most clearly, they can regulate GHG-emitting activities, cease fossil fuel subsidies and policies in support of fossil fuel development and consumption, and mobilize resources to support adaptation for groups already facing genocidal conditions or a serious risk of the same. Their manifest failure to employ these means constitutes a violation of the duty to prevent genocide.

171. MSG fully endorses OACPS's submission that, in order to restore compliance with their obligations to prevent genocide stemming from climate change, States engaged in the Relevant Conduct must, at minimum, (1) use all means available to them to achieve drastic reductions in GHG emissions under their jurisdiction and control; and (2) cooperate with and provide assistance to groups facing serious risks of genocide to take measures necessary

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344 United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises*, p. 4-5 (2023).

345 Technical dialogue of the first global stocktake, Synthesis report by the co-facilitators on the technical dialogue, FCCC/SB/2023/9 (8 Sept. 2023), para. 44 ("Assessment of collective progress on adaptation has revealed an urgent need to rapidly scale up finance for adaptation, to meet the growing needs and priorities of developing countries.").

346 *See, e.g.*, Calla Wahlquist, *Peter Dutton apologises for 'water lapping at your door' jibe*, THE GUARDIAN (13 Sept. 2015) (link).

347 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order of 28 March 2024, Declaration of Judge Yusef, para. 3.

348 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.CJ. Rep., p. 43, para. 438.

to adapt to the adverse impacts of climate change.[349] MSG invites the Court to affirm these consequences.[350]

172. Furthermore, MSG invites the Court to consider whether a State or group of States that has predominantly contributed to climate change may be in breach of their duty to not commit genocide, or may be held responsible for complicity in genocide pursuant to Article III(e) of the Convention (by supporting production of fossil fuels and failing to adequately regulate GHG emissions),[351] triggering additional legal consequences.[352]

173. In sum, the ongoing climate crisis represents nothing less than a slow-motion genocide against the peoples of Melanesia and other vulnerable groups. The international community, particularly major emitting States, has both the legal obligation and the moral imperative to prevent this unfolding catastrophe and put an end to the genocidal conditions already at play in Melanesia. MSG invites this Court to affirm that (1) States hold obligations to avert the existential harm that climate change is **already causing** to entire peoples; and (2) by engaging in the Relevant Conduct and manifestly failing to take measures to prevent the resultant destruction of peoples, States are in breach of the same.[353]

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349 *See* Written Statement of OACPS, para. 80.

350 MSG is aware that while the duty to prevent genocide attaches once there is a serious risk of genocide, breach can only be found where genocide has actually been committed. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.CJ. Rep., p. 43, para. 431. However, as MSG has explained, the peoples of Melanesia are already experiencing genocidal conditions. Accordingly, MSG submits that a breach has occurred, entailing international responsibility.

351 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.CJ. Rep., p. 43, paras. 379-383 (explaining that these violations are mutually exclusive).

352 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.CJ. Rep., p. 43, paras. 169-170 ("Contracting Parties may be responsible for genocide and the other acts enumerated in Article III of the Convention . . . the responsibilities of States that would arise from breach of such obligations, are obligations and responsibilities under international law.").

353 MSG agrees with the submissions of Vanuatu, Solomon Islands, OACPS, and others, that these same conditions—which amount to genocide against the peoples of Melanesia as ethnical groups—also amount to individual violations of the right to life. *See, e.g.*, Written Statement submitted by the Republic of Vanuatu, paras. 343-348; Written Statement of Solomon Islands, paras. 166-170; Written Statement of OACPS, para. 121; Written Statement of the Republic of Ecuador, paras. 3.112-3.114; Written Statement of the Arab Republic of Egypt, paras. 207-210.

MSG further notes the association between climate change and ethnic conflict, especially in ethnically fractionalised States such as those in Melanesia. *See Intergovernmental Panel on Climate Change, Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statements B.4.7, C.2.12 (2022); Carl-

E. Racial and Gender Discrimination

174. MSG fully endorses the position submitted by OACPS in its Written Statement that the prohibitions on racial discrimination and gender discrimination apply in the context of climate change, obligating States to address and prevent disparate impacts of climate change on racial and gender minorities.[354] MSG agrees that these norms hold *jus cogens* character and thus vest all States with *erga omnes* obligations to eliminate racial and gender discrimination—as has recently been confirmed by this Court.[355] These obligations apply not only with respect to intentional discrimination but also with respect to conduct that is

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Friedrich Schleussner et al., *Armed-conflict risks enhanced by climate-related disasters in ethnically fractionalized countries*, 113 Proceedings of the Nat'l Academy of Sciences, pp. 9218-9219 (2016).

Many of our jurisdictions suffer from ethnic conflicts, which are largely traceable to colonial legacies. In Melanesia, colonial powers caused ethnic fractionalisation by imposing arbitrary borders, within which they divided, amalgamated, and/or relocated peoples of different ethnic backgrounds and cultural traditions, resulting in overpopulation, land conflicts, and resource scarcity. These issues, coupled with social inequities that have resulted from uneven colonial development policies and unsustainable resource extraction, have erupted into violent ethnic conflicts in recent memory. *See, e.g.*, Ruth Liloqula & Alice Aruhe'eta Pollard, *Understanding conflict in the Solomon Islands: A practical means to peacemaking in* STATE SOCIETY AND GOVERNANCE IN MELANESIA, pp. 2-7 (Australia National University Press 2000); JOHN BRAITHWAITE ET AL., PILLARS AND SHADOWS: STATEBUILDING AS PEACEBUILDING IN SOLOMON ISLANDS, pp. 18-20, 23-25 (Australia National University Press 2010); Yan Zhuang, *Protests rock Solomon Islands: Here's what's behind the unrest*, NY TIMES (25 Nov. 2021) (link); Satendra Prasad et al., *Economic development, democracy and ethnic conflict in the Fiji islands*, pp. 3-7 (Minority Rights Group International 2001); Written Statement of the Melanesian Spearhead Group, Ex. 34, Expert Statement of Professor Jerry Jacka, paras. 19-27; *see also generally* Benjamin Reilly, *Ethnic conflict in Papua New Guinea*, 49 Asia Pacific Viewpoint (2008). Climate change replicates and exacerbates all of these underlying drivers of ethnic tensions by displacing peoples from their lands, degrading and destroying natural resources, and inducing insecurity. *See* Solomon Yeo, *How climate change losses could open the Solomon Islands' old wounds*, INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT (25 Nov. 2020) (link); Kate Higgins and Josiah Maesua, *Climate change, conflict and peacebuilding in Solomon Islands*, Policy Brief No. 36, pp. 3-11 (Toda Peace Institute 2019). This exacerbation has already caused conflict to intensify in some places. *See* Written Statement of the Melanesian Spearhead Group, Exhibit 36, Expert Statement of Professor Paige West, paras. 38-40. Thus, MSG wishes to register its concern that, in addition to inducing genocidal conditions, climate change causes further suffering to our people by exacerbating ethnic conflict and violence.

354 *See* Written Statement of OACPS, paras. 81-90.

355 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, paras. 180-189 (detailing the prohibition of discrimination in various sources of international law and concluding that these provisions "give effect to the principle of the prohibition of discrimination, which is now part of customary international law"); *see also* Written Statement of OACPS, paras. 82-83; *see also* Dire Tladi (Special Rapporteur on peremptory norms of general international law (*jus cogens*)), *Fourth report on peremptory norms of general international law (jus cogens)*, U.N. Doc A/CN.4/727, paras. 91-101 (31 Jan. 2019); *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 I.C.J. Rep., p. 403, para. 81 (implicitly recognising prohibition on racial discrimination is a peremptory norm); *Case Concerning the Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain)*, Judgment, 1970 I.C.J. Rep., p. 3, para. 34 (racial discrimination); *Norin Catriman et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, Judgment (merits, reparations and costs), Series C. No. 279, Inter-Am. Ct. H.R., para. 197 (2014) (equality and non-discrimination).

neutral on its face but that causes a disproportionate impact on marginalised racial, ethnic, or gender groups.[356]

175. MSG further agrees with the position of OACPS that by virtue of these obligations, States must prevent and ameliorate the disproportionate impacts of climate change on marginalised racial and gender groups. While climate change and the conduct that causes it may be neutral on its face, the evidence is clear that racial minorities and women are disproportionately affected.[357] Moreover, as set forth in relation to the prohibition of genocide, the adverse effects of climate change are disproportionately felt by racialised and marginalised groups precisely because of the systemic inequality, oppression, and discrimination these groups face by virtue of their racialisation and marginalisation.[358] The failure of major emitting States to change their patterns of behaviour can also be understood as informed by persistent and structuralized conceptions of these same racialized groups as inferior and therefore as sacrificable.[359]

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356 *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, ICJ, Judgment of 31 Jan. 2024, para. 196 (link) ("[R]acial discrimination may result from a measure which is neutral on its face, but whose effects show that it is 'based on' a prohibited ground. This is the case where convincing evidence demonstrates that a measure, despite being apparently neutral, produces a disparate adverse effect on the rights of a person or a group distinguished by race, colour, descent, or national or ethnic origin, unless such an effect can be explained in a way that does not relate to the prohibited grounds in Article 1, paragraph 1. Mere collateral or secondary effects on persons who are distinguished by one of the prohibited grounds do not, in and of themselves, constitute racial discrimination within the meaning of the Convention."). MSG submits that the same test would apply in the context of gender discrimination.

357 *See, e.g.*, Committee for the Elimination of Racial Discrimination, *First draft general recommendation No. 37 on racial discrimination in the enjoyment of the right to health*, CERD/C/GC/37, para. 15 (15 May 2023); E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Ecological crisis, climate justice and racial justice*, U.N. Doc. A/77/549, para. 1 (25 Oct. 2022); Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change*, CEDAW/C/GC/37, paras. 2-3, (13 Mar. 2018).

358 E. Tendayi Achiume (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), *Ecological crisis, climate justice and racial justice*, U.N. Doc. A/77/549, paras. 1-2, 15, 18-19 (25 Oct. 2022); *see also* David R. Boyd (Special Rapporteur on human rights and the environment), *The right to a clean, healthy and sustainable environment: non-toxic environment*, U.N. Doc. A/HRC/49/53, para. 22 (12 Jan. 2022) ("The disturbing phenomenon of poor and marginalized communities being more heavily affected by pollution is a form of environmental injustice. Environmental injustices related to pollution and the production, export, use and disposal of toxic substances are rooted in racism, discrimination, colonialism, patriarchy, impunity and political systems that systematically ignore human rights."); *id.* at paras. 26-29.

359 *See* paras. 163-167, *supra*.

176. MSG agrees with OACPS that State obligations are triggered by the disparate impact of climate change on women and peoples of African descent.[360] MSG submits that Pacific peoples, too, are racialised groups.[361] As such, States' obligations to prohibit racial discrimination also squarely apply to the well-understood disproportionate impacts of climate change on Pacific peoples.[362]

177. In light of the disparate and devastating climate impacts that these and other protected groups are already experiencing, MSG joins OACPS in submitting that, by virtue of their obligations to eliminate racial and gender discrimination, States are required to take all necessary measures to mitigate the disparate impacts of climate change on racialised and marginalised groups.[363] Such measures must include action to significantly reduce GHG emissions, which is necessary to avoid further disparate impacts. In addition, MSG recalls that the **ICERD**—which elaborates the content of the *jus cogens* customary prohibition of racial discrimination—specifically provides that "[e]ach State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."[364]

178. In the context of climate change, MSG submits that these obligations require States to correct laws and policies that enable the continued emission of significant levels of GHGs (thereby perpetuating the disparate impacts of climate change on protected groups), including by bringing subsidies for fossil fuels to an end and correcting laws and regulations that fail to adequately control GHG emissions of private actors within States' jurisdiction and control. Indeed, as the Committee on the Elimination of Racial Discrimination (**CERD**) has

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360 Written Statement of OACPS, paras. 85-86 (providing evidence as to the disparate impact of climate change on women and peoples of African descent).

361 *See e.g.*, Dylan Asofo, *The racism in climate change law: Critiquing the law on climate change-related displacement with critical race theory*, 39.2 Berkeley J. Int'l Law, pp. 274-277 (2021) (detailing the history of racialized environmental degradation in the Pacific).

362 Intergovernmental Panel on Climate Change, "Chapter 15: Small Islands" *in Climate Change 2022: Impacts, Adaptation and Vulnerability*. *Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report, Executive Summary (2022).

363 Written Statement of OACPS, paras. 87-89.

364 International Convention on the Elimination of All Forms of Racial Discrimination, 7 Mar. 1966, 660 U.N.T.S. 195, art. 2.

indicated, State obligations to eliminate the discriminatory impacts of climate change may require them to "take appropriate measures to prevent situations in which the economic activities by transnational corporations registered in the State party have an adverse effect on the human rights and way of life of minority groups and indigenous peoples in other countries."[365] By failing to take such action, States remain in contravention of their obligations to eliminate gender and racial discrimination in the context of climate change.

179. Finally, MSG notes that pursuant to these norms, States are obligated to ensure that the mitigation and adaptation measures they undertake are not themselves discriminatory, but instead promote equity and non-discrimination.[366]

180. In this respect, MSG notes that the CERD has already found France's conduct discriminatory with respect to Indigenous peoples of its overseas territories, including the Kanak people of New Caledonia (represented by MSG through MSG Member FLNKS). In its 2022 review of France, the CERD expressed "its concern at discrimination against Indigenous Peoples in the overseas territories and at the fact that their rights, in particular their rights to land and to free, prior and informed consent, are not fully respected." [367] The CERD additionally noted with concern "the adverse effects of extractive activities on health and the environment, especially in French Guiana and New Caledonia" as well as "the negative impact of climate change on the traditional ways of life of Indigenous populations."[368] The CERD called upon France to fulfil its obligations by, *inter alia*, "[i]n consultation with the Indigenous Peoples concerned, adopt[ing] measures to offset or mitigate the consequences of extractive activities on their health and environment, as well as measures to mitigate the effects of the climate

365 Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined tenth and twelfth reports of the United States of America*, CERD/C/USA/CO/10-12, para. 46 (21 Sept. 2022).

366 *See* Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change*, CEDAW/C/GC/37, para. 14 (13 Mar. 2018).

367 Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-second and twenty-third periodic reports of France*, CERD/C/FRA/CO/22-23, para. 15 (14 Dec. 2022).

368 Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-second and twenty-third periodic reports of France*, CERD/C/FRA/CO/22-23, para. 15 (14 Dec. 2022).

crisis on their lands, territories and resources with the aim of protecting their ways of life and means of subsistence."[369]

181. MSG invites the Court to confirm that State conduct responsible for climate change is in breach of their obligations to eliminate racial and gender discrimination and, as such, triggers legal consequences. MSG further invites the Court to confirm that States must comply with the same obligations in undertaking actions to address the climate crisis, including mitigation and adaptation measures.

VII. LEGAL CONSEQUENCES

182. In this Part, MSG discusses three issues of particular importance in relation to question (b). First, MSG reaffirms that, as submitted by the vast majority of written statements, question (b) is governed by the general law of State responsibility. MSG further explains why arguments to the contrary advanced in a minority of written statements should be rejected. Second, MSG considers the legal consequences that may be engaged with respect to the two categories of victims identified in the question: injured, specially affected, and particularly vulnerable States, and individuals and peoples of present and future generations. MSG considers concretely the content of the duties that responsible States owe these victims for climate-related harm stemming from their internationally wrongful acts. Finally, MSG registers its agreement with the position advanced in the written statements of Vanuatu and Solomon Islands, that the Relevant Conduct amounts to serious breaches of peremptory norms, triggering additional legal consequences for all States.

A. General International Law of State Responsibility

183. As most participants to these proceedings have submitted, question (b) is unambiguously governed by the general international law of State responsibility, as codified in the draft Articles on State Responsibility for Internationally Wrongful Acts (**ARSIWA**).[370] A

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369 Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-second and twenty-third periodic reports of France*, CERD/C/FRA/CO/22-23, para. 16 (14 Dec. 2022).

370 *See, e.g.*, Written Statement of the Melanesian Spearhead Group, para. 292; Written Statement submitted by the Republic of Vanuatu, para. 559; Written Statement of the Solomon Islands, paras. 230-231; Written Statement of the Portuguese Republic, para. 115; Written Statement of the Democratic Republic of the Congo, paras. 255-270, 323-343; Written Statement of the Republic of Palau, para. 4; Written Statement of the Republic of Colombia, para. 4.8; Written Statement of the International Union for the Conservation of Nature, para. 534; Written Statement of the

minority of participants argue, however, that these rules are displaced by the UN Climate Regime as *lex specialis*.[371] A small number of mostly overlapping participants further argue that even if the general law of State responsibility applies, the diffuse and causally complex character of climate change renders application of that law "highly unpractical."[372] The first of these arguments must be rejected as a mischaracterisation of the operation of law. The second must be rejected as a mischaracterisation of the question before the Court.

184. Turning to the first argument, MSG recalls that the general law of State responsibility provides secondary rules that attach when States have breached their obligations under

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Republic of Singapore, para. 4.1; Written Statement of the Republic of Kenya, para. 6.87; Written Statement of the Republic of the Philippines, para. 115; Written Statement of the Republic of Albania, para. 129; Written Statement of the Federated States of Micronesia, paras. 121-128; Written Statement of the Republic of Sierra Leone, para. 3.134; Written Statement by the Swiss Federation, para. 72; Written Statement of Grenada, para. 74; Written Statement of Saint Lucia, para. 86; Written Statement of Saint Vincent and the Grenadines, para. 128; Written Statement of the Kingdom of the Netherlands, para. 5.4; Written Statement of the Commonwealth of the Bahamas, paras. 233-234; Written Statement of the Republic of the Marshall Islands, paras. 55-57; Written Statement of the Republic of Kiribati, para. 179; Written Statement of the Democratic Republic of Timor-Leste, para. 355; Written Statement by Republic of India, para. 82; Written Statement of the Independent State of Samoa, para. 190; Written Statement of the Republic of Latvia, para. 74; Written Statement of the Republic of Ecuador, para. 4.6; Written Statement of Barbados, paras. 272-273; Written Statement of the African Union, para. 254; Written Statement of OACPS, para. 143; Written Statement of the Republic of Madagascar, paras. 73-75; Written Statement of the Oriental Republic of Uruguay, paras. 155-160; Written Statement of the Arab Republic of Egypt, paras. 287-292; Written Statement of the Republic of Chile, para. 93; Written Statement of the Republic of Namibia, paras. 130-131; Written Statement of Tuvalu, para. 120; Written Statement of the People's Republic of Bangladesh, para. 145; Written Statement of the Republic of Mauritius, para. 210; Written Statement of the Republic of Costa Rica, para. 95; Written Statement of Antigua and Barbuda, paras. 532-533; Written Statement of the Commission of Small Island States on Climate Change and International Law, paras. 146, 150-151; Written Statement of the Republic of El Salvador, para. 50; Written Statement of the Federative Republic of Brazil, paras. 78-79; Written Statement of the Government of the Socialist Republic of Viet Nam, paras. 42-44; Written Submission of the Dominican Republic, para. 4.57; Written Statement of the Kingdom of Thailand, para. 29; Written Statement of Burkina Faso, paras. 346-401; *cf.* Written Statement by the Governments of Denmark, Finland, Iceland, Norway and Sweden, paras. 102-106 (limited application); Written Statement of the Kingdom of Tonga, paras. 285, 288-296 (limited application); Written Statement of the Republic of Korea, paras. 45-47 (submitting that rules apply but that their implementation might be difficult in the context of climate change).

371 *See* Written Statement of the Organization of Petroleum Exporting Countries (OPEC), paras. 119-120; Written Statement of the Government of Canada, paras. 32-35; Written Statement of the Kingdom of Saudi Arabia, paras. 6.3-6.8; Written Statement of the United Kingdom of Great Britain and North Ireland, paras. 134-138; Written Statement of the People's Republic of China, paras. 139-140; Written Statement of Japan, para. 41; Written Statement of the Islamic Republic of Iran, para. 158; Written Statement of the State of Kuwait, para. 86; *cf.* Written Statement of the European Union, paras. 351-354 (arguing that both the climate and human rights regimes displace the secondary rules of State responsibility as *lex specialis*).

372 Written Statement of the Russian Federation, p.16; *seen also* Written Statement of the Petroleum Exporting Countries (OPEC), paras. 112-118; Written Statement of the Kingdom of Saudi Arabia, para. 6.7; Written Statement of the United Kingdom of Great Britain and North Ireland, para. 137.4; Written Statement from the French Republic, paras. 177-211; Written Statement of New Zealand, para. 140; Written Statement of the People's Republic of China, para. 138; Statement of the Republic of Korea, paras. 46-49; Written Statement of the United States of America, para. 5.10; Written Statement of Australia, paras. 5.9-5.10.

primary rules of law.[373] Certain States essentially argue that these secondary obligations have been displaced by the UN Climate Regime.[374] For example, the United Kingdom argues that the climate treaties "identify legal consequences in the form of primary treaty obligations."[375] Likewise, the People's Republic of China argues that legal consequences are governed by the UN Climate Regime's "tailor-made" solutions to facilitate compliance and address loss and damage.[376] These arguments flow from the position that the UN Climate Regime governs State conduct in respect of climate change as *lex specialis*. MSG has already explained why this position is incorrect and should be rejected.[377]

185. Moreover, the argument that the UN Climate Regime has displaced the general law of State responsibility is wholly unsupported in law—even if the UN Climate Regime could be considered *lex specialis*. It is universally understood that the general law of State responsibility imposes secondary obligations that apply to breaches of all primary obligations, **unless they have been specifically displaced by specialized rules of State responsibility**.[378] As the International Law Commission (**ILC**) has explained in its commentary on Article 55 of ARSIWA, in order for the secondary rules of State

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373 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, General commentary, para. 1 (2001) (link).

374 *See, e.g.*, Written Statement of the United Kingdom of Great Britain and North Ireland, para. 136; *see also, e.g.*, Written Statement of the Organization of Petroleum Exporting Countries (OPEC), para. 119 (arguing that the secondary rules of State responsibility are displaced by the "self-contained special provisions in the primary sources of international law, the UNFCCC, Kyoto Protocol and Paris Agreement," specifically the "compliance and implementation mechanisms" contained in those instruments).

375 Written Statement of the United Kingdom of Great Britain and North Ireland, para. 136.

376 Written Statement of the People's Republic of China, para. 140; *see also, e.g.*, Written Statement of the Islamic Kingdom of Iran, para. 158 (arguing that legal consequences may only be governed pursuant to the voluntary compliance mechanisms of the Paris Agreement); Written Statement of the European Union, paras. 328-334 (arguing that the secondary rules of State responsibility are displaced by the "non-adversarial" mechanisms under the UN climate regime, which are based on "global solidarity and development cooperation" rather than "legal consequences for harm resulting from a breach").

377 *See* Part V, *supra*.

378 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, general commentary, para. 5 (2001) (link) ("[T]he present articles are concerned with the whole field of State responsibility . . . They apply to the whole field of the international obligations of States, whether the obligation is owed to one or several States, to an individual or group, or to the international community as a whole.").

responsibility to be displaced, "there must be some actual inconsistency between them, or else a discernible intention that one provision is to exclude the other."[379]

186. Nothing in the UN Climate Regime evinces any intention—express or implied—to displace the secondary rules of State responsibility. Proponents of this position point to Articles 8 and 15 of the Paris Agreement, but neither can be plausibly read as intending to displace the secondary rules of State responsibility. Article 15 establishes a non-compliance mechanism "to facilitate implementation of and promote compliance" with the Paris Agreement.[380] But this non-compliance mechanism does not establish a framework of State responsibility for breach of primary obligations under the UN Climate Regime, let alone any other applicable primary rule of law. As the ILC's Special Rapporteur on the protection of the atmosphere has explained, "[t]here is a fundamental difference between 'breach' and 'non-compliance' in relation to international obligations."[381] Whereas a "'breach' of international law by a State entails its international responsibility," non-compliance mechanisms are cooperative in nature, "designed to 'assist' non-complying States in returning to compliance."[382] In short, by encouraging States to comply with their primary obligations, the Paris Agreement's non-compliance mechanism compliments but does not overlap with the secondary rules of State responsibility. As such, the former does not displace the latter.

187. Pursuant to Article 8 of the Paris Agreement, State parties have established the Warsaw International Mechanism for Loss and Damage, which is a **voluntary** mechanism to assist States that have incurred unavoidable loss and damage as a result of climate change. This voluntary mechanism cannot be said to displace, or even purport to displace, the legally-binding framework of State responsibility for breach of primary obligations. Indeed, as many proponents of this erroneous argument have emphasised,[383] "Article 8 of the Agreement does

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379 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 45, commentary, paras. 4-6 (2001) (link).

380 Paris Agreement to the United Nations Framework Convention on Climate Change, 12 Dec. 2015, T.I.A.S. No. 16-1104, art. 15.

381 Shinya Murase (Special Rapporteur of the UN International Law Commission), *Fifth report on the protection of the atmosphere*, U.N. Doc. A/CN.4/711, para. 33 (8 Feb. 2018).

382 Shinya Murase (Special Rapporteur of the UN International Law Commission), *Fifth report on the protection of the atmosphere*, U.N. Doc. A/CN.4/711, paras. 16-18, 33 (8 Feb. 2018).

383 *See, e.g.*, Written Statement of the People's Republic of China, para. 141; Written Statement of the United States of America, paras. 3.31-3.33; Written Statement of the Kingdom of Saudi Arabia, para. 4.83; Written Statement of

not involve or provide a basis for any liability or compensation."[384] The Warsaw Mechanism is thus decidedly distinct from the framework of reparation for injury caused by internationally wrongful acts contained in the secondary rules of State responsibility.

188. Moreover, numerous State parties to the Paris Agreement explicitly declared that nothing in the treaty can be interpreted as derogating from the general law of State responsibility or relinquishing any claims or rights regarding compensation for the adverse effects of climate change.[385] For all of the foregoing reasons, it cannot be seriously contended that the mechanisms established in Article 8 or Article 15 are in anyway "inconsistent" with or was intended to displace the generally applicable law of State responsibility.

189. Further, and contrary to the insinuations of certain parties to this proceeding,[386] it should be noted that the terms of the question expressly demonstrate that the UNGA wishes the Court to examine the general law of State responsibility. As Vanuatu has rightly pointed out,[387] the language of "legal consequences" in the Resolution mirrors the language of Part II of ARSIWA,[388] and the Court has repeatedly indicated that requests couched in the language of "legal consequences" reference the general law of State responsibility.[389] The terms "acts and omissions" in the question are paraphrased from key elements—"actions or omissions"—of an internationally wrongful act as codified in Article 15 of ARSIWA, and the terms "injured" and "specially affected" States are taken directly from Article 42 of

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Japan, paras. 43-44; Written Statement of Australia, paras. 2.45-2.46; Written Statement of the Organization of Petroleum Exporting Countries (OPEC), para. 99.

384 Decision 1/CP.21, Adoption of the Paris Agreement, FCCC/CP/2015/L.9, para. 51 (12 Dec. 2015).

385 Declarations to this effect were made by the Philippines, Cook Islands, Federated States of Micronesia, Nauru, Niue, Solomon Islands, and Tuvalu. In addition, Vanuatu and the Marshall Islands declared that ratification of the Paris Agreement "shall in no way constitute a renunciation of any rights under any other laws, including international law." *See Paris Agreement*, UNITED NATIONS TREATY COLLECTION (Mar. 8, 2024) (link).

386 *See* Written Statement of the United Kingdom of Great Britain and North Ireland, para. 137 (arguing that the text of question (b) does not refer to the general law of state responsibility, but rather to the compliance mechanism under the Paris Agreement).

387 Written Statement submitted by the Republic of Vanuatu, paras. 539, 545.

388 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 28 (2001) (link).

389 *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 I.C.J. Rep., p. 403, para. 51.

ARSIWA. This congruency of language further confirms the UNGA's intent that the Court evaluate legal consequences under the general law of State responsibility.

190. Finally, the application of ARSIWA to the Relevant Conduct has been expressly recognized by regional and international tribunals. For example, the ECtHR recently emphasised the relevance of Article 47 of ARSIWA in the context of multiple States contributing to the harm of climate change.[390] The ITLOS has also indicated, in the context of States' obligations with respect to anthropogenic GHG emissions under the UNCLOS, that "if a State fails to comply with [its] obligations, international responsibility would be engaged for that State."[391] These decisions add significant weight and authority to the conclusion that the general law of State responsibility applies to State obligations in respect of climate change.

191. Turning to the second argument, a handful of States and international organisations—mainly major GHG emitters and producers of fossil fuels—have argued that even if secondary rules of State responsibility may apply in principle, their actual application in the context of climate change is either impractical or impossible.[392] This is simply not the case. As set forth by several Written Statements,[393] the Relevant Conduct, namely "the conduct of States over time in relation to activities that contribute to climate change and its adverse effects," which has caused "significant harm to the climate system as part of the environment," is precisely contemplated as a "breach consisting of a composite act" within the meaning of the secondary rules of State responsibility.

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390 *Verein Klimaseniorinnen Schweiz and others v. Switzerland*, App. No. 53600/20, ECtHR, paras. 442-443 (2024) (link).

391 *Climate Change and International Law*, Case No. 31, Advisory Opinion of 21 May 2024, ITLOS, para. 223 (link); *see also id.* at para. 286.

392 *See* Written Statement of New Zealand, para. 140; Written Statement of the People's Republic of China, paras.134-135 (arguing that given "the uniqueness of climate change," including complexities in relation to attribution and causation, GHG emissions cannot be classified as "internationally wrongful acts" at all); *see also, e.g.*, Written Statement of Australia, paras. 5.9-5.10; Written Statement of the Kingdom of Saudi Arabia, para. 6.7; Written Statement of the Organization of Petroleum Exporting Countries (OPEC), paras. 112-118; Written Statement of the United Kingdom of Great Britain and North Ireland, para. 137.4; Written Statement from the French Republic, paras. 177-211; Written Statement of the Republic of Korea, paras. 46-49; Written Statement of the United States of America, para. 5.10.

393 *See, e.g.*, Written Statement submitted by the Republic of Vanuatu, paras. 530-535; Written Statement of the African Union, para. 231; Written Statement of OACPS, para. 147; Written Statement of the Arab Republic of Egypt, paras. 293-295.

192. Codified in Article 15(1) of ARSIWA, a breach consisting of a composite act occurs through "a series of actions or omissions defined in aggregate as wrongful."[394] The ILC commentary on Article 15 clarifies the nature of such an act.[395] It provides that a breach arising from a composite act consists of an aggregate of acts or omissions occurring over time, which individually would not have amounted to a breach. The breach crystallises when the cumulative effect of the series of individual acts and omissions crosses the threshold of wrongfulness.[396] The breach then extends backwards in time to cover each act or omission in the series, regardless of whether any individual act or omission would, in isolation, amount to a breach. Likewise, the breach extends into the future for as long as the series of wrongful conduct continues.[397]

193. The definition of a breach consisting of a composite act naturally captures the Relevant Conduct. MSG recalls that, in general, in order to qualify as an internationally wrongful act, the conduct in question must both breach an operable legal rule and must be attributable to the State.[398] As MSG and others have explained in their Written Statements,[399] in the context of climate change, conduct attributable to the State includes (1) State subsidies for fossil fuel production; (2) authorization for expansion of fossil fuels; (3) adoption of laws, policies, programmes, and decisions regarding energy policy that support fossil fuel production and consumption; and (4) failure to adequately regulate GHG emissions under the State's jurisdiction or control.

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394 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 15(1) (2001) (link).

395 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 15, commentary, para. 8 (2001) (link); *see also* Written Statement submitted by the Republic of Vanuatu, paras. 530-535.

396 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 15, commentary, para. 8 (2001) (link).

397 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 15(2) (2001) (link).

398 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 2 (2001) (link).

399 Written Statement of the Melanesian Spearhead Group, paras. 294-296; Written Statement submitted by the Republic of Vanuatu, paras. 494-499; Written Statement of OACPS, paras. 145-146; Written Statement of the Republic of Kenya, para. 6.104; Written Statement of the Arab Republic of Egypt, paras. 291, 297; Written Statement of the Republic of Costa Rica, para. 103; *see also* Written Statement of the International Union for the Conservation of Nature, para. 554.

194. MSG agrees with Vanuatu that, properly viewing the conduct as a composite act, the breach crystallises for any individual State when cumulative GHG emissions stemming from a series of such acts and omissions reach the level of significant harm to the climate system and other parts of the environment in non-conformity with operable obligations identified under question (a). Assessed at the level of a group of States, the breach occurs when the cumulative conduct of these States, taken together, reaches the level of catastrophic harm in the form of climate change and its adverse effects in breach of applicable obligations under question (a).[400] In either case, the breach then extends back in time to the first in the series of acts or omissions contributing to the cumulative emissions. MSG agrees with Vanuatu's submission that historically high cumulative emissions are therefore sufficient to establish a breach.[401] This means that major emitting States cannot claim to be in compliance with their international legal obligations simply because their annual emissions have declined in recent years. Moreover, the breach will continue into the future until the conduct comes into conformity with applicable obligations. Of course, the breach of any specific obligation may only be said to extend back to the point at which that obligation became operational (e.g., 1872 in the case of due diligence, 1945 in the case of self-determination).[402]

195. MSG agrees with the position advanced in numerous Written Statements that each State engaged in the Relevant Conduct can and should be held responsible for its contributions to the harms stemming from climate change.[403] Indeed, the secondary rules of State responsibility contemplate a situation where, as here, multiple States are responsible for the same internationally wrongful act.[404] Article 47 of ARSIWA provides that "[w]here several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act." This rule was recently referenced by the

400 Written Statement submitted by the Republic of Vanuatu, paras. 534-535.

401 Written Statement submitted by the Republic of Vanuatu, para. 528.

402 *See* Part IV, fn. 82, *supra*; *see also* Written Statement submitted by the Republic of Vanuatu, para. 529.

403 Written Statement submitted by the Republic of Vanuatu, para. 535; Written Statement of the Democratic Republic of the Congo, paras. 316-320; Written Statement of Saint Vincent and the Grenadines, para. 132; Written Statement of the Republic of the Marshall Islands, para. 63; Written Statement of the Republic of Ecuador, paras. 4.18-4.20; Written Statement of the Oriental Republic of Uruguay, para. 172; Written Statement of the Arab Republic of Egypt, paras. 371-373; Written Statement of the Commission of Small Island States on Climate Change and International Law, paras. 166-171; Written Statement of Burkina Faso, para. 368.

404 Written Statement submitted by the Republic of Vanuatu, para. 535.

ECtHR—in rejecting precisely same arguments raised here—that individual States cannot be held responsible for their contributions to a "global phenomenon that requires action by the community of States."[405] Noting that such arguments have been routinely rejected in domestic courts, the ECtHR, in *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, explained that:

> [W]hile climate change is undoubtedly a global phenomenon which should be addressed at the global level by the community of States, the global climate regime established under the UNFCCC rests on the principle of common but differentiated responsibilities and respective capabilities of States (Article 3, §1). This principle has been reaffirmed in the Paris Agreement (Article 2, §2) and endorsed in the Glasgow Climate Pact as well as in the Sharm el-Sheikh Implementation Plan. It follows, therefore, that **each State has its own share of responsibilities to take measures to tackle climate change and that the taking of those measures is determined by the State's own capabilities rather than by any specific action (or omission) of any other State**. **The Court considers that a respondent State should not evade its responsibility by pointing to the responsibility of other States, whether Contracting Parties to the Convention or not.**
>
> This position is consistent with the Court's approach in cases involving a concurrent responsibility of States for alleged breaches of Convention rights, where each State can be held accountable for its share of the responsibility for the breach in question. **It is also consistent with the principles of international law relating to the plurality of responsible States, according to which the responsibility of each State is determined individually, on the basis of its own conduct and by reference to its own international obligations (see ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, with**

[405] *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, App. No. 53600/20, ECtHR, para. 441 (2024) (link) (emphasis added). Major emitters and producers of fossil fuels raise the same erroneous argument here. For example, New Zealand argues that "it is not clear that the drafters of ARSIWA envisaged a situation," as in the climate change context, where "i) all States are injured to varying degrees; ii) all States are contributors to the injury to varying degrees; iii) some contributions to the injury are the result of internationally lawful acts; and iv) some contributions to the injury are the result of internationally wrongful acts." Written Statement of New Zealand, para. 140(c). Likewise, the United States suggests that individual States cannot be held responsible for their contributions to "the harm caused by anthropogenic climate change" because this is the result of activities taking place "in every country and every part of the world." Written Statement of the United States of America, paras. 4.17-4.19; *see also, e.g., id.* at para. 2.28 (describing climate change as a "quintessential collective action problem, which can be effectively addressed only through global action."); Written Statement of Australia, para. 5.9.

commentaries, Commentary on Article 47, paragraphs 6 and 8).[406]

196. Finally, and relatedly, MSG notes that a small number of States—again major GHG emitters and fossil fuel producers—raise concerns about the practicality of implementing the secondary rules of State responsibility, that is, invoking legal consequences in the context of climate change. Specifically, these States argue that causal uncertainty associated with attributing specific acts of a given State to particular climate-related harms would preclude an injured State (or peoples, or individual victims) from invoking international responsibility.[407] But these arguments grossly mischaracterise what is required to trigger legal consequences.

197. First, it should be noted that legal consequences attach to any internationally wrongful act, whether or not the wrongful act has resulted in injury. For example, a State responsible for an internationally wrongful act is always obligated to cease that act if it is continuing, and to offer assurances and guarantees of non-repetition as appropriate.[408] These consequences occur automatically under international law as a result of the wrongful act itself.[409] Likewise, States responsible for an internationally wrongful act are under an obligation to make full reparations for any injury the act has caused. This obligation also arises automatically where the wrongful act has resulted in injury.[410] The Court is therefore more than capable of

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406 *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, App. No. 53600/20, ECtHR, paras. 442, 444 (2024) (link) (emphasis added) (most citations omitted). MSG further notes that, in the above quoted passage, the ECtHR explicitly referenced the UN Climate Regime to support the proposition that States can be held responsible for their wrongful acts in the context of climate change. This authority further undermines the argument that the climate regime displaces the secondary rules of State responsibility.

407 *See* Written Statement of the Organization of Petroleum Exporting Countries (OPEC), para. 93; Written Statement of the United Kingdom of Great Britain and North Ireland, para. 137; Written Statement of New Zealand, para. 140; Written Statement of the Republic of Korea, paras. 46-49; Written Statement of the People's Republic of China, paras. 134-8; Written Statement of the United States of America, paras. 2.20-2.26, 5.7-5.10; Written Statement of the Russian Federation, pp. 17-18; Written Statement of the Kingdom of Saudi Arabia, para. 6.7; Written Statement of Australia, para. 5.9.

408 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 30 (2001) (link).

409 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 30, commentary, para. 3 (2001) (link).

410 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 31, commentary, para. 4 (2001) (link) ("The general obligation of reparation is formulated in article 31 as the immediate corollary of a State's responsibility, i.e. as an obligation of the responsible State resulting from the breach, rather than as a right of an injured State or States.").

determining that these legal consequences arise as a result of the Relevant Conduct, even without considering the causal link between the Relevant Conduct and injuries suffered by specific victims. That said, the obligation of reparation will often remain inconsequential in the absence of a claim that links the wrongful act to specific injury.[411] Accordingly, question (b) requires the Court to establish that causation for the purpose of reparations owed to victims is not **by definition** impossible, as some participants to these proceedings suggest.

198. MSG agrees with Vanuatu's submission that the correct causal test involves establishing a causal link between the breach resulting from a composite act (rather than a specific act or omission in isolation) and the alleged injury, and invites the Court to confirm the same.[412] This test requires proof that the alleged injury would have been avoided "with a sufficient degree of certainty" in the absence of significant harm the environment stemming from the composite breach.[413] Precisely what evidence is needed to satisfy this test is to be determined in specific contexts, as it "may vary depending on the primary rule violated and the nature and extent of the injury."[414]

199. The bottom line, however, is that the causal inquiry is far less complex than some participants suggest and does not pose an insurmountable obstacle to establishing or invoking a duty to make reparations for injury resulting from the Relevant Conduct. To be sure, the work of the IPCC establishes an "unequivocal" causal relationship between the significant harm to the climate system caused by anthropogenic GHG emissions and the severe and widespread harm to environment and people resulting from climate change.[415] Further, as MSG has

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411 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 31, commentary, para. 7 (2001) (link) ("[T]here is no general requirement, over and above any requirements laid down by the relevant primary obligation, that a State should have suffered material harm or damage before it can seek reparation for a breach. The existence of actual damage will be highly relevant to the form and quantum of reparation. But there is no general requirement of material harm or damage for a State to be entitled to seek some form of reparation.").

412 Written Statement submitted by the Republic of Vanuatu, para. 562.

413 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. Rep., p. 43, paras. 462-463.

414 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations Judgement, 2022 I.C.J. Rep., p.13, para. 94.

415 Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement A.1 (2023).

explained,[416] and as numerous Written Statements have stressed,[417] this harm can be attributed to the acts and omissions of States, with the contribution of specific States readily identified.[418] This corpus of evidence amply establishes the requisite causal connection. Indeed, in *Klimaseniorinnen v. Switzerland*, the ECtHR determined that, on the basis of this evidence, "a legally relevant relationship of causation" could be drawn between the Relevant Conduct and the harms affecting individuals due to the adverse effects of climate change.[419] The duty to make reparations for the relevant conduct therefore clearly exists, arising as a distinct legal consequence on which the Court has been asked to shed light in these proceedings.

200. In sum, MSG respectfully invites the Court to confirm that (1) the general international law of State responsibility governs the legal consequences arising from breach of States' international legal obligations in respect of climate change (as identified in response to question (a); (2) that the Relevant Conduct represents a breach of these obligations consisting of a composite act, triggering legal consequences; and (3) that multiple States can be held responsible for their contributions to the harm of climate change pursuant to Article 47 of ARSIWA. MSG further encourages the Court to (4) clarify the causal test required for the purpose of reparations, and to confirm that it is in principle possible to satisfy the test on the basis of available evidence.

B. Content of Legal Consequences

201. The question asks the Court to opine on legal consequences in respect of States, including SIDS, that are injured, specially affected, or particularly vulnerable to climate change, as well as in respect of individuals and peoples of present and future generations. The answers

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416 *See* Part IV, *supra*.

417 *See, e.g.*, Written Statement of OACPS, paras. 145-146; Written Statement of the Democratic Republic of Congo, para. 295; Written Statement of the Republic of Sierra Leone, para. 3.145; Written Statement of the Republic of the Marshall Islands, para. 49; Written Statement of the Republic of Kenya, paras. 6.102-6.103; Written Statement of the Republic of Ecuador, para. 4.17; Written Statement of the Democratic Socialist Republic of Sri Lanka, para. 107; Written Statement of the Arab Republic of Egypt, para. 370; Written Statement of Tuvalu, para. 114; Written Statement of the Republic of Mauritius, paras. 215-217; Written Statement of the Republic of Costa Rica, para. 103; Written Statement of Antigua and Barbuda, paras. 566-592; Written Statement of the Democratic Socialist Republic of Sri Lanka, para. 28.

418 This evidence is set forth in Part IV, *supra*. *See also* Written Statement of the Republic of Vanuatu, paras. 162-170.

419 *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, App. No. 53600/20, ECtHR, para. 478 (2024) (link).

to these questions are of particular interest to MSG, given the immense suffering that MSG Members and the peoples of Melanesia have already experienced as a result of climate change, and the increased loss and hardship they are expected to experience in the future. MSG therefore wishes to share its perspective on the specific content of legal consequences that would arise in the case that a State or group of States is found to have breached their legal obligations in respect of climate change.

202. The general law of State responsibility provides that a number of consequences flow from a State perpetrating an internationally wrongful act, in the form of obligations that the responsible State owes to victims harmed by its conduct. These include the obligations of cessation and non-repetition, as well as the obligation of reparation in the form(s), as appropriate, of restitution, compensation, and satisfaction. In this Section, informed by the loss and damage already experienced by MSG Members and the peoples of Melanesia as a result of climate change, MSG describes what may be required from responsible States to discharge each of these obligations in turn.

203. As referenced above, the duty of cessation requires the responsible State to bring its internationally wrongful conduct to an end.[420] Discharge of this duty requires the State to correct its own wrongful acts, including by correcting defective laws and regulatory schemes.[421] It also may require the State to take positive steps to control the conduct of private actors under its jurisdiction and control, including but not limited to revocation of permits and authorisations for private conduct contributing to the internationally wrongful

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420 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 30 (2001) (link); *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 267 (collecting advisory opinions in which the Court has "confirmed the existence" of the obligation of cessation); *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, 2012 I.C.J. Rep., p. 99, para. 137.

421 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 268 (explaining that the obligation of cessation encompasses the "obligation to repeal all legislation and measures creating or maintaining the unlawful situation"); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. Rep., p. 136, paras. 151, 163 (finding that because Israel had performed an internationally wrongful act by constructing a wall in Palestine, and through the regime supporting that activity, the obligation of cessation required Israel to "cease forthwith the works of construction of the wall . . ., to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto").

act.[422] In the context of climate change, MSG submits that cessation thus requires responsible State(s) to, at minimum: (1) cease subsidies of fossil fuels; (2) cease authorisations and support for the expansion of fossil fuel production; and (3) cease their failure to appropriately regulate GHG emissions under their jurisdiction and control. These three activities—which are all directly attributable to the State—account, in most cases, for the majority of GHG emissions and thus must be brought to an end in order for a breaching State to satisfy its duty of cessation.[423]

204. Importantly, MSG agrees with the submissions of Vanuatu and OACPS that development or use of geoengineering to reduce atmospheric GHG concentrations would not satisfy the duty of cessation, as these technologies are highly speculative and offer no guarantee of success.[424] As set out in detail in Vanuatu's Written Statement, these technologies are themselves inherently risky, posing serious risks of harm to both the climate system and other parts of the environment, as well as to human rights.[425] MSG agrees with Vanuatu and OACPS that development and use of these technologies are fundamentally inconsistent with States' existing legal obligations, including under the UN Climate Regime, the UNCLOS, human rights instruments, and customary law principles, including the duty of due diligence, the prevention principle, and customary human rights norms.

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422 *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, 2014 I.C.J. Rep., p. 226, paras. 244-245 (holding that for Japan to discharge its duty of cessation with respect to its internationally wrongful programme of whaling, it must, among other things, "revoke any authorization, permit or license" issued to private parties to engage in whaling pursuant to that programme, to "refrain from granting any further permits," and to immediately cease implementation of that programme); *see also Trail Smelter Arbitration*, Awards of 16 April 1938 and 11 Mar. 1941, Rep. of International Arbitral Awards, vol III, p. 1905, p. 1934.

423 *See* Simon Black et al., *IMF Fossil Fuel Subsidies Data: 2023 Update*, IMF Working Paper WP/23/169 (International Monetary Fund 2023) (link) (reporting that reached an all-time high of USD 7 trillion in 2022 and must be cut drastically to end support for the production and consumption of the major source of anthropogenic GHG emissions); United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises*, 4-5 (2023) (reporting that current government policies in support of fossil fuel production and consumption are leading "to global production levels in 2030 that are 460%, 29%, and 82% higher for coal, oil, and gas, respectively, than the median 1.5ºC-consistent pathways"); Secretariat of the United Nations Framework Convention on Climate Change, *Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat*, U.N. Doc. FCCC/PA/CMA/2022/4, para. 17 (26 Oct. 2022) (indicating that based on current emissions reductions commitments of States, temperatures are expected to reach 2.1-2.9°C above pre-industrial levels by mid-century).

424 Written Statement submitted by the Republic of Vanuatu, paras. 571-575; Written Statement of OACPS, para. 166.

425 *See* Written Statement Submitted by the Republic of Vanuatu, paras. 571-575.

205. MSG invites the Court to clarify that the duty of cessation requires responsible States to bring the wrongful conduct under their jurisdiction and control to an end, and to further clarify that this obligation cannot be discharged through reliance on geoengineering technologies, the use of which carries serious risks of causing distinct violations of States' obligations under international law.

206. Responsible States also hold a distinct obligation to provide reparation to injured States and human rights victims in order to repair the harms already suffered as a result of their wrongful conduct.[426] Ultimately, the purpose of reparation is to make victims whole.[427] As such, MSG submits that the appropriate forms of reparation in the context of climate change-induced harms should be determined by listening to the voices of the victims, who are best positioned to explain what is needed to repair the harm they have suffered. In this Section, MSG provides examples of each form of reparation grounded, as much as possible, in the perspectives of victims of climate injustice throughout Melanesia, and what they have indicated they need to heal.

207. The preferred form of reparation is restitution, which seeks to undo the harm and put the victim back in the position they would have been in had the harm never occurred.[428] Restitution entails "any action that needs to be taken by the responsible State to restore the situation resulting from its internationally wrongful act," provided such act is not "materially impossible or too burdensome in proportion to its benefits."[429] Among other forms of

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426 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 30, commentary, paras. 7-8 (2001) (link) (discussing the relationship between cessation and reparation and confirming that they are two separate obligations that "must be distinguished"); *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 269 (confirming that reparation is a legal obligation owed in addition to the obligation of cessation).

427 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 269 ("[R]eparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed" (citing *Factory at Chorzów (Germ. v. Pol.)*, Merits, Judgment, Case No. 13, 1928 P.C.I.J., Series. A, No. 17, p. 47)).

428 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, art. 35, commentary, para. 3 (2001) (link) (explaining that "because restitution most closely conforms to the general principle that the responsible State is bound to wipe out the legal and material consequences of its wrongful act by re-establishing the situation that would exist if that act had not been committed, it comes first among the forms of reparation").

429 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, article 35, commentary, para. 5 (2001) (link)

redress,[430] MSG submits that the duty of restitution requires responsible States, first and foremost, to provide injured States and peoples with adaptation assistance.[431]

208. Effective adaptation entails changes that reduce vulnerability and enhance the resiliency of affected States, communities, and environments to the adverse effects of climate change.[432] As MSG has demonstrated, the harms of climate change cannot be divorced from the structural harms of colonialism, racism, and inequitable capitalism—which have left those less responsible for climate change most vulnerable to its impacts. MSG thus whole-heartedly endorses the submission of Madagascar that "restitution for the damage suffered as a result of climate change requires redressing an entire system rooted in the consequences of colonialism and an inequitable international economic system."[433]

209. This type of systemic redress can by facilitated by transformational adaptation—adaptation that goes beyond incremental or reactive responses to the adverse effects of climate change to make fundamental changes at the systemic and structural level in order to address the root causes of human vulnerability to climate change.[434] Transformational adaptation thus entails large-scale, long-term investments across an "entire socio-ecological system."[435] Examples

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(explaining further that restitution may entail "material restoration or return of territory, persons or property, or the reversal of some juridical act, or some combination of them").

430 *See, e.g.*, Written Statement submitted by the Republic of Vanuatu, paras. 580-597; Written Statement of Solomon Islands, paras. 239-240; Written Statement of OACPS, paras. 176-184.

431 Many Written Submissions likewise emphasised adaptation as an important form of restitution. *See, e.g.*, Written Statement submitted by the Republic of Vanuatu, paras. 583-584; Written Statement of Solomon Islands, para. 239; Written Statement of Tuvalu, paras. 137-139; Written Statement of the African Union, para. 278; Written Statement of the Republic of Kenya, para. 6.94; Written Statement of the Commission of Small Island States on Climate Change and International Law, para. 182; Written Statement of Saint Lucia, para. 92; Written Statement of Saint Vincent and the Grenadines, para. 133; Written Statement of the Republic of Albania, para. 136; Written Statement of Burkina Faso, para. 374; Written Statement of the Republic of the Philippines, para. 127; Written Statement of the Republic of Kiribati, para. 188; Written Statement of the Democratic Republic of Timor-Leste, para. 371

432 Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Sections A.3, B.4 (2023).

433 Written Statement of the Republic of Madagascar, para. 85.

434 G. Fedele et al., *Transformative adaptation to climate change for sustainable social ecological systems*, 101 Environmental Science & Policy, p. 116 (2019); S. Eriksen et al., *Reframing adaptation: The political nature of climate change adaptation*, 35 Global Environmental Change, p. 524 (2015).

435 Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Introduction, p. 7 (2023).

of transformational adaptations include creating a climate-resilient healthcare sector, restoring degraded ecosystems, raising and reclaiming islands, building adaptive capacity across all sectors of society, and restoring indigenous conservation practices. The IPCC has recognized that transformational adaptation is more effective than incremental adaptation and can help to overcome current limits to adaptation.[436] As the stories shared by MSG make clear, overcoming such limits is a matter of survival for the peoples of Melanesia.

210. In order to discharge their obligation of restitution, MSG submits that responsible States must provide sufficient financial, technical, and other support for the transformational adaptation measures that injured States and communities have identified as necessary to address the harm they are experiencing and reduce their vulnerability to the same.

211. Impacted States and communities in Melanesia already have plans to engage in such adaptation but largely lack the resources to do so. For example, the Ouara Tribe of New Caledonia is facing the prospect of forced relocation due to the combination of rising seas and frequent landslides. They have already been forced to relocate once by French colonisers and want to do whatever they can to avoid a second forced relocation. They explain:

> We want to install seawalls to stop the sea from entering and do some dredging and filling to build up the island. We know this won't stop the sea from rising, but it might allow us to stay longer. We can't afford to do this on our own, so we are trying to think of how to get funding for projects to protect our community and our island, and our lives here . . . We don't want to leave our land. Again.[437]

212. For the people of Veraibari in Papua New Guinea, rising seas have already rendered their land uninhabitable, forcing them to relocate four times. To adapt, they are planning to relocate for a fifth and final time and to rebuild in a climate resilient manner. After this fifth relocation, they will not be able to relocate again because there is no habitable land left in their territory. Ara Kouwo, the headman of the Veraibari explains:

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436 Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Statement C.3.4 (2023) (specifically discussing soft limits, which are barriers that render theoretically feasible adaptation options inaccessible).

437 Written Statement of the Melanesian Spearhead Group, Ex. 12, Statement of the Ouara Tribe, paras. 53-54.

> We have a plan to relocate the village. We have drafted up plans of what the village will look like. We have established a Veraibari Relocation Community Development Committee . . . [we have] designed the plans [] and specifically designed climate resilient houses. We estimate to rebuild the village will cost us around 1.5million Kina (around $375,000USD). We do not have these funds.[438]

If this relocation fails, the community will never be able to enjoy the life that they had prior to experiencing the impacts of climate change:

> If we are forced to move to other people's lands, it will never be our own because of how Kastom land works here. It will cause social disharmony and conflict. We will lose our food source and our hunting grounds. We will continue to lose our culture. What will become of us?[439]

213. As these examples indicate, assistance with adaptation is necessary to avoid further rights violations and build resiliency to the adverse impacts that have already made life increasingly untenable.

214. At the level of injured States, too, assistance with adaptation is a necessary form of restitution. For example, Vanuatu is facing resource and capacity constraints to respond to increasingly frequent and severe cyclones and other climate-associated disasters. Responding to these disasters has required Vanuatu to devote most of its governmental personnel and resources to emergency response, making it nearly impossible for the government to implement its plans to adapt and enhance climate resiliency.[440] The costs associated with responding to frequent disasters have drained Vanuatu financially, forcing

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438 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 76.

439 Written Statement of the Melanesian Spearhead Group, Ex. 14, Statement of Ara Kouwo, para. 77.

440 *See, e.g.*, Written Statement submitted by the Republic of Vanuatu, Ex. P, Impact Statement of Rothina Ilo Noka, Director for the Department of Women's Affairs, Republic of Vanuatu, paras. 10-17; Written Statement submitted by the Republic of Vanuatu, Ex. Q, Impact Statement of Peter Kamil, Head of Disaster Recovery Coordination Unit within the Department of Strategic Policy, Planning and Aid Coordination, Republic of Vanuatu, paras. 15-18, 21, 33-34; Written Statement Submitted by the Republic of Vanuatu, Ex. R, Impact Statement of Antoine Ravo, Director of the Department of Agriculture, Republic of Vanuatu, paras. 31-33, 41-43; Written Statement Submitted by the Republic of Vanuatu, Ex. S, Impact Statement of John Kaltau, Acting Director of the Department of Education, Republic of Vanuatu, paras. 6, 24; Written Statement submitted by the Republic of Vanuatu, Ex. T, Impact Statement of Abraham Nasik, Director of the National Disaster Management Office, Republic of Vanuatu, paras. 7, 32-40.

the country to rely on outside aid. Too often, aid comes in the form of debt financing and is attached to onerous reporting requirements that the government struggles to comply with, especially while in the midst of near-constant emergency response.[441] At the same time, "donor funding is decreasing instead of increasing as Vanuatu faces more frequent high intensity cyclones," placing "Government resources under severe stress."[442] Vanuatu is "currently experiencing problems with acquiring adequate resources to respond to the impact of disasters."[443] Moreover, donor funding is aligned with donor priorities and is often unresponsive to critical needs on the ground.[444] Support for adaptation and building adaptive capacity is essential to correct these harms, which are the direct consequence of climate change. Antoine Ravo, the Head of Vanuatu's Department of Agriculture, puts it plainly:

> The priority of the Department of Agriculture is to ensure that all of the people of Vanuatu have the fundamental right to eat . . . We have to support people to ensure that they have enough food and there is no food insecurity. Climate change is already impacting this. Especially after cyclones there is not enough food available. People are forced to reduce their food intake.
>
> We need to adapt and mitigate [climate change] impacts on the resource that we have. We need science, we need good research to plan for the future. But a challenge is that research capacity in our sector is too low and we do not have the resources required, especially when the Departmental capacity is redirected to response and recovery.
>
> As my last statement: We need support! We need financial support to maintain our roles and responsibilities, to ensure that people have sufficient food and also increase the standard of living. The impact of climate change is here and will be ongoing. We need support in

441 Written Statement Submitted by the Republic of Vanuatu, Ex. Q, Impact Statement of Peter Korisa Kamil, Head of the Disaster Recovery Coordination Unit within the Department of Strategic Policy, Planning and Aid Coordination, Republic of Vanuatu, paras. 19, 25, 33-34.

442 Written Statement Submitted by the Republic of Vanuatu, Ex. Q, Impact Statement of Peter Korisa Kamil, Head of the Disaster Recovery Coordination Unit within the Department of Strategic Policy, Planning and Aid Coordination, Republic of Vanuatu, paras. 20-21.

443 Written Statement Submitted by the Republic of Vanuatu, Ex. Q, Impact Statement of Peter Korisa Kamil, Head of the Disaster Recovery Coordination Unit within the Department of Strategic Policy, Planning and Aid Coordination, Republic of Vanuatu, para. 21.

444 Written Statement Submitted by the Republic of Vanuatu, Ex. Q, Impact Statement of Peter Korisa Kamil, Head of the Disaster Recovery Coordination Unit within the Department of Strategic Policy, Planning and Aid Coordination, Republic of Vanuatu, para. 24.

> terms of infrastructure so that we can be more resilient in our response and adaptation to climate change.[445]

215. Building adaptive capacity is a form of restitution of particular importance, as this allows victims to stand on their own two feet and better cope with the harms they are experiencing and will continue to experience into the future. As Camilla Noel, a member of the Pacific Island Students Fighting Climate Change, explains:

> I want to see the push for educational measures here in Vanuatu. I believe that is where we are lacking the most. Providing the appropriate materials to allow for grassroots level communities [to adapt] and for these aids and measurements to have an emphasis on rural communities. I can only ask for the things I see that are absent here in the grassroots and that is shelter, appropriate educational material, opportunities for young people to develop. **I take notice that this is a funding issue and perhaps that is what I am demanding from the International Court of Justice- to provide an opinion that addresses the remedies that my people are owed for all the harm they have experienced as a result of the climate crisis**.[446]

216. While effective adaptation is an essential form of restitution, MSG notes that ineffective adaptation (also called maladaptation) can increase vulnerability and exacerbate the harms of climate change.[447] Scientific consensus provides that to ensure positive outcomes, adaptation must be: (1) grounded in accurate science, including local and traditional forms of science; (2) tailored to the place and communities at issue and responsive to the needs of affected peoples; (3) flexible and considered on a long-term time horizon, taking into account future climate risks and uncertainties, among other criteria; and, most importantly, (4) in all

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445 Written Statement Submitted by the Republic of Vanuatu, Ex. R, Impact Statement of Antoine Ravo, Director of the Department of Agriculture, Republic of Vanuatu, paras. 41-43.

446 Written Statement of the Melanesian Spearhead Group, Ex. 20, Statement of Camilla Noel, para. 30 (emphasis added).

447 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Section C.4 (2022).

cases, it is essential that impacted States and communities maintain autonomy over their adaptation.[448]

217. As Tuvalu rightly submits, while assistance with adaptation may require considerable monetary investments by responsible States, such costs do not render this form of restitution "too burdensome in proportion to its benefit" deriving from it given the fundamental rights at stake.[449]

218. MSG respectfully invites the Court to recognize effective, victim-driven adaptation as an essential component of restitution for harm stemming from the wrongful conduct of States that contributes to climate change and its adverse effects.

219. Some harms caused by climate change are irreparable, making restitution materially impossible. The appropriate form of reparation for such harms is monetary compensation.[450] This Court has clarified that compensation is owed for "damage to the environment."[451] Compensation is also owed for physical and economic damage—such as losses of infrastructure, livelihoods and income, and the economic value of lost land and resources. Losses of culture and ways of life, too, have economic value, both in the context of local economies and, more broadly, in terms of world heritage. Particularly in the case of Melanesia, which is a hotspot of interlinked linguistic, cultural, and biodiversity, loss of culture represents a loss to the heritage of the world that is most pronounced and profound. MSG submits that victims should be compensated for that economic loss. That said, the economic dimension of culture is just a fraction of its full value, and compensation for this

448 Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Sections C.4, C.5 (2022).

449 Written Statement of Tuvalu, paras. 138-140.

450 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, pt. 2, as corrected, art. 36 (2001) (link).

451 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation Judgment, 2018 I.C.J. Rep., p. 15, para. 42 (holding that "damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law. Such compensation may include indemnification for the impairment or loss of environmental goods and services in the period prior to recovery and payment for the restoration of the damaged environment").

loss alone would not discharge responsible States of their duty to provide full and adequate reparation.

220. Climate change has caused much more substantial losses in the form of non-economic cultural, moral, and spiritual injuries. Although such damage may be difficult to quantify, "the absence of adequate evidence as to the extent of material damage will not, in all situations, preclude an award of compensation for that damage."[452]

221. MSG Members and the peoples of Melanesia have already suffered deep and irreparable cultural and spiritual injuries as their cultures, ontologies, and identities have collapsed around them. For example, rising seas have displaced many from their lands and destroyed their sacred spaces, severing connections with the spirits of their ancestors and their cultural identities. Simione Botu, Chief of Vunidogoloa Village, explains the pain his people experienced when they were forced to abandon their land and sacred sites due to rising seas:

> The rising sea level had completely washed our graveyard. The cemetery where our ancestors are buried is sacred to us as it is their final resting place. Saltwater intrusion and inundation posed challenges in relation to keeping these sacred places intact. **This has further disrupted our link with our ancestors, a loss that will be difficult to quantify, as it is part of our identity.**[453]

Sailosi Ramatu, former headman of Vunidogoloa explains further:

> When we left the old village, we had to break our link with the land and the environment and our ancestors. The day we were relocating was a sad day for us. The people on that day were very emotional and we could hear the cries of the people. I had not experienced mourning until that day and the day we left the village it was the day I felt even more loss than losing a loved one.[454]

Likewise, Hilary Fioru, of Lilisiana, Solomon Islands, explains the devastation he has felt since rising seas washed away the graveyard where his ancestors were laid to rest:

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452 *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, 2018 I.C.J. Rep., p. 15, para. 35.

453 Written Statement of the Melanesian Spearhead Group, Ex. 6, Statement of Simione Botu, para. 18 (emphasis added).

454 Written Statement of the Melanesian Spearhead Group, Ex. 8, Statement of Sailosi Ramatu, para. 21.

> When I witnessed the destruction of the graveyards, where bones and remains of our ancestors have been washed out of the soggy grounds and caskets have been unearthed when high tides come into the village, I felt emotional and sad as these are sacred part of our identity, and we are losing our sense of identity and connection to our people and land. **Our connection to our grandfathers is now being taken away which is the saddest thing that we must deal with every day.**[455]

222. Changes to the weather and the environment have caused quantifiable damages, such as loss of homes, food, health, and livelihoods. But more than that, these changes have disrupted the connections that people have with their place and their environment. In many Melanesian ontologies, people are one with their specific place—including all elements of nature: the land, the trees, the species, the air. For example, for the Biangai people of Papua New Guinea, land is "what they commonly call their 'bone,' something that is core to being a person in this world."[456] The degradation of lands, waters, and biodiversity as a consequence of climate change has thus directly injured peoples across Melanesia, severing the connections to place that are the foundation of their existence:

> I've seen big changes in the weather pattern over my lifetime. Before I knew the weather pattern. But now, **even though I am living in my homeland, it feels like I am living in a foreign land. It is strange. I don't know my place anymore.**[457]

> Nature used to speak to me and I would listen, but now the connection I had nurtured with my environment is slowly being lost. This is because the environment is changing and becoming unrecognisable. **Nature is no longer the place of refuge it once was. Instead I am afraid.** I see great loss when I see the areas that are affected by sea level rise. Those families are being forced out of their homes and are made to adapt to the areas they have relocated to because, in a way, they have left their culture behind.[458]

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455 Written Statement of the Melanesian Spearhead Group, Ex. 16, Statement of Hilary Fioru, para. 65 (emphasis added).

456 Written Statement of the Melanesian Spearhead Group, Ex. 33, Expert Statement of Professor Jamon Halvaksz, para. 8.

457 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, para. 8 (emphasis added).

458 Written Statement of the Melanesian Spearhead Group, Ex. 20, Statement of Camilla Noel, para. 26 (emphasis added).

223. Likewise, the decline and disappearance of culturally vital natural resources has resulted in devastating loss. For example, as explained in Part IV, for many peoples in Melanesia, the Yam is central to identity, culture, and life itself.[459] The harm that climate change has caused to the Yam exacts deep spiritual wounds on the many peoples whose existence is spiritually intertwined with that of the Yam. For example, Mangau Iokai the *Tupunis* (spiritual guardian) of the Yam in Yakel Village, Vanuatu, explains:

> **Now that the Yam has vanished, my heart is broken. My connection with the Yam spirit is broken.** Before, through my family and my ancestors, I was able to lean on the spirit when I needed it. But now I don't have anything to lean on. It just feels like empty space. **Because the spirit is no longer there, I feel empty. I am walking around like an empty shell.**[460]

224. As the foregoing examples demonstrate, the peoples of Melanesia have experienced overwhelming and irreparable intangible losses as a consequence of the internationally wrongful acts of States contributing to climate change (i.e., the Relevant Conduct). MSG respectfully urges the Court to confirm that States responsible for these harms owe a duty to compensate the victims for such losses, in addition to compensation for economic losses.

225. MSG stresses the point made by OACPS that voluntary contributions to mechanisms to support victims of climate injustice, such as the UNFCCC Loss and Damage Fund, are distinct from and cannot be substituted for the legally binding obligation of States to provide reparation for the harms caused by their internationally wrongful conduct.[461] MSG invites the Court to confirm that contributions to such funds cannot be said to displace or reduce the obligations of responsible States to provide compensation to the victims that have been harmed as a result of their internationally wrongful conduct. Moreover, compensation must be just that: compensation for harm incurred due to the internationally wrongful acts of

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459 *See* Part VI (C), paras. 109-115.

460 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, para. 43 (emphasis added).

461 Written Statement of OACPS, para. 188.

responsible States. As such, compensation cannot be structured as loans or come with strings attached, as this would only further burden already vulnerable States.[462]

226. While compensation is a necessary component of reparation for these harms, it is essential to bear in mind that, as MSG Member Solomon Islands rightly states: "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."[463]

227. The final form of reparation, satisfaction, is thus required to redress those dimensions of an injury that cannot be addressed through restitution or compensation.[464] Satisfaction is focused on addressing the dignitary and symbolic aspects of the harm. It deals with remedial actions such as truth-telling, apologising for the breach, and memorialising what has been lost.[465] The measures available to discharge the duty of satisfaction can be broad and varied. In this respect, MSG reiterates the submission made in its Written Statement, that for some of the cosmological and cultural injuries suffered in Melanesia, no remedy conceived within Western ontologies will ever be adequate. The Western view of the world is fundamentally different than that of the peoples of Melanesia and other indigenous peoples. Thus, in the case of such losses, MSG submits that culturally appropriate processes must also be instituted, which allow reckoning and healing on the terms of the victims. MSG invites the Court to confirm that the obligation of satisfaction for such harms should be discharged through culturally grounded processes.

228. Another important modality of satisfaction in this context is a taking of responsibility by those States that have contributed most to the climate crisis. Despite contributing negligibly to global GHG emissions, peoples across Melanesia are overwhelmed by feelings of failure and personal responsibility for the harms befalling their communities. For example, Mangau Iokai, as *Tupunis* of the Yam for Yakel, is responsible for communing with the spirits in

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462 Written Statement of Madagascar, para. 92; Written Statement of the Republic of Namibia, paras. 143-145.

463 Written Statement of Solomon Islands, para. 242.

464 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, pt. 2, as corrected, art. 37, commentary, para. 1 (2001) (link).

465 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, pt. 2, as corrected, art. 37(2) (2001) (link); *see also id.* at art. 37, commentary, para. 5.

order to ensure a good yield of Yam for his community each year. He thus feels that the disappearance of the Yam is a personal failing: "I feel I have failed in my duty that has been passed down from my ancestors to my grandfathers to me."[466] Likewise, medical practitioners who have lost access to traditional medicines feel that they are failing in their duty to provide essential healthcare to their communities. For example, medicine woman Naus Iaho of Yakel explains, "Making the medicine is my sacred duty. It is something I must do . . . when I can't do it, to me it is a failure."[467]

229. Many who have lost access to customary resources are unable to fulfil their customary duties and are plagued by a sense of deep shame. For example, the community of Vunidogoloa Village, Fiji, has lost much of their *dalo* (taro), which is an important crop essential for the customary practice of gift giving. It is an "unheard-of" breach of customary protocol to go to a ceremony with nothing to present.[468] "For the men, this was a source of pride when they would go and present a lot of *dalo*. But now "we cannot do this," leaving them feeling ashamed.[469] Likewise, in Yakel, food shortages are so severe that the community has no choice but to eat chickens and pigs intended for use in custom ceremonies. As a result, the ceremonies cannot be performed. The women of the community explain that "when we are not able to do the Kastom ceremony we feel shame . . . we feel wrong. But we can't help it."[470] Indeed, "some women in the community are so worried about the Kastom ceremony they are supposed to be doing that they are having strokes."[471]

230. For many communities, this shame has caused the breakdown of relationships. An essential part of culture for many of the peoples of Melanesia involves resource exchange, including through ceremonies of giving and trade of specialised resources across tribes and communities. These practices build bonds and ensure community cohesion. As a result of climate-induced weather changes and extreme events, resources are so scarce that these

466 Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, para. 43.

467 Written Statement of the Melanesian Spearhead Group, Ex. 22, Statement of Naus Iaho, para. 13.

468 Written Statement of the Melanesian Spearhead Group, Ex. 8, Statement of Sailosi Ramatu, para. 30.

469 Written Statement of the Melanesian Spearhead Group, Ex. 8, Statement of Sailosi Ramatu, para. 31.

470 Written Statement of the Melanesian Spearhead Group, Ex. 27, Statement of the Women of Yakel, para. 30.

471 Written Statement of the Melanesian Spearhead Group, Ex. 27, Statement of the Women of Yakel, para. 29.

practices are no longer possible, and relationships have broken down.[472] Jeanette Lini Bolenga explains that this is changing the entire character of her people:

> [In the past, when I would visit], everyone is happy to see me, they all come to say hello, the young and the old, everybody, and they would offer me fruit, lots of things to eat. But this time, people seemed a bit hesitant to talk to me. I couldn't understand why. They were standing at a distance and not greeting me warmly. Something was wrong. I think it was because they didn't have anything to offer me. They didn't have enough food to share, they didn't have anything to give me, so **they felt ashamed and like they couldn't greet me properly. Life has changed. Scarcity has changed who people are . . . this scarcity of food is changing the whole character of our people**.[473]

231. Others feel a sense of personal responsibility to address the impacts of climate change—despite contributing negligibly to the problem. For example, the people of Ouvea Island in New Caledonia have run out of fresh drinking water due to climate change. To address this, three desalinisation plants were installed. The community is facing a number of other impacts and has limited resources. Nevertheless, they are prioritising reducing their own negligible carbon emissions: "We've seen the harms of climate change, and we think it is wrong to run a plant on coal. The community of Ouvea has committed to changing the energy source for the desalination plant. So now the unit in the North of Ouvea is running on a combination of fossil fuel and coconut oil. And we are trying to switch to completely green fuel. Biofuel."[474]

232. Reparation is owed to absolve innocent victims of the unwarranted and overwhelming feelings of shame, guilt, and personal responsibility that they are experiencing. MSG submits that satisfaction thus requires responsible States to take ownership of the harm they have

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472 *See, e.g.*, Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, para. 45; Written Statement of the Melanesian Spearhead Group, Ex. 21, Statement of Mangau Iokai, para. 51; Written Statement of the Melanesian Spearhead Group, Ex. 29, Statement of Werry Narua, paras. 57-62.

473 Written Statement of the Melanesian Spearhead Group, Ex. 19, Statement of Jeanette Lini Bolenga, paras. 71, 97 (emphasis added).

474 Written Statement of the Melanesian Spearhead Group, Ex. 11, Statement of Francois Neudjen, para. 50.

caused and apologise for the damage that has been done. MSG respectfully invites the Court to confirm the same.

C. Legal Consequences for Serious Breaches of Peremptory Norms

233. MSG endorses the submissions made by MSG Members Solomon Islands and Vanuatu, among others,[475] who rightly note that the Relevant Conduct is in breach of several obligations which trigger application of the special regime for "serious breach by a State of an obligation arising under a peremptory norm of general international law" under the secondary rules of State responsibility, as codified in Article 40 of ARSIWA. Under this regime, "peremptory norms" include those of both a *jus cogens* character and an *erga omnes* character.[476] The regime applies only to conduct amounting to a "serious breach" of such an obligation, defined as "a gross or systematic failure by the responsible State to fulfil the obligation."[477]

234. As detailed in Part VI, the Relevant Conduct is inconsistent with several such obligations, including the peremptory norms of self-determination, the prohibition of racial discrimination, and the prohibition of genocide.[478] The Relevant Conduct is also inconsistent with additional norms holding an *erga omnes* character, including the duty of due diligence and the duty to prevent significant harm to the environment.[479]

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475 *See*, *e.g.*, Written Statement Submitted by the Republic of Vanuatu, paras. 601-607, 637-640; Written Statement of Solomon Islands, paras. 232-233; Written Statement of OACPS, paras. 190-194; Written Statement of the Oriental Republic of Uruguay, para. 159; Written Statement of the Republic of Costa Rica, paras. 104-106.

476 *See Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 l.C.J. Rep., p. 95, para. 180 (applying the regime of aggravated responsibility with respect breach of *erga omnes* obligations); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.CJ. Rep., p. 136, para. 159 (applying the regime of aggravated responsibility with respect to violations of *jus cogens* norms).

477 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, pt. 2, as corrected, art. 40 (2001) (link).

478 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 274 (specifically discussing self-determination).

479 MSG does not take up the duty to prevent significant harm to the environment, but endorses the submissions of MSG Members on this topic. *See* Written Statement Submitted by the Republic of Vanuatu, paras. 261-287; Written Statement of Solomon Islands, paras. 146-162.

235. MSG agrees with the contention of Solomon Islands, Vanuatu, and OACPS, that the conduct of major emitters, particularly developed countries in the global North, amounts to a "serious breach" of these peremptory norms. These States have allowed the wrongful conduct to continue for decades—systematically failing to regulate GHG emissions under their jurisdiction and control while actively subsidizing the production and consumption of fossil fuels. Major emitting States have continuously engaged in this conduct while fully aware, since at least the 1960s,[480] of the catastrophic consequences of that conduct, particularly on the most vulnerable peoples. These States have also failed to meet their commitments to provide climate finance for the most vulnerable nations and peoples for decades, further exacerbating the harm experienced by these victims.[481] This pattern of behaviour demonstrates a gross and systematic failure of States to fulfil their most sacrosanct international legal obligations.[482] As such, the regime for serious breaches of peremptory norms governs at least with respect to violations of the norms listed above.

236. Article 41 of ARSIWA provides that such serious breaches trigger legal consequences for **all** States. Specifically, all States "shall cooperate to bring to an end through lawful means any serious breach." Further, "[n]o State shall recognize as lawful a situation created by a serious breach . . . nor render aid or assistance in maintaining that situation."[483] This Court

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480 *See* Written Statement Submitted by the Republic of Vanuatu, paras. 177-192 (detailing extensive evidence that demonstrates States were well-aware of the causes and adverse impacts of climate change by at least the 1960s, if not earlier); *see also* Written Statement of the Arab Republic of Egypt, paras. 305-314 (providing evidence that States were aware of the negative impacts of climate change since at least the 1950s); Written Statement of Burkina Faso, paras. 299-309 (same).

481 *See, e.g.*, Technical dialogue of the first global stocktake, Synthesis report by the co-facilitators on the technical dialogue, FCCC/SB/2023/9 (8 Sept. 2023), para. 44.

482 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 243 (explaining that "the prolonged character of Israel's unlawful policies and practices aggravates their violation of the right of the Palestinian people to self-determination"); *see also id.* at para. 257 (confirming that this conduct amounts to "serious breaches of obligations erga omnes under international law").

483 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, vol. II, pt. 2, as corrected, General commentary, para. 1 (2001) (link); *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, paras. 278-279.

has further clarified that all States must cooperate to bring an end to ongoing violations of rights protected under the engaged peremptory norms.[484]

237. In the context of climate change, MSG agrees with OACPS and Vanuatu that these rules have the following application. First, the duty to cooperate to ensure that serious breaches are brought to an end requires all States to work together in good faith to reduce GHG emissions, at minimum in line with the 1.5°C temperature goal. Second, the duty to not recognize as lawful a situation created by a serious breach means, at minimum, States must continue to recognise the sovereignty, self-determination, and land and maritime territories of States whose continued physical viability is compromised by climate change.[485] Third, the duty to not render aid or assistance in maintaining the wrongful situations means that States must not actively support the further accumulation of GHG emissions in the atmosphere. Thus, they must cease subsidies for fossil fuels, as well as any other administrative, legislative, policy, or financial support for activities that contribute to the continued emission of GHGs.

238. The duty to cooperate to ensure that ongoing violations are brought to an end means that States must, at minimum, work together to provide adaptation assistance as needed to prevent further aggravation of rights violations and, to the extent practicable, offset those violations that have already occurred. Thus, for example, States are under an obligation to assist small island states facing the loss of territory (in violation of their right to self-determination) with implementing the adaptation strategy of their choice to preserve a habitable territory, such as land reclamation or raising of islands.

239. Finally, MSG agrees with the view expressed by the Solomon Islands, and in many of the Written Statements,[486] that implementation of cooperative duties should be accomplished in

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484 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 275; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. Rep., p. 136, para. 159.

485 *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 278 (finding that pursuant to the duty of non-recognition of unlawful situations, "Member States are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967").

486 Written Statement of the Solomon Islands, paras. 123-132; Written Statement of the Federated States of Micronesia, paras. 69-77; Written Statement of the Republic of Kiribati, paras 147, 152-154; Written Statement of the Republic

line with principle of equity, which is foundational to our international legal order. Those States with greater responsibility for the harm and greater capacity to provide redress should do so. In contrast, those States that have negligibly contributed to the harm of climate change and may themselves be victims of harms stemming from breaches of peremptory norms, will have a limited role to play in the cooperative effort to bring both breaches of these norms and the violations that stem from them to an end.

VIII. CONCLUSION AND MESSAGES TO THE COURT

240. MSG is grateful for its ability to participate in these proceedings—which are of profound importance to our Members. In MSG's Written Statement and in these Written Comments, MSG has explained the stakes of these proceedings for the peoples of Melanesia. Climate change is not a speculative threat. Serious and irreparable harm has already occurred.

241. The repeated onslaught of climate-related extreme weather events, disasters, and degradation of natural resources have left sovereign States struggling to provide a sustainable future for our peoples. Climate change has caused the collapse of ecosystems, disruption of weather, and loss of biodiversity. These losses have undermined Melanesian cosmologies, severed spiritual connections, and rendered many cultural practices impossible to perform. Entire Melanesian worlds have already been destroyed. These harms have already caused violations of the right to self-determination and cultural rights, among others. These losses will only intensify in the future, with the magnitude of harm a direct function of global GHG emissions reductions and mobilisation of finance and support adaptation.

242. Our peoples have already lost their lands, their homes, their ways of life, and their identities. The destabilised climate has resulted in erratic weather and increasingly intense natural disasters. This has resulted in the collapse of agricultural and ocean-based food systems that our people have always relied upon, resulting in food insecurity and starvation. Our communities have lost access to traditional medicine and are falling ill—both due to the

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of Ecuador, paras. 3.55-3.56, 3.61-3.62; Written Statement of the Republic of Mauritius, para. 217; Written Statement of the Republic of Brazil, paras. 80-83; Written Statement of Romania, paras. 64, 78; Written Statement of the Arab Republic of Egypt, para. 66; Written Statement of the Republic of Albania, para. 88-92, 114; Written Statement of the Republic of Madagascar, paras. 63-64; Written Statement of the Republic of Kenya, paras. 5.23-5.25; *see also* Written Statement of Antigua and Barbuda, paras. 277, 280.

physical stressors of climate change and anxiety about the future. These harms are so severe that the situation is nothing short of genocidal; the peoples of Melanesia are already experiencing a slow death as a result of climate change. For many of our peoples, the harms of climate change reproduce and exacerbate the violence they have already experienced at the hands of colonial powers, and the Kanak people of New Caledonia continue to suffer.

243. As a matter of scientific fact, the harms our people are experiencing as a result of climate change can be traced back to the same colonial powers, with just 16 States, including the United States, the United Kingdom, and the EU, responsible for three-quarters of all global warming—and that is not accounting for colonial emissions. These States were aware of the harms of climate change since at least the 1960s, and have not only failed to adequately regulate GHG emissions under their jurisdiction and control, but continued to actively subsidize and support fossil fuel product and consumption—this despite full knowledge that their course of action all but guarantees the destruction of our people. This conduct is premised on ideologies of racisms, colonialism, and capitalism that have judged our peoples inferior, and therefore sacrificable.

244. MSG submits that this conduct constitutes a breach of numerous independent international legal obligations, including obligations of due diligence and prevention of transboundary harm, human rights, the duty to prevent genocide, and the prohibitions on racial and gender discrimination. MSG further submits that these breaches entail legal consequences under the secondary rules of State responsibility, including obligations of cessation and non-repetition, as well as a duty of reparation owed to Melanesian States and peoples, and other victims of responsible States' internationally wrongful acts.

245. Legal clarity, both with respect to the obligations that apply to climate change and to the conduct that violates those obligations, is essential to preserve the possibility of survival for the peoples of Melanesia. A decisive statement from this Court that the conduct of major GHG emitters causing significant harm to the climate system violates international law could encourage States to bring their conduct into conformity with the law, thereby averting the end of things for our peoples.

246. Equally essential, an opinion that meaningfully examines and details the legal consequences that flow from violations of international legal obligations in the context of climate change could help to correct the egregious harms the peoples of Melanesia and other vulnerable groups have already experienced, thereby moving us all toward true climate justice.

247. As the Court is aware, MSG lawyers and agents travelled throughout the Melanesian subregion to collect stories of community experiences with climate change. These communities opened their hearts and homes to us, sharing sacred knowledge, as well as stories of deeply personal pain and loss. We often felt we were taking too much, but again and again, communities assured us that they were happy to share this most intimate information, and asked in return only that we ensure the Court hears their voices. Many people we spoke with shared specific messages they wished to transmit to the Court. MSG concludes by sharing these messages here and once again implores the Court to carefully read the statements and testimonies attached as exhibits to MSG's Written Statement.

248. Message from Sailosi Ramatu (64), former headman of Vunidogoloa Village, Cakaudrove, Fiji:

> I have said this from the beginning and I'm still saying it now; if only people could come together, and the leaders could listen to the most impacted people in this world. We can stop this devastation if only they listen. Great leaders, we are struggling, what is going to happen? We are about to die, what is going to happen? Will you listen to us?
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> Will this Court advise them to listen to us? To hear about what we are facing. We are facing the problems of the things they create. They are bigger countries; we are smaller countries. We are drowning but they are still floating.

249. Message from Francois Neudjen (62), Special Advisor to the Kanak Customary Senate, from Ouvea, Loyalty Islands, New Caledonia:

> The Kanak people are still in a struggle for independence from French colonisation. Climate change really affects us here, but because of our colonial status, our voices are not heard on the international stage. The MSG submission is a lifeline for us, which carries our voices onto the international scene. I am thankful that my voice can be heard before the International Court of Justice. When I say this, I think of all the elders

> who have already done what they have done, who are no longer with us, but who have made it possible for us to have these moments of exchange together. So, I am talking on behalf of all of our ancestors, all of our leaders, who have already gone. I hope that the ICJ hears our voices and understands our struggle. I am going to stop here because I am getting emotional.

250. Message from the Ouara Tribe of Ouara Island, New Caledonia:

> Joseph took the lawyers into his Yam garden. The Yam garden is a sacred place. The Yams are living, sacred beings. It is tabu (taboo) to allow anyone else to enter your Yam garden, to show anyone else your Yam garden. Doing so can cause a curse to befall you. While the Yam is growing, we do not disturb him. We leave him growing by himself. But even so Joseph invited the lawyers to come to his garden, because it is important that the Court understand about the Yam and what we are going through-how much we are losing. So we are breaking the tabu and allowing the lawyers into the Yam garden, so they can see and understand, and share what they learn with the Court.
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> We need all of the elements to come together for the Yam to grow well. We need proper rain, proper soil, proper sunshine, and the salty wind to help the land to be fertile to plant our Yam. Now the elements are out of balance. There is too much rain, the sea is coming up where it is not supposed to be, and the mountain is coming down. Because of this, the Yam is struggling to grow, and we are struggling to hang onto our customs.
>
> The mountain is coming down and the water is coming up. We are stuck in the middle trying to hold onto our traditions. We have to try our best to hold onto our customs, our ways of doing things here on this island. It is our way of life and who we are. If we lose it, we don't know what will become of us.

251. Message from Ara Kouwo (52), headman of Veraibari Village, Kikori District in the Gulf Province of the State of Papua New Guinea:

> As a leader of the village, I talk to people about the problems they are facing. I am facing them too. In my statement, I would like to share my testimony about what sea level rise has done to my home, hoping that we can hold hands to find a way forward together. Please hear my testimony.

252. Message from Faye Mercy Saemala (70), a grandmother from Malaita Province, Solomon Islands:

> My message for the International Court of Justice is that I want the Court to see and hear the silent cries of our children and our families heard through these submissions. I want the Court to issue an advisory opinion that will be a powerful instrument that will pave the way for our international laws and our domestic laws to safeguard us from the increased impacts of climate change. As a mother, grandmother and great grandmother I have seen that our lives are unknown to predict as the changes of the weather that we are experiencing now are no longer safe for us. Every day we are fighting for our survival to live in our homes and our land, but the risk of the rising sea level is rapidly taking our land away from us and it is unknown where our children and their children in the future will be able to live a life like we have today. I want the Court to know that climate change is real and it is an everyday reality that me and my people are faced to deal with for the rest of our lives.

253. Message from Mangau Iokai (78), *Tupunis* for the Yam, from Yakel Village, Tanna, Vanuatu:

> I'm very happy to be sharing my story with the International Court of Justice. Now our living has gone very differently and we are suffering. We have to say something to the world in order for things to get better. I want to tell the Court that they have to do something good for the people. If they do something good, I would be happy about that. I don't want them to do something bad that will harm our people.
>
> I have asked the lawyers to come back and tell us the decision of the Court.

254. Message from Alpi Nangia (64), *Ieni* (Speaker) of Yakel Village, Tanna, Vanuatu:

> When the lawyers and the Attorney General came to talk to us about the ICJ and asked us to give a statement, we were more than happy and happy to spend time to talk about these things. I want to tell the world, now when we are doing things, we must be doing things together, not the English or Americans doing one thing and we another. We must understand each other and what they are doing that might hurt us here. We can get an understanding of what we are doing in the future. You and I are the same people. Even though I am black, we are the same people throughout the whole world.

255. Message from Jenny Toata (56), a gardener from Yakel Village, Tanna, Vanuatu:

> I would like to tell the Court that they have to put a stop on the gas emissions that are ruining our gardens. They are living in continents and we are living on tiny islands. When they are doing things, it affects my village, me, my family, my children and my grandchildren.

256. Message from Johnny Loh (60), a gardener from Yakel Village, Tanna, Vanuatu:

> To the Judges of the International Court of Justice, I want to say: The changes are causing us to really suffer. If it is the big factories that are causing all of these changes, I want the Judges to put a stop to the factories putting up the big smoke.

257. Message from women of Yakel Village, Tanna, Vanuatu (Linet Iawaiin, 51; Yalitea Iakaho, 58; Sera Nawahata, 48; Nelly Pilia, 53; Naus Iaho, 62; Nancy Iacitan, 42; Sera Narubam, 56; Yoba Mearangi, 58; and Jenny Toata, 61):

> What we want is to go back to the way things were so we can have a better life. Seeing the changes in the climate has given us a lot of worries and we want to tell the Court to put a stop to this and how it is affecting us. If the Court can make it stop, it will make us more happy in the way that we will be living.

258. Message from Werry Narua (45), from Port Resolution, Tanna, Vanuatu:

> My message to the International Court of Justice is that I am concerned about my future, and for future generations. I have been seeing all these changes and the impacts over the course of my 45 years of life. I recently realised that all of these changes are gradually building up and it will get worse. My concern is about the livelihood of my children that are alive and their unborn children. If you are able to stop it, to keep our alive and our future generations – stop it.

259. Message from Camilla Noel (23), Member of the Pacific Island Students Fighting Climate Change, from Luganville, Espiritu Santo, Vanuatu:

> We are already on the verge of an uncertain future, and not just for us young people, but for everybody. We only ask that you deliver an advisory opinion that ensures a guaranteed future for us. Give us hope for a better future. Without tackling the fundamental inequalities which cause environmental degradation, we cannot

> achieve true climate justice. The climate crisis is a human rights crisis and we come together with the voices of indigenous people, youth and marginalised communities, we hope for an advisory opinion that will give us justice and also achieve intergenerational equity so that there will be hope for future generations.

260. Message from Cynthia Rosah Bareagihaka Houniuhi (29), President of the Pacific Island Students Fighting Climate Change, from Honiara, Solomon Islands:

> Thinking about the future of the Solomon Islands scares me. It's very uncertain and that uncertainty keeps me up at night thinking, what if this extreme weather event happens, what would the people have to face? What if a cyclone or a hurricane were to hit someone that I love? All of this also makes me think about how unfair the situation is. Why are our people suffering more and having to face this uncertainty?
>
> People know about the information about climate change but why isn't anything changing? This makes me very worried, scared and anxious about the future and angry and frustrated about why nothing is being done because I have a lot to lose, and my people have a lot to lose. We ask the question—will it stop? Will it have to be another island sinking before the world takes attention. Whose island will it be? Will it be mine?
>
> Back in 2019, young people were tired of this bleak future that we had before us. I was fortunate to be part of the 27 law students from the University of the South Pacific that began this campaign, by asking our leaders to seek an advisory opinion from the world's highest court (the International Court of Justice), to help us address this problem and protect our future. We formed an organisation called the Pacific Islands Students Fighting Climate Change (PISFCC) to continue our climate justice journey.
>
> **As someone who has been there since the start of this campaign in 2019, I hope the ICJ will bring clarity to what is happening around us.** In the Solomon Islands, when there is some confusion or there's a breach of custom or there's an issue between two families we always go to the chief – someone to say something about the matter and this brings peace to the people.
>
> **We look to the International Court of Justice as the equivalent of the chief** in this time where my people have been saying the same thing over and over again that we are being affected, we are being forced to relocate and our people face great suffering. So we are in some ways like families trying to grasp this issue and find a solution

to it. And so in the village we would normally go to the chief and whatever the chief would say we would highly respect it and this would normally bring harmony and peace to our people. We are now looking for the same peace and harmony and the ability of the ICJ to bring that.

As a young woman, I look to the ICJ to provide greater clarity on country responsibilities that will protect the children that we will bring in the future. I hope the ICJ will provide an advisory opinion that names and spells out the obligations of States to protect our future, the rights of future generations. I hope the ICJ does not shy away from really explaining it in detail so the world can abide by this.

I hope our stories will be something that is reflected in the advisory opinion. Our stories, especially the realities and experiences of everyday life for the Solomon Islanders is reflected and considered in the final opinion delivered by the Court.

We look to the ICJ and we have a high expectation, but we believe the ICJ can be the chiefs that our people need today.

Hague, 13th August 2024

Leonard Louma, OBE
Director General