



INTERNATIONAL COURT OF JUSTICE

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

WRITTEN COMMENTS OF SOLOMON ISLANDS

15 AUGUST 2024

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CHAPTER I. INTRODUCTION

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

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

- (a) *What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?*
- (b) *What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:*
 - (i) *States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?*
 - (ii) *Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”¹ (“Request”).*

2. By letters dated 17 April 2023, the Deputy-Registrar gave notice of the Request to all States entitled to appear before the Court, pursuant to Article 66(1) of the Statute of the International Court of Justice (“Statute”).
3. In its Order of 20 April 2023, the Court decided that *“the United Nations and its Member States are considered likely to be able to furnish information on the questions*

¹ Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, GA Res 77/276, UN Doc A/Res/77/276 (4 April 2023, adopted 29 March 2023) (“Request”).

submitted to the Court for an advisory opinion and may do so within the time-limits fixed in this Order”, and fixed 20 October 2023 as the time-limit within which written statements on the question could be presented to the Court.

4. In its Order of 4 August 2023, the Court extended:
 - 4.1 to 22 January 2024 *“the time-limit within which all written statements on the questions may be presented to the Court in accordance with Article 66, paragraph 2, of the Statute”*; and
 - 4.2 to 22 April 2024 *“the time-limit within which States and organizations having presented written statements may submit written comments on the other written submission in accordance with Article 66, paragraph 4, of the Statute”*.
5. In its Order of 15 December 2023, the Court further extended:
 - 5.1 to 22 March 2024 *“the time-limit within which all written statements on the questions may be presented to the Court in accordance with Article 66, paragraph 2, of the Statute”*; and
 - 5.2 to 24 June 2024 *“the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements in accordance with Article 66, paragraph 4, of the Statute”*.
6. In its Order of 30 May 2024, the Court further extended to 15 August 2024 *“the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute”*.
7. Pursuant to the Order of 30 May 2024, and having presented its written statement on 22 March 2024, Solomon Islands (“**Solomons**”) wishes to avail itself of the opportunity to furnish written comments on the other written statements received.

CHAPTER II. SUMMARY OF WRITTEN STATEMENT AND COMMENTS

8. As outlined in detail in Solomons' written statement to the Court dated 22 March 2024, Solomons respectfully invites the court to provide an advisory opinion as follows:

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

- (a) exercise due diligence in meeting relevant obligations as set out in the UNFCCC, the Paris Agreement, and other relevant sources of international law that must also represent progression over time;
- (b) adhere to the principle of common but differentiated responsibilities and respective capabilities, including by providing technical assistance, finance and capacity-building to developing States;
- (c) adhere to the duty to cooperate in implementing their obligations under international environmental law and the mitigation and adaptation measures under the UNFCCC and the Paris Agreement;
- (d) protect the climate system and the environment for the benefit of present and future generations;
- (e) adhere to the precautionary principle which relevantly requires States to protect the climate system and the environment under customary international law;
- (f) prevent transboundary harm from causing significant damage to the environment of another State;
- (g) respect, protect and fulfil the internationally recognised human rights of present and future generations, including the rights to life, private and family life, the rights of children and women, the right to live with dignity in a clean, healthy and sustainable environment, and the right to self-determination and related rights to health, water, food, housing and culture;

- (h) protect and preserve the marine environment from the adverse effects of climate change by preventing, reducing and controlling pollution from greenhouse gas emissions; and
- (i) recognise that people displaced by climate change are afforded protection under the 1951 Refugee Convention.

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

- (a) provide full reparations, where a State has committed an internationally wrongful act against the climate system and other States;
- (b) provide full reparations to individuals and communities of present and future generations, where States have caused significant harm to the climate system and those parties; and
- (c) cease all internationally wrongful acts and guarantee non-repetition, where States commit internationally wrongful acts against the climate system and other States.

9. Further and in addition to those submissions, Solomons written comments proceed as follows:

- 9.1 **Chapter III** reiterates Solomons position on the law of the sea in relation to climate change in light of the International Tribunal for the Law of the Sea (“ITLOS” or “the Tribunal”) advisory opinion given in *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*;
- 9.2 **Chapter IV** analyses the international regime applicable to displacement and migration caused by climate change impacts;
- 9.3 **Chapter V** addresses the applicability of international human rights law to the climate change regime and the calculation of carbon budgets on a fair share basis;

9.4 **Chapter VI** addresses state responsibility and attribution for historical emissions;

9.5 **Chapter VII** briefly concludes.

CHAPTER III. LAW OF THE SEA

10. On 21 May 2024, the International Tribunal for the Law of the Sea delivered its Advisory Opinion on the *Request submitted to the Tribunal by the Commission of Small Island States on Climate Change and International Law* (“**ITLOS Climate Change Advisory Opinion**”).²

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

11. Solomons considers the Tribunal’s findings a welcome step in the development of international law and protection of the marine environment and climate system from the adverse effects of climate change. Solomons reaffirms its submissions in relation to the law of the sea as expressed in its written statement at paragraphs 205 to 207, and notes the close alignment with the findings of the Tribunal in relation to the interpretation of Part XII of UNCLOS.

B. Rejection of *lex specialis* argument should be followed by this Court

12. Solomons welcomes ITLOS’ finding at paragraphs 222 to 224 that the UNFCCC and the Paris Agreement are not *lex specialis* to the UN Convention on the Law of the Sea (“**UNCLOS**”) and that the Paris Agreement does not modify or limit State obligations created under UNCLOS. While the Tribunal was considering the question of *lex specialis* in the context of UNCLOS, Solomons considers the Tribunal’s reasoning applies to other sources of law, such as international environmental law, human rights law, and general and customary international law.³ The plain text of the UNFCCC and the Paris Agreement confirm that those treaties do not seek to replace or supplant other

² *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal) (Advisory Opinion)* (International Tribunal for the Law of the Sea, Case No 31, 21 May 2024) (“**ITLOS Climate Change Advisory Opinion**”).

³ Solomon Islands, ‘Written statement’, Submission in *Obligations of States in respect of Climate Change*, 22 March 2024 [55] to [58] (“*Solomons Written Statement*”).

international obligations relevant to climate change.⁴ The Tribunal's finding is highly persuasive to this Court and accordingly, Solomon respectfully requests that this Court also reject the argument that the UNFCCC and the Paris Agreement are *lex specialis*.⁵

C. Maritime entitlements should be preserved in the context of climate change induced sea-level rise

13. Solomons' written statement at paragraphs 208 to 213 stresses the importance of the Court acknowledging that in the context of sea-level rise and climate change, a State's maritime entitlements should be preserved. At paragraph 150 of the ITLOS Climate Change Advisory Opinion, the Tribunal declined to consider sea-level rise and States' maritime entitlements in the context of climate change, as it was of the view that the Request was not directed to those questions. Solomons reaffirms the submissions made in its written statement, namely that States' baselines and the outer limits of their maritime zones should be preserved. This position is supported by the International Law Association's ("ILA") Committee on International Law and Sea Level Rise. In the final report of the Committee, issued in June 2024, it is recommended that baselines and limits of maritime zones be maintained despite changes due to sea-level rise, even in the process of submergence.⁶
14. Solomons also considers that the nature of the Request before this Court is importantly different to the Request before ITLOS in that it refers, in Question (b)(i), specifically to questions of State responsibility in respect to "*States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change*". Impacts on maritime entitlements are of acute importance to SIDS, because their geographical circumstances mean that they are specially affected by the adverse effects of sea-level rise. As such, while it may have

⁴ United Nations Framework Convention on Climate Change, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994), preamble ('UNFCCC'); Paris Agreement, opened for signature 22 April 2016, 1155 UNTS 146 (entered into force 4 November 2016), preamble ('Paris Agreement'); Responsibility of States for Internationally Wrongful Acts, GA Res 56/83, UN Doc A/RES/56/83 (28 January 2002, adopted 12 December 2001) annex, art 55(4) ('ARSIWA').

⁵ 24 States and intergovernmental organisations argued that the UNFCCC, the Kyoto Protocol and the Paris Agreement are *lex specialis*.

⁶ International Law Association, 'International Law and Sea Level Rise' Athens Conference (Report, 2024) 45-47 ('ILA Sea Level Rise Report 2024').

been proper for ITLOS to defer consideration of maritime entitlements, Solomons invites this Court to adopt a different course.⁷

D. CBDR-RC should be interpreted harmoniously with UNCLOS

15. Solomons welcomes the finding of the Tribunal which harmonises the standards established in Article 194(1) of UNCLOS and common but differentiated responsibilities and respective capabilities (“CBDR-RC”) under the Paris Agreement. The Tribunal held that Article 194(1) provides that States shall take necessary measures to prevent, reduce and control marine pollution, using for this purpose “the best practicable means at their disposal”, “in accordance with their capabilities”.⁸ The scope and content of necessary measures may vary depending on the means available to States and their capabilities, such as their financial, technical, scientific and economic capabilities, which injects a “certain degree of flexibility” in discharging the obligation under Article 194(1).⁹ After analysing CBDR-RC in the context of the Paris Agreement, the Tribunal noted that:

“The Tribunal considers that while the obligation under article 194, paragraph 1, of the Convention does not refer to the principle of common but differentiated responsibilities and respective capabilities as such, it contains some elements common to this principle. Thus, the scope of the measures under this provision, in particular those measures to reduce anthropogenic GHG emissions causing marine pollution, may differ between developed States and developing States. At the same time, it is not only for developed States to take action, even if they should “continue taking the lead”. All States must make mitigation efforts.” (Emphasis added).

16. This approach to the obligations created under Article 194(1) aligns with the interpretation put forward by Solomons in its written statement at paragraph 99, namely, that CBDR-RC is a dynamic standard which shifts in light of different national

⁷ At least 25 States and intergovernmental organisations made submissions on this point, which indicates the importance of the topic in these proceedings.

⁸ ITLOS Climate Change Advisory Opinion (n 2) [225].

⁹ ITLOS Climate Change Advisory Opinion (n 2) [226].

circumstances and can become more stringent over time.¹⁰ Solomons respectfully invites this Court to similarly interpret the distinct but complementary provisions in Article 194(1) as establishing a dynamic or flexible standard for CBDR-RC which can impose more stringent obligations on States as their financial, technical, scientific and economic capabilities change.

CHAPTER IV. CLIMATE DISPLACEMENT, MIGRATION AND RELOCATION

17. State obligations in the context of climate displacement, migration and relocation were rarely considered in detail by States and intergovernmental organisations in written statements provided to the Court.¹¹ Solomons respectfully invites the Court to analyse State obligations in the context of climate displacement, migration and relocation as an important part of answering Question (a) and, in the context of describing relevant forms of restitution, Question (b) of the General Assembly's Request.¹²
18. Before proceeding further, it is relevant to note that a range of terms are used by States to refer to issues of climate mobility. Solomons uses the umbrella term "climate mobility" to refer to different types of movement caused by climate change. There are three types of movement captured by this term: displacement, migration, and planned relocation.¹³
19. Displacement refers to the movement of persons who have been forced to leave their homes or places of habitual residence as a result of a climate-related disaster.¹⁴ Climate migration is the temporary or permanent movement of people from their habitual place of residence predominantly for reasons of sudden or progressive change in the environment due to climate change.¹⁵ This can occur within or across State borders, and exists on a continuum of more voluntary to more forced movement. Planned

¹⁰ Solomons Written Statement (n 3) [90]-[100].

¹¹ The issue was addressed at least in part by: Albania, Antigua & Barbuda, Bahamas, Bangladesh, Bolivia, Burkina Faso, Dominican Republic, Egypt, El Salvador, France, Kiribati, Liechtenstein, Madagascar, Marshall Islands, Netherlands, Peru, Portugal, Seychelles, Solomon Islands, Tonga, Tuvalu, Vanuatu, COSIS, PIF, and FFA.

¹² See El Salvador, 'Written statement', Submission in *Obligations of States in respect of Climate Change*, 22 March 2024, [48] "What obligations States owe to climate migrants, whether as a category of their own or under refugee protection law, needs to be addressed by the Court's opinion" ('El Salvador Written Statement').

¹³ International Organisation for Migration, "International Migration Law: Glossary on Migration" (2019). Retrieved from: <https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf> 31, 51 and 157 ('IDMC Glossary').

¹⁴ Ibid, 51.

¹⁵ Ibid, 31.

relocation describes a planned process in which people move or are assisted to move away from their homes and settle in a new location because of the effects of climate change.¹⁶ These different aspects of climate mobility correspond with discrete State obligations.

20. As Solomons noted in its written statement at paragraphs 218 to 227, climate mobility issues are of particular significance in Solomons and across SIDS more generally. Solomons draws the Court's attention to paragraphs 13 to 51 of its written statement, which sets out the extensive impacts of climate change as drivers of internal and cross-border climate displacement, migration and relocation within Solomons. Solomons also notes the impact statements of Alfred Didi, Daniel Duru, Gladys Habu, Ethel Loku and Melinda Tahola, attached to these Written Comments, which describe the severe impacts of climate change on their lives (*'Impact Statements'*). The persons who have provided the Impact Statements are permanent residents of the affected communities. The documents are not sworn, but have been compiled through interviews and telephone conversations between Solomon Islands government lawyers and the statement givers. Many of these communities are extremely remote and transport between these places and Honiara (where these submissions have been prepared) is expensive, infrequent and often unreliable. Similarly, many of these remote communities do not have reliable internet connection to allow for the statements to be sworn remotely. The Impact Statements provide first-hand effects of climate change in the Solomon Islands and have been included for this purpose in support of these submissions.
21. In brief, since 2008 planned and emergency relocation has contributed to the displacement of over 26,000 people – or around 5 per cent of Solomons' population.¹⁷ Solomons has already lost five islands to total inundation, with further islands at risk. With sea-levels rising three times higher than the global average,¹⁸ Solomons anticipates losing further islands to inundation or uninhabitability in the near future,

¹⁶ Ibid, 157.

¹⁷ Internal Displacement Monitoring Centre (IDMC) 'Sudden-Onset Hazards and the Risk of Future Displacement in the Solomon Islands' (Report, 2021) 9 (*'IDMC Risk Profile'*).

¹⁸ Simon Albert et al. 'Interactions between sea-level rise and wave exposure on reef island dynamics in the Solomon Islands' (2016) 11(5) *Environmental Research Letters*.

- potentially displacing over 4,000 people per year.¹⁹ In a State where 80 per cent of land is under customary tenure,²⁰ displacement fuels land disputes, leads to a loss of traditional ways of life, and severely undermines local culture.²¹
22. These issues are vividly reflected in the Impact Statements attached to the Written Comments. Collectively the Statements describe dire threats to the right to life and connected rights to food and clean water, the right to self-determination, the right to a healthy environment, and the right to private and family life.²² Gladys Habu, 28, describes the loss of her ancestral lands on Kale Island, which has been permanently submerged by rising sea levels, with the majority of territory lost over the course of a decade: *“The loss of Kale Island has had a profound impact on me, my tribe, and community. For me, it is the loss of our cultural heritage and a place very close to home. I now have a daughter who will never experience this part of our culture that I was fortunate to experience growing up.”*²³
23. Daniel Duru, 64, from Kombe Village, describes some of the cultural and social challenges associated with forced relocation in an island context:
- “Only few of us remain by the seashore. The idea of relocation is not simple for us. We face a land dispute problem because the higher land further inland is owned by different tribes and families, so we are not allowed to settle on their lands unless we come to an agreement. Reaching agreement is not easy, so we have no place to relocate to and therefore we have no choice but to stay.”*²⁴
24. Ethel Loku, 54, from Haleta Village, describes the impact of climate change on local culture and access to food:

¹⁹ IDMC Risk Profile (n 17) 13.

²⁰ Marjorie Sullivan, ‘Recognition of Customary Land in the Solomon Islands: Status, Issues and Options’ (2007) Working Paper 66 *Resource Management in Asia-Pacific* 7; Anouk Ride, ‘Climate Change and Conflict in Solomon Islands’ *United States Institute of Peace* (2 November 2023).

²¹ International Organisation for Migration (IOM), ‘Pacific Migration Common Country Analysis’ (Report, 2021) 21; United Nations Economic and Social Commission for Asia and the Pacific, ‘Climate Change and Migration Issues in the Pacific’ (Report, 2014) 22.

²² See Solomon Islands Written Statement at [163]–[204].

²³ Gladys Habu Impact Statement (Annexure 3) [8].

²⁴ Daniel Duru Impact Statement (Annexure 2) [22].

*“In the past, our traditional knowledge taught us when to plant our gardens, when the ground was soft and when the weather was right for gardening. Today it is different. Our knowledge, skills and techniques are not workable anymore and I believe this is due to the changing weather patterns.”*²⁵

25. Alfred Didi, from Ambu Village, similarly describes other threats to vital food systems and traditional fishing practices:

*“I am sad seeing how these changes have affected our livelihood on Ambu especially for us saltwater (coastal) people who rely heavily on marine resources for survival. We can no longer rely on our cultural knowledge for fishing ...”*²⁶

Melinda Tahola, a teacher on Sikaiana Island, makes clear that despite the severe impacts associated with extreme weather events causing “suffering for the Sikaiana Island community”, there are significant efforts to resist displacement: “[W]e are trying to adapt so we can remain on our ancestral lands”.²⁷

26. The experience in Solomons is largely typical of SIDS, who have been recognised by the Intergovernmental Panel on Climate Change (“IPCC”) as being uniquely vulnerable to climate displacement.²⁸ SIDS’ populations are more likely to relocate due to threats to marine and coastal agricultural food systems,²⁹ water scarcity,³⁰ sea-level rise and a loss of habitable land.³¹ Beyond SIDS, climate displacement and migration is also a significant concern for States globally, although disproportionately in the Global South – the World Bank estimates that by 2050 climate change could lead to 216 million people becoming internally displaced across Latin America, Eastern Europe, Central Asia, North Africa, Sub-Saharan Africa, South Asia and East Asia and

²⁵ Ethel Loku Impact Statement (Annexure 4) [16].

²⁶ Alfred Didi Impact Statement (Annexure 1) [22].

²⁷ Melinda Tahola Impact Statement (Annexure 5) [9].

²⁸ 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* (Cambridge University Press, 2023) 2045 (‘IPCC 2022 Chapter 15’).

²⁹ Ibid, 2046, 2068.

³⁰ Esha Zaveri et al., ‘Ebb and Flow, Volume 1: Water, Migration and Development’ (Report, 2021) (World Bank, Washington DC) 17.

³¹ IPCC 2022 Chapter 15 (n 28) 2046, 2076.

the Pacific.³² With over 1 billion people projected to be living in low-elevation coastal areas by 2050, it is important for the Court to clearly identify State obligations in relation to climate displacement, migration and relocation.³³

27. On this basis, Solomons will briefly address two key points:

27.1 States have obligations to provide technical and financial support to developing States facing internal and cross-border displacement, migration and relocation resulting from the effects of climate change; and

27.2 people displaced across borders by climate change should be subject to increased cooperation by States, and afforded protection under the Convention Relating to the Status of Refugees 1951 (“1951 Refugee Convention”),³⁴ regional instruments, international human rights law and complementary forms of international protection.

A. **States have obligations to provide technical and financial support to developing States facing internal and cross-border displacement, migration and relocation resulting from the effects of climate change**

28. As early as 1991, the IPCC warned that displacement would be the worst consequence of climate change.³⁵ Solomons recognises that most climate change induced displacement will be within borders. Each year, about three times as many people are displaced internally by disasters than by conflict – the vast majority in the Asia-Pacific region.³⁶ While internal displacement is larger in scale than cross-border displacement, it is important that States comply with their obligations under international law in respect of both, in addition to instances of climate migration and relocation. These

³² Viviane Clement et al., ‘Groundswell Part 2: Acting on Internal Climate Migration’ (Report, 2021) (World Bank, Washington DC).

³³ Intergovernmental Panel on Climate Change, ‘Summary for Policymakers’ in *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2023) 32.

³⁴ Convention Relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) (‘Refugee Convention’).

³⁵ Intergovernmental Panel on Climate Change, ‘Policymaker Summary of Working Group II (Potential Impacts of Climate Change)’ in *Climate Change: The IPCC 1990 and 1992 Assessments* (1992) 103 [5.0.10].

³⁶ Bruce Burson, ‘Displacement in a changing climate’ *International Federation of Red Cross and Red Crescent Societies* (Report, 2021) 4; see generally Internal Displacement Monitoring Centre (IDMC), ‘Global Report on Internal Displacement’ (2024) at: <<https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC-GRID-2024-Global-Report-on-Internal-Displacement.pdf>> 6.

obligations derive from, *inter alia*, the Paris Agreement, international and regional human rights law, and, in the case of cross-border displacement, refugee law.

29. Solomons written statement comprehensively addresses State mitigation and adaptation obligations at paragraphs 59 to 227, which will not be repeated here. Of particular relevance are States' adaptation and loss and damage obligations, including those set out in Article 2(1)(b), Article 7 and Article 8 of the Paris Agreement. For example, Article 7(6) recognises the "*importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing countries parties*",³⁷ while Article 8(4) underlines the need to cooperate in relation to early warning systems, emergency preparedness, slow onset events, events causing irreversible or permanent loss and damage, non-economic losses, and resilience of communities, livelihoods and ecosystems.³⁸ Consistent with the principle of CBDR-RC, Article 9 relevantly requires developed States to provide finance to assist developing States in meeting their mitigation and adaptation obligations under the Agreement.
30. All States therefore have both mitigation and adaptation obligations which are relevant for climate mobility. For example, States must take mitigation measures which will reduce greenhouse gas emissions and in turn prevent the extensive and irreversible damage which causes displacement, migration and relocation.³⁹ Developed States must provide technical and financial assistance to developing States and LDCs and SIDS to mitigate climate change,⁴⁰ and relevantly for climate mobility, adapt to climate change impacts and develop climate resilience.⁴¹ This was reaffirmed by ITLOS, which held that the terms of the Paris Agreement requiring the provision of scientific, technical, educational and other assistance were also owed under Articles 202 and 203 of UNCLOS, and were a "means of addressing an inequitable situation".⁴²

³⁷ Paris Agreement (n 4) art 7(6).

³⁸ Paris Agreement (n 4) art 8(4)(a)-(h).

³⁹ ITLOS Climate Change Advisory Opinion (n 2) [175], [276], [258], [243].

⁴⁰ UNFCCC (n 4) art 4(3); Daniel Bodansky et. al, *International Climate Change Law* (Oxford University Press, 2017), 139.

⁴¹ UNFCCC (n 4) art 4(3); Bodansky (n 40) 139.

⁴² ITLOS Climate Change Advisory Opinion (n 2) [327]-[329].

31. These obligations are also derived from international human rights law. A number of written statements to this Court are in agreement that displacement caused by sea-level rise and climate change impacts will prevent the realisation of human rights, such as the right to self-determination,⁴³ the right to be free from hunger,⁴⁴ the right to adequate housing,⁴⁵ the right to cultural identity,⁴⁶ and the right to an adequate standard of living.⁴⁷ Some written statements further noted that all States have an obligation to cooperate to ensure people who are forcibly displaced due to climate change impacts are safely accommodated, either domestically or elsewhere.⁴⁸
32. States should therefore cooperate to implement instruments that allow them to discharge the obligations described above. For example, States should have regard for the work of the UNFCCC Task Force on Displacement.⁴⁹ Similarly, the Guiding Principles on Internal Displacement⁵⁰ and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa provide a framework for responding to internal displacement in the context of disasters, including those linked to climate change.⁵¹ Similarly, the Global Compact for Safe, Orderly and

⁴³ Kiribati, 'Written statement', Submission in *Obligations of States in respect of Climate Change*, 22 March 2024, [138].

⁴⁴ See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Bahamas [229]; Tonga [262].

⁴⁵ See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Bahamas [229]; Liechtenstein [43]; Tonga [262].

⁴⁶ Vanuatu 'Written statement', Submission in *Obligations of States in respect of Climate Change*, 22 March 2024, [301] ('*Vanuatu Written Statement*').

⁴⁷ See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Bahamas [229]; Liechtenstein [63]; Tonga [262].

⁴⁸ See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: Kingdom of the Netherlands [5.44]; Portugal [148].

⁴⁹ As adopted by 195 States at COP 21.

⁵⁰ UN Human Rights Commission, *Addendum: Guiding Principles on Internal Displacement*, 54th sess, UN Doc E/CN.4/1998/53/Add.2 (17 July 1998).

⁵¹ UNHCR, 'Summary of Deliberations on Climate Change and Displacement' from *Expert Meeting on Climate Change and Displacement*, 22-25 February 2011 (Bellagio, Italy) [19] ('*Bellagio Deliberations*'), Chairperson's Summary 'Nansen Conference: Climate Change and Displacement in the 21st Century' (5-7 June 2011) [19]; 'Both the Guiding Principles on Internal Displacement and the African Union's 2009 Kampala Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) in Africa cover internal displacement resulting from natural disasters, including those linked to climate change'.

Regular Migration (“Global Compact on Migration”),⁵² which Solomons endorsed in 2018, considers climate change related displacement,⁵³ and in that context, encourages States to:

- 32.1 strengthen joint analysis and sharing of information to better map, understand, predict and address migration movements, such as those that may result from sudden-onset and slow-onset natural disasters, the adverse effects of climate change, and environmental degradation;⁵⁴
- 32.2 develop adaptation and resilience strategies to sudden-onset and slow-onset natural disasters, the adverse effects of climate change and environmental degradation, taking into account the potential implications for migration, while recognising that adaptation in the country of origin is a priority;⁵⁵
- 32.3 harmonise and develop approaches and mechanisms at the subregional and regional levels to address the vulnerabilities of persons affected by sudden-onset and slow-onset natural disasters, by ensuring that they have access to humanitarian assistance that meets their essential needs with full respect for their rights wherever they are, taking into account the capacities of all countries involved;⁵⁶
- 32.4 develop coherent approaches to address the challenges of migration movements in the context of sudden-onset and slow-onset natural disasters, including by

⁵² *Global Compact for Safe, Orderly and Regular Migration*, GA Res 73/195, UN Doc A/RES/73/195 (11 January 2019, adopted 19 December 2018) (“*Global Compact on Migration*”). 166 States voted in favour, Albania, Andorra, Angola, Argentina, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Bhutan, Bolivia, Bosnia and Herzegovina, Brazil, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Canada, Central African Republic, Chad, China, Colombia, Comoros, Congo, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Eswatini, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea-Bissau, Guyana, Haiti, Honduras, Iceland, India, Indonesia, Iran, Iraq, Ireland, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Lao People’s Democratic Republic, Lebanon, Lesotho, Liberia, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Palau, Papua New Guinea, Peru, Philippines, Portugal, Qatar, Republic of Korea, Republic of Moldova, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Sierra Leone, Slovenia, Solomon Islands, South Africa, South Sudan, Spain, Sri Lanka, Sudan, Suriname, Sweden, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, Tuvalu, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

⁵³ *Global Compact on Migration* (n 52) [18].

⁵⁴ *Global Compact on Migration* (n 52) [18](h).

⁵⁵ *Global Compact on Migration* (n 52) [18](i).

⁵⁶ *Global Compact on Migration* (n 52) [18](k).

taking into consideration relevant recommendations from State-led consultative processes, such as the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, and the Platform on Disaster Displacement.⁵⁷

33. The Global Compact on Migration usefully presents a framework for States to establish standards of migration governance and cooperation, with a particular focus on the unique needs of LDCs and SIDS.⁵⁸ Consistent with the principles set out above, ITLOS recognised that States have specific obligations to harmonise climate policies,⁵⁹ and support developing States with scientific, technical, educational, and financial assistance in the context of climate change.⁶⁰
34. The UN Human Rights Council also relevantly suggested a number of measures that States could cooperatively take, including:
 - 34.1 to promote and expand safe, regular, dignified and accessible pathways for human mobility that respect and protect the rights of persons affected by climate change, including through specific protection mechanisms;
 - 34.2 to refrain from returning migrants to territories affected by climate change that can no longer sustain them and steadfastly uphold the fundamental principle of non-refoulement and other international human rights law obligations, to provide protection for persons who are unable to return to their homes as a result of climate change; and
 - 34.3 to facilitate the integration of climate change-related migrants in host communities, the regularisation of their legal status and their access to labour markets.⁶¹

⁵⁷ Global Compact on Migration (n 52) [18](l).

⁵⁸ Global Compact on Migration (n 52) [39]; see also *Report of the United Nations High Commissioner for Refugees: Part II Global compact on refugees*, A/73/12 (Part II) (2 August 2018) as adopted by GA Res 73/151, UN Doc A/RES/73/151 (17 December 2018) [8].

⁵⁹ ITLOS Climate Change Advisory Opinion (n 2) [243].

⁶⁰ ITLOS Climate Change Advisory Opinion (n 2) [327]-[329].

⁶¹ UN Human Rights Council, *Addressing Human Rights Protection Gaps in the Context of Migration and Displacement of Persons across International Borders Resulting from the Adverse Effects of Climate Change and Supporting the Adaptation and Mitigation Plans of Developing Countries to Bridge the Protection Gaps* UN Doc A/HRC/38/21 (23 April 2018) [66] (c), (d) and (h).

35. Where States fail to discharge their mitigation and adaptation obligations, and the adverse effects of climate change lead to displacement, migration and relocation, States will be internationally responsible for reparations in the form of non-monetary restitution to address human mobility.⁶² While the form of redress will be similar to those primary obligations set out above, they are legally distinct as reparations are backward-looking in nature.
36. In summary, Solomons notes and welcomes the Written Statements of other parties stating that all States have an obligation to cooperate to ensure people who move due to climate change are safely accommodated,⁶³ and that States should be entitled to compensation for expenses incurred in receiving and supporting displaced persons.⁶⁴ All States owe mitigation and adaptation obligations under, *inter alia*, the Paris Agreement and international human rights law to address climate mobility. In line with CBDR-RC, developed States must provide technical and financial support to developing States, in particular SIDS and LDCs, facing internal and cross-border displacement, migration and relocation resulting from the effects of climate change.
- B. People displaced across borders should be protected under the 1951 Refugee Convention, regional instruments and complementary forms of international protection**
37. Solomons addressed State obligations towards people displaced beyond borders due to climate change in its written statement at paragraphs 226 to 227. This noted that individuals should be considered for protection under not only the 1951 Refugee Convention and the Protocol Relating to the Status of Refugees 1967,⁶⁵ but also regional refugee instruments such as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa⁶⁶ and the 1984 Cartagena Declaration,⁶⁷ and the

⁶² See Solomon Islands Written Statement [229]-[248].

⁶³ See for example the written statements of the following States in *Obligations of States in respect of Climate Change*: Kingdom of the Netherlands [5.44]; Portugal [148].

⁶⁴ See for example the written statements of the following States in *Obligations of States in respect of Climate Change*: Madagascar [87]; Vanuatu [487].

⁶⁵ Protocol Relating to the Status of Refugees, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967) ('*Refugee Protocol*').

⁶⁶ Organisation of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa, opened for signature 10 September 1969 1001 UNTS 45 (entered into force 20 June 1974).

⁶⁷ *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (22 November 1984) ('*Cartagena Declaration*').

complementary protection non-refoulement obligations established under international human rights law.

Protection under the 1951 Refugee Convention or regional instruments

38. The need for international protection arises where a person is outside their own country and is unable to return due to a well-founded fear of persecution or serious human rights violations, which the State cannot or will not protect them from.⁶⁸ The slow-onset, irreversible impacts of sea-level rise have seen people move across borders as they are living in unsafe conditions or are no longer capable of sustaining livelihoods.⁶⁹ This is particularly the case where “*internally displaced persons fail to find safety and security in their own country, leading to significant numbers of cross-border movements within and beyond the region.*”⁷⁰ In 2020, UNHCR issued guidance on protection claims in the context of climate change, clarifying that people compelled to cross international borders in the context of disasters or events linked to climate change can fall within the international legal definition of a refugee under the 1951 Refugee Convention.⁷¹
39. UNHCR has noted that refugee status determination processes by national asylum authorities should consider the impacts of climate change events broadly, including impacts upon human rights, social and political security, and government responses to climate change impacts:

*“[i]f a narrow view is taken of the effects of climate change and disasters, there is a risk that decision-makers may decide that refugee law is inapplicable and deny access to refugee status determination”.*⁷²

⁶⁸ UNHCR, ‘Climate change impacts and cross-border displacement: International refugee law and UNHCR’s mandate’ (12 December 2023).

⁶⁹ See Sanjula Weerasinghe, ‘In Harm’s Way: International Protection in the Context of Nexus Dynamics Between Conflict or Violence and Disaster or Climate Change’, UNHCR, PPLA/2018/05 (2018).

⁷⁰ Internal Displacement Monitoring Centre (IDMC), Global Report on Internal Displacement (2019) <<https://www.internal-displacement.org/global-report/grid2019?>>. 41.

⁷¹ UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters* (1 October 2020) <www.refworld.org/docid/5f75f2734.html> [6]; UNHCR, ‘Climate change impacts and cross-border displacement: International refugee law and UNHCR’s mandate’ (12 December 2023).

⁷² Ibid [5].

40. Consideration of these factors may satisfy the existing framework for protection under Article 1A(2) of the Refugee Convention, which is:

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country; or who, not having a nationality and being outside the country of [their] former habitual residence, is unable or, owing to such fear, is unwilling to return to it."
(emphasis added)

41. Persecution in the context of this framework requires proof of a targeted threat against an individual on the basis of their identity. As set out above, climate change impacts may lead to an individual or group being exposed to a risk of human rights violations amounting to persecution under Article 1A(2).⁷³ Further, the impact of climate change events on security, government support for communities and political stability may exacerbate risks to individuals or groups, rendering them persecuted "for reasons of" a particular trait. For people belonging to particular groups which are already marginalised and vulnerable, and therefore disproportionately affected by climate change, a risk of persecution may arise.⁷⁴ Consistent with this interpretation, UNHCR has provided three examples that may satisfy the definition under the 1951 Refugee Convention:

- 41.1 people fleeing conflict or violence which may be caused or exacerbated by the effects of climate change, thereby rendering the State unable or unwilling to protect the victims and leaving them at risk of persecution.⁷⁵ For example,

⁷³ For example, the right to life, physical integrity, an adequate standard of living, health, water, sanitation, and self-determination or development; UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4 (April 2019) [51]-[55].

⁷⁴ See *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, judgment (European Court of Human Rights, Grand Chamber) (9 April 2024) ('*KlimaSeniorinnen*'); UNHCR, 'Climate change impacts and cross-border displacement: International refugee law and UNHCR's mandate' (12 December 2023).

⁷⁵ UNHCR, 'Climate change impacts and cross-border displacement: International refugee law and UNHCR's mandate' (12 December 2023) [1.1.1].

conflict over arable land and control of resources in Sudan and South Sudan in 2019;⁷⁶

41.2 environmental defenders, activists or journalists targeted and persecuted for defending, conserving or reporting on ecosystems or government responses to climate change, which may be considered a political stance. For example, violence against environmental defenders in Northern Central America resisting natural resource extraction, reported by the Inter-American Commission on Human Rights;⁷⁷ and

41.3 vulnerable groups such as women, children, and the elderly, who suffer from the greatest impacts of climate change, which compounds existing discrimination, gender-based violence, human trafficking and instances of child marriage. Minority groups and indigenous people are similarly vulnerable as they are already marginalised, and may be denied access to resources or excluded from disaster risk reduction strategies.⁷⁸

42. Contrary to the submission of some States,⁷⁹ the 1951 Refugee Convention, despite not being originally designed with climate change in mind, is clearly capable of providing protection in a range of climate-related displacement contexts. The interpretation of the 1951 Refugee Convention is supplemented by UNHCR's approach to protection under regional instruments such as Conclusion III(3) of 1984 Cartagena Declaration on Refugees⁸⁰ and Article I(2) of the 1969 OAU Convention on Specific Aspects of Refugee Problems in Africa, which recognise as refugees persons who have:

⁷⁶ UNHCR, 'Climate change impacts and cross-border displacement: International refugee law and UNHCR's mandate' (12 December 2023) [1.1.1(a)].

⁷⁷ UNHCR, 'Climate change impacts and cross-border displacement: International refugee law and UNHCR's mandate' (12 December 2023) [1.1.1(b)]; for example, Inter-American Commission on Human Rights (IACHR), Report on the Situation of Environmental Human Rights Defenders in the Northern Central American Countries, OEA/Ser.L/V/II, Doc. 40/22, 16 December 2022.

⁷⁸ UNHCR, 'Climate change impacts and cross-border displacement: International refugee law and UNHCR's mandate' (12 December 2023) [1.1.1(c)].

⁷⁹ Kingdom of the Netherlands, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [5.42]. The Netherlands did not oppose an expansive interpretation as such, but rather noted that the Convention "would not seem applicable in the context of climate change as it was not designed to protect climate-related displaced persons".

⁸⁰ While it is not a treaty, the definition of 'refugee' in the Cartagena Declaration (n 61) has attained important standing in the Americas through entrenchment in domestic laws. Across the Americas, States have recognised its value through regional instruments such as the 1994 San Jose Declaration on Refugees and Displaced Persons, the 2004 Mexico Declaration and Plan of Action to Strengthen International Protection of Refugees in Latin America, the 2011 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas, the 2014 Brazil Declaration and Plan of Action and the 2018 100 Points of Brasilia.

*“fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflict, massive violation of human rights or other circumstances which have seriously disturbed public order”.*⁸¹

43. While the Cartagena Declaration does not provide a legal definition of “seriously disturbed public order”, UNHCR considers that it is sufficiently broad to encompass climate-related impacts.⁸² The concept of “public order” refers to the prevailing level of administrative, social, political and moral order as assessed according to the effective functioning of the State and based on respect for the rule of law and human dignity such that the life, security and freedom of people are protected.⁸³ Disturbances can stem from human or other causes, and as such climate change impacts – whether they are defined as being anthropogenic in nature or not – are capable of being events that “seriously disturb public order”.⁸⁴ In relation to internal flight or relocation alternatives, both the 1969 OAU Convention and the 1984 Cartagena Declaration definitions of refugees include persons who flee situations that affect either “part” or “the whole” of the territory of their country of origin.⁸⁵ Therefore if a person is displaced due to a serious disturbance to the public order as a result of a climate impact, there is no requirement that the impact extends throughout the State’s territory in order for the applicant to receive protection.
44. In terms of the status of the 1984 Cartagena Declaration, while it is not a treaty, the Inter-American Court of Human Rights has established that there is state practice consistent with its expanded definition to include circumstances which have seriously disturbed public order:

“Additionally, the Court notes that the developments produced in refugee law in recent decades have led to state practices, which have consisted in granting

⁸¹ Cartagena Declaration (n 61), Conclusion III(3).

⁸² UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters* (1 October 2020) <www.refworld.org/docid/5f75e2734.html> [15]-[16].

⁸³ Ibid, [16].

⁸⁴ Tamara Wood, ‘Who is a Refugee in Africa? A Principled Framework for Interpreting and Applying Africa’s Expanded Refugee Definition’, (2019)31 *International Journal of Refugee Law* 311-313, 307.

⁸⁵ UNHCR, *Guidelines on International Protection No. 4: “Internal Flight or Relocation Alternative” Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, UN Doc HCR/GIP/03/04 (23 July 2003).

international protection as refugees to persons fleeing their country of origin due to generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances which have seriously disturbed public order. Bearing in mind the progressive development of international law, the Court considers that the obligations under the right to seek and receive asylum are operative with respect to those persons who meet the components of the expanded definition of the Cartagena Declaration.”⁸⁶ (Emphasis added).

45. Solomons therefore considers the expanded definition contained in the 1984 Cartagena Declaration and 1969 OAU Convention to be an evolving norm of international law that acknowledges the humanitarian impact of climate change and supports broader protection frameworks for those affected. Beyond the 1984 Cartagena Declaration, and the 1969 OAU Convention, other regional instruments⁸⁷ such as the African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers (“**African Guiding Principles**”),⁸⁸ also provide the basis for protection in the context of climate change, with Principle 21(2) stating:

“Every climate migrant has the right to seek and to obtain asylum in other countries in accordance with laws of those countries, regional, and international conventions.”⁸⁹

46. The African Guiding Principles also stipulate the need for states to mitigate climate change, recognising that it is the effects of climate change that drive migration.⁹⁰ Consistent with the Global Compact, the African Guiding Principles ask States to develop adaptation strategies to address the impacts of climate change, reduce

⁸⁶ *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection (Advisory Opinion)* (Inter-American Court of Human Rights, Series A No 21, 19 August 2014) [79].

⁸⁷ *Brazil Declaration, A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean* (3 December 2014); *African Union Convention for the protection and assistance of internally displaced persons in Africa*, opened for signature 23 October 2009, 3014 UNTS 3 (entered into force 6 December 2012).

⁸⁸ African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers are proposed for consideration and adoption by the African Commission on Human Rights during its 75th ordinary session in Addis Ababa (3-23 May 2023).

⁸⁹ African Commission on Human and Peoples’ Rights African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers (Principle 21(2)) (emphasis added).

⁹⁰ African Commission on Human and Peoples’ Rights African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers (Principle 32)

vulnerability and to create pathways for migration. Outside of the 1951 Refugee Convention and regional frameworks, protection is also available in climate change contexts under international human rights law.

Complementary protection under international human rights law

47. Beyond international refugee law treaties and frameworks, States owe obligations to people displaced across borders in a climate change context under international human rights law. In particular, the principle of non-refoulement applies, which is an established norm of customary international law and international human rights law.⁹¹ It is binding on all States, regardless of whether they have acceded to the 1951 Refugee Convention or its 1967 Protocol. As set out in *Teitiota*,⁹² States must act swiftly to curb the effects of climate change, to prevent individuals and groups from being exposed to violations of human rights, particularly Articles 6 (right to life) and 7 (prohibition of torture and cruel, inhuman or degrading treatment or punishment) of the International Covenant on Civil and Political Rights (“ICCPR”),⁹³ which trigger non-refoulement obligations.⁹⁴ Solomons considers that a State would be in breach of their non-refoulement obligations if they return a person displaced by sea-level rise or other climate change impacts and do not consider potential threats to the right to life, given difficulties obtaining habitable land, securing water resources and accessing food.⁹⁵

⁹¹ See New York Declaration for Refugees and Migrants, para 67; *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Advisory Opinion OC-21/14, Inter-American Court of Human Rights Series A No 21 (19 August 2014) para 211; Nigel S Rodley and Matt Pollard, *The Treatment of Prisoners under International Law* (3rd edn, OUP 2009). *The Institution of Asylum and its Recognition as a Human Right in the Inter-American System of Protection (Interpretation and Scope of Articles 4, 22.7 and 22.8 in relation to Article 1(1) of the American Convention on Human Rights)*, Advisory Opinion OC-25/18, Inter-American Court of Human Rights Series A No 24 (30 May 2018) (only available in Spanish, unofficial English translation available at Inter-American Court of Human Rights, ‘Advisory Opinion OC-25/18 of 30 May 2018 Requested by the Republic of Ecuador’ para 181.

⁹² Human Rights Committee, *Views: Communication No 2728/2016*, UN Doc CCPR/C/127/D/2728/2016 (24 October 2019) ¶ [9.9] (*‘Teitiota v Australia’*) [9.11].

⁹³ International Convention on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (*‘ICCPR’*) arts 6 and 7; Human Rights Committee, *General comment No. 36 Article 6: right to life*, 124th sess, UN Doc CCPR/C/GC/35 (3 September 2019); Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 44th sess, UN Doc HRI/GEN/1/Rev.9 (Vol. I) p.200 (10 March 1992).

⁹⁴ Kenzie Poole ‘Climate Migrants: Who are They and What Legal Protections Do They Have?’ (2021) *Immigration and Human Rights Law Review*; Lucia Rose, ‘The World After Teitiota: What the HRC Decision Means for the Future of Climate Migration’ (2021) 12 *San Diego Journal of Climate and Energy Law* 41, 55.

⁹⁵ *Teitiota v Australia* (n 92) [9.12] (noting that the Committee found the right to life would not be breached as Kiribati was still 10-15 years away from uninhabitability).

48. In summary, Solomons, along with other States,⁹⁶ invites the Court to recognise that States owe obligations to protect persons displaced across borders under the 1951 Refugee Convention, regional instruments and complementary forms of international protection. States should proactively cooperate, in line with frameworks such as the Pacific Regional Framework on Climate Mobility,⁹⁷ to ensure persons displaced in the context of climate change at the regional and sub-regional level are afforded international protection.⁹⁸ Solomons considers that recent developments in the region, such as the *Falepili Union* between Australia and Tuvalu⁹⁹ – the first agreement of its kind – indicate a significant step towards cooperation in the context of climate relocation and migration in the region. Further cooperation should be undertaken on an equitable basis and in line with CBDR-RC.

CHAPTER V. INTERNATIONAL HUMAN RIGHTS LAW

A. Decision of the European Court of Human Rights in *KlimaSeniorinnen*

49. Solomons welcomes the decision of the European Court of Human Rights (“ECtHR”) on 9 April 2024 in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (“*KlimaSeniorinnen*”).¹⁰⁰ The decision supports Solomons written statement by establishing the following:

- 49.1 States must adopt, and apply in practice, regulations and measures capable of mitigating effects of climate change and the increase of GHG concentrations in the Earth’s atmosphere;¹⁰¹
- 49.2 States have positive obligations under international human rights law to mitigate the adverse impacts of climate change on human health, well-being and quality of life;¹⁰²

⁹⁶ El Salvador Written Statement (n 12) [48].

⁹⁷ Pacific Climate Change Migration and Human Security Programme, *Pacific Regional Framework on Climate Mobility* (Pacific Islands Forum Meeting, 6-10 November 2023).

⁹⁸ Ibid [40].

⁹⁹ *Falepili Union (Australia/Tuvalu)*, opened for signature 9 November 2023 (due to enter into force in late 2024).

¹⁰⁰ *KlimaSeniorinnen* (n 74).

¹⁰¹ Ibid [545]-[547].

¹⁰² Ibid [544].

49.3 in order to respect, protect and fulfil human rights obligations, States must fulfil their positive obligations to establish a regulatory framework to reach carbon neutrality;¹⁰³ and

49.4 States must take immediate action to safeguard human rights from climate impacts, or risk a disproportionate burden on future generations.¹⁰⁴

B. State carbon budgets must be calculated on a fair share basis

50. An important aspect of the *KlimaSeniorinnen* decision was its finding that States must identify their overall remaining carbon budget (or another equivalent method of quantifying future GHG emissions).¹⁰⁵ Switzerland was found to have failed to comply with this obligation.¹⁰⁶ Solomons welcomes this finding from the ECtHR, but would note that no methodology was explicitly established by the Court for setting carbon budgets. Recalling paragraph 98 of its written statement, Solomons considers that States are required to adopt emissions reduction targets consistent with their “fair share”, calculated in line with CBDR-RC in light of different national circumstances.¹⁰⁷ Carbon budgets should therefore be set in accordance with a States’ fair share of emissions reductions. While the ECtHR did not adopt a specific approach, it did recognise the importance of CBDR-RC in determining national carbon budgets.¹⁰⁸ Solomons considers that it would therefore be consistent with the reasoning of the ECtHR to clarify that CBDR-RC requires a fair-share approach to mitigation targets, and in turn the setting of fair-share carbon budgets.

¹⁰³ Ibid [547]-[548]

¹⁰⁴ Ibid [549].

¹⁰⁵ Ibid [550(a)].

¹⁰⁶ Ibid [570]-[572].

¹⁰⁷ Lavanya Rajamani et al., ‘National ‘fair shares’ in reducing greenhouse gas emissions within the principled framework of international environmental law’ (2021) 21(8) *Climate Policy* 983.

¹⁰⁸ *KlimaSeniorinnen* [571]: “In this regard the Court cannot but note that the IPCC has stressed the importance of carbon budgets and policies for net-zero emissions (see paragraph 116 above), which can hardly be compensated for by reliance on the State’s NDCs under the Paris Agreement, as the Government seemed to suggest. The Court also finds convincing the reasoning of the GFCC, which rejected the argument that it was impossible to determine the national carbon budget, pointing to, inter alia, the principle of common but differentiated responsibilities under the UNFCCC and the Paris Agreement (see Neubauer and Others, cited in paragraph 254 above, paragraphs 215-29). This principle requires the States to act on the basis of equity and in accordance with their own respective capabilities.”

CHAPTER VI. STATE RESPONSIBILITY

- A. State responsibility for harm to the climate system can be attributed as a matter of fact and law**
51. Over 40 States and intergovernmental organisations considered the question of whether it is legally and factually possible to establish attribution or causation regarding a State's emissions and the adverse impacts of climate change. While Solomons did not address this topic in its written statement, it presents its views here without prejudice to further expansion in its oral submissions.
52. Despite developments in attribution science in recent years, some parties challenged whether it was possible to attribute the actions of States to adverse climate impacts. It was asserted that there was no single agreed scientific methodology to attribute climate change to the GHG emissions of any individual State,¹⁰⁹ and that attribution of specific harm to a group or individual is "impossible".¹¹⁰ Similarly, doubts were raised about the feasibility of establishing a causal link between breach and the allegedly injured party.¹¹¹ This line of reasoning was contested, with it being suggested that any difficulties with attribution science do not remove state responsibility, as concurrent causes of climate change cannot preclude an award of compensation for the damage against the responsible State.¹¹² Solomons also notes the observation that source and event attribution make it possible to conclude that a particular climate event was caused by a specific anthropogenic source.¹¹³
53. On the question of attribution science, Solomons considers that a causal link exists between State conduct and alleged violations and consequent damages. For some years it has been well established that attribution science is capable of quantifying the contribution of States and other individual emitters to extreme weather events and climate-related hazards.¹¹⁴ While methodological choices can affect the calculation of

¹⁰⁹ United Kingdom, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [137.4.3].

¹¹⁰ Organisation of the Petroleum Exporting Countries, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [93].

¹¹¹ South Korea, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [46].

¹¹² Sierra Leone, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [3.145].

¹¹³ Sri Lanka, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [28].

¹¹⁴ Friederike Otto et al, 'Assigning historic responsibility for extreme weather events' (2017) 7 *Nature Climate Change* 757.

historical emissions of individual emitters, these choices do not undermine the capacity of courts to determine States' relative contribution to climate change harms as a matter of fact. The best available science should be used to determine these questions of fact. This in turn provides the basis for State responsibility for harm.

54. Turning to the basis for attributing State responsibility, a significant number of States do not see any barrier to establishing international responsibility.¹¹⁵ Article 47 of the Draft Articles on Responsibility of States for Wrongful Acts ("ARSIWA") supports the position that States do not escape individual responsibility for damage caused on the grounds that other States have also jointly contributed to the same damage.¹¹⁶ For claimant States, Article 47 holds that where several States are responsible for the same act, the responsibility of each State may be invoked in relation to that act, without prejudice to any right of recourse against the other responsible States.¹¹⁷ Additionally, Solomons agrees with other States that a claim may be brought by a non-injured State on the basis of *erga omnes* obligations,¹¹⁸ and that cumulative historical emissions should be calculated with emissions during colonial periods being attributed to colonial powers.¹¹⁹
55. Some States have asked the Court to take a "forward-looking" approach, not aimed at assessment of any historic acts or omissions.¹²⁰ However, the concept of "historical responsibility" forms the basis on which the UNFCCC, the Paris Agreement and the climate negotiations are built.¹²¹ Those forums have called "*for the acceptance of accountability for the full consequences of an industrialization that relied on fossil fuels*

¹¹⁵ See for example the written statements of the following States and international organisations in *Obligations of States in respect of Climate Change*: African Union, Antigua & Barbuda, Bangladesh, Barbados, Brazil, Burkina Faso, Costa Rica, Dominican Republic, Egypt, India, Kenya, Latvia, Madagascar, Micronesia, Namibia, Netherlands, Palau, Peru, Philippines, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sierra Leone, Sri Lanka, Vanuatu, Viet Nam, International Union for Conservation of Nature, Melanesian Spearhead Group.

¹¹⁶ Democratic Republic of the Congo, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [295].

¹¹⁷ Democratic Republic of the Congo, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [301].

¹¹⁸ Antigua and Barbuda, 'Written statement', Submission in *Obligations of States in respect of climate change*, 22 March 2024, [566]-[571].

¹¹⁹ *Ibid* [591].

¹²⁰ See for example the written statements of the following and intergovernmental organisations in *Obligations of States in respect of Climate Change*: Germany [79]-[81], Japan [27], Kuwait [122]-[123], Nordic Countries [98] and United States of America [3.26].

¹²¹ See for example, UNFCCC (n 4) preamble, arts 3(1), 4(1); *Paris Agreement* (n 4) preamble, arts 2(2), 4(3), 4(4), 4(19), 9(3); see for example the written statements of the following and intergovernmental organisations in *Obligations of States in respect of Climate Change*: Colombia [3.55], Egypt [61]-[62], Kiribati [100]-[101], Saint Lucia [65], Saudi Arabia [5.3], Singapore [3.33], and United Arab Emirates [155].

[...] and carbon energy”.¹²² These States’ industrialisation relied on fossil fuels and they benefitted greatly because they did not bear the costs of the problem thereby created, being excessive greenhouse gas emissions and climate change.

B. States are responsible for internationally wrongful acts causing climate damage

56. Solomons considers that, as set out in its Written Statement,¹²³ the relevant obligations of States derive from a number of sources of law that go beyond the UNFCCC, Kyoto Protocol and the Paris Agreement. In light of ITLOS’ rejection of the *lex specialis* argument made in its advisory proceedings,¹²⁴ and the common submission of States that *lex specialis* does not apply,¹²⁵ it is difficult to sustain the argument that no relevant legal obligations are in force beyond the UNFCCC framework in 1992.

57. It is important that this Court establishes a durable framework for settling State responsibility and calculating reparations, in particular compensation. States are responsible for breaching these obligations stemming from varied sources of law beyond the UNFCCC framework, including due diligence obligations, international environmental law, international human rights law, the law of the sea, and general and customary international law.¹²⁶ Solomons agrees with the observations of States and intergovernmental organisations that internationally wrongful acts breaching these varied state obligations were continuing in nature or a composite act, often under Articles 14(3) and 15 of the ARSIWA,¹²⁷ which draws a connection between historical conduct and current responsibility.

¹²² Henry Shue, ‘Historical Responsibility, Harm Prohibition, and Preservation Requirement: Core Practical Convergence on Climate Change’ (2015) 2(1) *Moral Philosophy and Politics* 7, 12–13.

¹²³ Solomon Islands Written Statement (n 3) [54]–[204].

¹²⁴ ITLOS Advisory Opinion on Climate Change (n 2) [222]–[224].

¹²⁵ See for example the written statements of the following States and intergovernmental organisations in *Obligations of States in respect of Climate Change*: Albania [129], Antigua and Barbuda [533], Burkina Faso [97], Colombia [3.9], Cook Islands [135], Egypt [73], El Salvador [27]–[28], Kenya [2.8], Peru [69]–[74], Samoa [85], Spain [5]–[7], Swiss Confederation [68], Uruguay [81]–[87], Vanuatu [244], African Union [45], IUCN [551], OACPS [63].

¹²⁶ Solomon Islands Written Statement (n 3) [54]–[204].

¹²⁷ See for example the written statements of the following States and intergovernmental organisations in *Obligations of States in respect of Climate Change*: Sierra Leone [3.137], Melanesian Spearhead Group [299], Egypt [323], Democratic Republic of the Congo [254], Colombia [4.2].

CHAPTER VII. CONCLUSION

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

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

- (a) exercise due diligence in meeting relevant obligations under international law;
- (b) adhere to the principle of CBDR-RC, including by providing technical assistance, finance and capacity-building to developing States;
- (c) adhere to the duty to cooperate in implementing their obligations under international environmental law and the mitigation and adaptation measures under the UNFCCC and the Paris Agreement;
- (d) protect the climate system and the environment for the benefit of present and future generations;
- (e) adhere to the precautionary principle which relevantly requires States to protect the climate system and the environment under customary international law;
- (f) prevent transboundary harm from causing significant damage to the environment of another State;
- (g) respect, protect and fulfil the internationally recognised human rights of present and future generations, including the rights to life, private and family life, the rights of children and women, the right to live with dignity in a clean, healthy and sustainably environment, and the right to self-determination and its related rights to health, water, food, housing and culture;

- (h) protect and preserve the marine environment from the adverse effects of climate change by preventing, reducing and controlling pollution from greenhouse gas emissions;
- (i) preserve States' baselines and the outer limits of their maritime zones in the event of loss of territory due to sea-level rise;
- (j) recognise the continuing statehood and sovereignty of States who experience complete loss of territory due to sea-level rise; and
- (k) recognise that people displaced by climate change are afforded protection under the 1951 Refugee Convention, amongst other instruments and complementary forms of protection.

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

- (a) provide full reparations, where a State has committed an internationally wrongful act against the climate system and other States;
- (b) provide full reparations to individuals and communities of present and future generations, where States have caused significant harm to the climate system and those parties; and
- (c) cease all internationally wrongful acts and guarantee non-repetition, where States commit internationally wrongful acts against the climate system and other States.

Honiara, Solomon Islands, 15 August 2024

Respectfully submitted



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The Government of the Solomon Islands

Mr John Muria Jnr

Attorney General



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