

INTERNATIONAL COURT OF JUSTICE

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

(REQUEST BY THE UNITED NATIONS GENERAL
ASSEMBLY FOR AN ADVISORY OPINION)

WRITTEN STATEMENT OF THE COOK ISLANDS

20 MARCH 2024

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I. INTRODUCTION

1. Pursuant to the Order of the President of the International Court of Justice (**'the Court'**) of 20 April 2023, and the Court's letter of 2 February 2024 authorizing the Cook Islands to present a written statement, the Cook Islands hereby submits its written statement (**'Statement'**) on the request for an advisory opinion contained in UN General Assembly Resolution 77/276 (**'UNGA Resolution 77/276'**) that was adopted by consensus on 29 March 2023.
2. The UNGA Resolution 77/276 requests the Court to render an advisory opinion on the following questions:

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

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

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

3. This Statement presents the views of the Cook Islands on Question (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 (**'GHG'**) for States and for present and future generations (**'Question (a)'**).

4. This Statement is organised as follows. **Chapter II** presents the Cook Islands' views regarding the jurisdiction of the Court to render the requested advisory opinion and the admissibility of the request in the formulation endorsed by consensus by all States of the UNGA. Then, to contextualise the Cook Islands' submissions on the Question (a), **Chapter III** outlines the impacts of climate change on the Cook Islands, including a country overview and brief history of the Cook Islands. **Chapter IV** outlines and explains the Cook Islands' particular approach to its submissions on Question (a). **Chapter V** then presents the Cook Islands' views on Question (a) on the obligations of States in respect of climate change. Finally, **Chapter VII** concludes.
5. Overall, the Cook Islands respectfully submits that the Court's advisory opinion on Question (a) should emphasize that:
 - A. States have an obligation to take all necessary measures to mitigate their GHG emissions to protect and preserve the marine environments of other States in accordance with their extraterritorial human rights obligations; and
 - B. States have an obligation to support, assist and finance the implementation of traditional knowledge in adaptation actions in accordance with their human rights obligations

II. JURISDICTION AND ADMISSIBILITY OF THE REQUEST

6. This chapter presents the views of the Cook Islands regarding the jurisdiction of the Court to render the requested advisory opinion and the admissibility of the request in the formulation endorsed by consensus by all States of the UNGA. It proceeds as follows. **Part A** submits the Cook Islands' view that the Court has the power to render the advisory opinion requested. **Part B** then submits the Cook Islands' view there are no compelling reasons why the Court should not render the requested advisory opinion, despite having the power to exercise its discretion to do so. **Part C** submits the Cook Islands' view that the formulation of the questions put to the court in the UNGA Resolution 77/276 is clear and endorsed by consensus by all members of the UNGA.

A. The Court has jurisdiction to render the requested advisory opinion

7. When determining whether the Court has jurisdiction to render the requested advisory opinion, the relevant law to consider includes Article 96(1) of the UN Charter and Chapter IV of the Statute of the ICJ, particularly Article 65(1). Article 96(1) of the UN Charter states that: "The General Assembly [...] may request the International Court of Justice to give an advisory opinion on any legal question." Article 65(1) of the ICJ Statute states that: "The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."
8. The Cook Islands notes that the competence of the Court over the subject matter of the questions put to it are established in the following three elements. **First**, that the UNGA is expressly empowered by Article 96(1) of the UN Charter to request an ICJ advisory opinion "on any legal question." **Second**, that the UNGA regularly addresses different matters relating to climate change, including in its annual resolution on the "Protection of the global climate for present and future generations", the latest of which is UNGA Resolution 77/165 adopted by consensus on 14 December 2022. **Third**, that the two main questions asked by the UNGA are "legal question[s]" with one focusing on the "obligations of States under international law" and the other on "the legal consequences under these obligations."
9. The Cook Islands notes that States might challenge the jurisdiction of the Court to render an advisory opinion by arguing that these three elements are not established on the grounds the questions put to the Court are not "legal question[s]" as required, but are political ones. States might also argue that the questions are "abstract" or that the questions require the Court to take a stance on historical or scientific matters that it is not equipped to settle.

10. In the case that such a challenge were to arise, the Cook Islands respectfully submits that such arguments would be largely inconsistent with the views of the majority of Member States of the UNGA who adopted the UNGA Resolution 77/276 requesting the advisory opinion by consensus and that it had been co-sponsored by 132 States.¹ This consensus clearly shows that all Member States themselves consider – or at least do not oppose – the premise that the UNGA was acting within its powers when it adopted the resolution to request an opinion on “any legal question”, and that the questions are “legal question[s]” that the Court can address under its advisory jurisdiction.

B. No compelling reasons for the Court not to render the requested advisory opinion

11. The Cook Islands notes that the Court could possibly exercise its discretion not to render the advisory opinion requested in accordance with the Court’s consistent interpretations of Article 65(1) of the ICJ Statute which states the Court “may give” an advisory opinion.² The Court has also noted that only “compelling reasons would justify refusal of such a request”³ because

¹ Co-sponsors: Algeria, Andorra, Angola, Antigua and Barbuda, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belgium, Belize, Bulgaria, Cabo Verde, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czechia, Denmark, Djibouti, Dominican Republic, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guinea-Bissau, Guyana, Hungary, Iceland, Ireland, Italy, Jamaica, Kiribati, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, North Macedonia, Norway, Palau, Panama, Papua New Guinea, Portugal, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Vanuatu, Viet Nam and State of Palestine. *Additional co-sponsors*: Afghanistan, Armenia, Bolivia (Plurinational State of), Bosnia And Herzegovina, Botswana, Burundi, Dominica, Ecuador, El Salvador, Equatorial Guinea, Haiti, Indonesia, Israel, Japan, Kyrgyzstan, Malaysia, Mali, Mongolia, Niger, Peru, Philippines, Poland, Republic Of Korea, San Marino, Tajikistan, Thailand, Uruguay.

² See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para 44 (**‘Wall Advisory Opinion’**); *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 403, para. 29; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion of 25 February 2019, General List No. 169, para. 63.*

³ See *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, para 23; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para 14; *Wall Advisory Opinion*, p. 136, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 403, para. 30; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion of 25 February 2019, General List No. 169, para. 65.*

acceptance of a request for an opinion “represents its participation in the activities of the UN and, in principle, should not be refused”.⁴

12. The Cook Islands respectfully submits that there are no compelling reasons for the Court to exercise its discretion not to render the advisory opinion requested in the UNGA Resolution 77/276.
13. In previous cases, some of the reasons the Court has noted are insufficient to justify refusing a request for an opinion include the motives of the States sponsoring or supporting the request for an advisory opinion;⁵ the origins, political history or distribution of votes underlying a request;⁶ the lack of ‘clean hands’ of the sponsoring State;⁷ the lack of any indication by the requesting organ of the purpose for which the opinion is sought or its usefulness;⁸ the fact that a question is abstract or does not relate to a concrete dispute;⁹ the fact that the opinion may possibly have adverse effects on a political process;¹⁰ e.g. in a peace negotiation;¹¹ the fact that the UN Security Council has already taken action on the issue or that answering the question requires interpreting acts of the UN Security Council.¹²
14. One potentially compelling reason that is relevant for the Court to consider “for the appreciation of the propriety of giving an opinion”, but is not a formal impediment in itself, is the lack of consent by a State to the judicial resolution of an international dispute which is directly concerned by the question.¹³ If the request is an attempt to circumvent the principle of consent, the Court has stated that it should not render an advisory opinion.¹⁴ Another potentially compelling reason that is also relevant to the Court’s consideration, but not a formal impediment in itself, is the lack of sufficient information and evidence

⁴ See *Wall Advisory Opinion*, p. 136, para. 44; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, General List No. 169, para. 65.

⁵ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, para. 33.

⁶ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 16.

⁷ *Wall Advisory Opinion*, p. 136, paras. 63–64.

⁸ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, para. 34; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 16.

⁹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 15.

¹⁰ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 17.

¹¹ *Wall Advisory Opinion*, p. 136, paras. 51–54.

¹² *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403, paras. 36–47.

¹³ *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, para. 32.

¹⁴ *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, para. 33; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, General List No. 169, para. 85.

available to the Court to form an opinion, as provided in the *Eastern Carelia* case and as noted by the Court in the *Western Sahara* Advisory Opinion.¹⁵ Furthermore, the Court could decline to render an advisory opinion on a question on which it has already rendered one or has previously decided.¹⁶ Similarly, the Court may decline to render an opinion on pending questions before other international courts or tribunals and concerning the constitutive treaty of the latter.

15. In regards to the questions put to the Court in the UNGA Resolution 77/276, the Cook Islands notes it is possible that States could argue that the Court should exercise its discretion to not render the advisory opinion requested on two grounds. The **first ground** is that the factual complexity of climate change follows that there is a lack of sufficient information and evidence available to the Court to form an opinion. The **second ground** is that the Court should decline the request as there are pending requests for advisory opinions on questions related to State's obligations in respect of climate change before the International Tribunal for the Law of the Sea ('ITLOS')¹⁷ and the Inter-American Court of Human Rights ('ICtHR').¹⁸
16. On the **first ground**, the Cook Islands respectfully submits there is sufficient information and evidence available to the Court to form an opinion. Fundamentally, there is a clear scientific consensus on climate change reflected in the reports of the Intergovernmental Panel on Climate Change ('IPCC'), particularly in the Summaries for Policymakers, which are approved by consensus, line-by-line, by all 195 member States of the IPCC.¹⁹ Furthermore, the question put to the Court concerns matters for which there is

¹⁵ *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, para. 46, citing *Status of Eastern Carelia, Advisory Opinion* (1923) PCIJ Series B no 5, p. 29; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, General List No. 169, para. 71.

¹⁶ See, however, the observation of the Court in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, General List No. 169, para. 81 ('The Court observes that the principle of *res judicata* does not preclude it from rendering an advisory opinion. When answering a question submitted for an opinion, the Court will consider any relevant judicial or arbitral decision. In any event, the Court further notes that the issues that were determined by the Arbitral Tribunal in the *Arbitration regarding the Chagos Marine Protected Area* [...] are not the same as those that are before the Court in these proceedings').

¹⁷ *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)*, pending, available at: <https://www.itlos.org/en/main/cases/list-of-cases/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/>

¹⁸ *Solicitud de Opinión Consultiva presentada por Colombia y Chile ante la Corte Interamericana de Derechos Humanos*, 9 de enero de 2023, pending, available at: https://www.corteidh.or.cr/observaciones_oc_new.cfm?nld_oc=2634

¹⁹ Principles Governing IPCC Work, Appendix A: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports, section 4.4, available at: <https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles-appendix-a-final.pdf>

an abundance of reliable evidence and expert views for the Court to render its opinion, namely the identification of the most relevant obligations and the assessment of the consequences of a certain conduct (cumulative emissions of greenhouse gases over time which have caused climate change and its adverse effects), which is empirically well established since at least 1850.

17. On the **second ground**, the Cook Islands respectfully submits there are four reasons why the pending requests for advisory opinions on questions related to State's obligations in respect of climate change before the ITLOS and the ICtHR should not be relied upon by the Court to exercise its discretion not to render the advisory opinion requested in the UNGA Resolution 77/276. This does not mean, however, that the advisory opinions issued by these other international courts might not be persuasive as the Court prepares its advisory opinion on the basis of the particular questions put to it in the UNGA Resolution 77/276. **Firstly**, the UN General Assembly is a distinct body from the entities seeking the other advisory opinions, namely the Commission of Small Island States on Climate Change and International Law ('**COSIS**') for the ITLOS request and Chile and Colombia for the ICtHR request. **Secondly**, the subject-matter and questions asked in these two initiatives are much narrower and more specific than the one put to the Court. **Thirdly**, the entities seeking these advisory opinions consider that these processes are clearly distinct, as made clear by the fact that COSIS has requested and been authorised by the Court to take part in the Court's proceedings, and that both Chile and Colombia co-sponsored the UNGA Resolution 77/276 requesting the advisory opinion of the Court. **Fourthly**, only the Court has the general competence to provide the type of advice requested by the UNGA in the UNGA Resolution 77/276, as made clear by the scope of the questions, which go far beyond the interpretation of any single treaty (or constitutive instrument), and the adoption of the resolution by consensus.

C. The questions put to the Court are clear and endorsed by consensus

18. The Cook Islands notes that the Court also has the discretion to reformulate the questions put to it in the UNGA Resolution 77/276 or to interpret them restrictively according to its view in the *Chagos* Advisory Opinion which stated that:

[The Court] may depart from the language of the question put to it where the question is not adequately formulated (*Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV)*, Advisory Opinion, 1928, P.C.I.J., Series B, No. 16) or does not reflect the "legal questions really in issue" (*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 89, para. 35). Similarly, where the question asked is ambiguous or vague, the Court may clarify it before giving its opinion (*Application for Review of Judgement No. 273 of the United*

Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982, p. 348, para. 46). Although, in exceptional circumstances, the Court may reformulate the questions referred to it for an advisory opinion, it only does so to ensure that it gives a reply “based on law” (*Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 18, para. 15).²⁰

19. In light of this discretion, the Cook Islands notes the possibility that States could argue that the Court should reformulate the questions put to it on three grounds. **First**, that the questions put to the Court are not “legal questions” based in law. **Second**, that the questions prejudice the legal issues the Court would likely address. **Third**, that the questions fail to clearly represent the views of all States.
20. In response to the **first** possible ground, the Cook Islands respectfully submits that the questions clearly ask the Court to answer “legal questions,” by “having particular regard to” certain treaties and rules of international law which are recalled in the chapeau of the questions. Question (a) in the UNGA Resolution 77/276 is about clarifying the relevant legal obligations, whereas Question (b) is about clarifying the legal consequences of a certain conduct under such obligations. Therefore, there are no “exceptional circumstances” on the basis of which the Court would need to reformulate the questions put to it. In any event, questions formulated in general terms would in no way provide the grounds for reformulation. In its Advisory Opinion on the *Wall in Occupied Palestinian Territory* (**‘Wall Advisory Opinion’**), the Court expressly noted that “lack of clarity in the drafting of a question does not deprive the Court of jurisdiction. Rather, such uncertainty will require clarification in interpretation, and such necessary clarifications of interpretation have frequently been given by the Court.”²¹ Furthermore, in the following excerpt from the Court’s Advisory Opinion on the *Legality of Nuclear Weapons*, it made clear that it can answer abstract legal questions:

[I]t is the clear position of the Court that to contend that it should not deal with a question couched in abstract terms is ‘a mere affirmation devoid of any justification’, and that ‘the Court may give an advisory opinion on any legal question, abstract or otherwise’ (Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948, p. 61; see also Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, I. C.J. Reports 1954, p. 51 ; and *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*

²⁰ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95, para. 135.

²¹ *Wall Advisory Opinion*, p. 136, para 38. The Court cited this specific paragraph with approval in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95, paragraph 61.

notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I. C.J. Reports 1971, p. 27, para. 40).²²

21. In response to the **second** ground that States might argue in favour of reformulating the questions in the UNGA Resolution 77/276, the Cook Islands respectfully submits that the questions put to the Court are not formulated in a way that prejudices any disputes between States. Like Question (a), Question (b)(i)-(ii) asks the Court to clarify this time the “legal consequences” of a certain conduct under the obligations identified in response to Question (a). No specific dispute is referred to in the formulation of the questions. Moreover, at the time of its adoption by consensus, several States and groups thereof, including Norway,²³ the European Union,²⁴ the United Kingdom,²⁵ Iceland,²⁶ and the United States of America (**‘US’**),²⁷ confirmed the general understanding that the questions do not prejudice any dispute.

22. Finally, in response to the **third** ground that States may argue, the Cook Islands respectfully submits that it cannot be argued in good faith that the specific formulation of a resolution which was co-sponsored by no less than 132 States when tabled, and which was then adopted by consensus by the States of the UNGA does not reflect exactly what the UNGA needs the Court to clarify. Therefore, all States, through their consensus, considered that the questions were clear enough and could be answered in the context of an advisory opinion.

²² *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 15.

²³ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 26.

²⁴ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 8.

²⁵ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 20.

²⁶ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 24.

²⁷ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 28.

III. THE IMPACTS OF CLIMATE CHANGE ON THE COOK ISLANDS

23. This chapter provides an overview of the impacts of climate change on the Cook Islands. To contextualise these impacts, **Part A** provides a brief introduction to the Cook Islands, including a country overview and a brief history of the Cook Islands. **Part B** then outlines the scientific consensus on the causes and impacts of climate change, followed by 13 broad categories of impacts of climate change on the Cook Islands by weaving together various relevant sources, including expert reports, reports from the Government of the Cook Islands, reports from organisations, scholarly literature and written testimonials from people of the Cook Islands (**'Cook Islanders'**) for the Court that capture how climate change has impacted and continues to impact their lives in their own words.

A. An introduction to the Cook Islands

1. Country overview

24. The Cook Islands is an ocean state in the Polynesian region of the Pacific Ocean and comprises of 15 main islands that are divided into two groups: the Northern Group with 6 islands of coral atolls and the Southern Group with 9 islands of volcanic origin.²⁸

25. These 15 islands are scattered over approximately 2,000,000 square kilometres of the Pacific Ocean²⁹ with a combined land mass of 236.7 square kilometres and an Exclusive Economic Zone (**'EEZ'**) of 1.97 million square kilometres.³⁰

26. According to the 2021 census, the Cook Islands has a population of 15,040 people. Over 70% of the total population live on the Southern Group Island of Rarotonga, which is the main island and is where the capital town and district of Avarua is located. A further 20.2% of the population lives in the other

²⁸ Government of the Cook Islands, *Cook Islands Climate Change Policy 2018-2028*, 2019, p. 9, available at: <https://climatechange.gov.ck/wp-content/uploads/2019/10/Cook-Islands-Climate-Change-Policy-2018-2028.pdf>; Government of the Cook Islands, *JNAP II – Are we resilient? The Cook Islands 2nd Joint National Adaptation Plan 2016-2020*, 2016, p. 17, available at: <https://climatechange.gov.ck/wp-content/uploads/2019/10/JNAP-II-The-Second-Joint-National-Action-Plan-for-the-Cook-Islands.pdf>; Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 23-24, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

²⁹ Government of the Cook Islands, *Cook Islands Climate Change Policy 2018-2028*, 2019, p. 9, available at: <https://climatechange.gov.ck/wp-content/uploads/2019/10/Cook-Islands-Climate-Change-Policy-2018-2028.pdf>.

³⁰ Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 23, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

Southern Group islands and 7.3% in the Northern Group atolls.³¹ In terms of ethnicity, 77% of the population identify as Cook Islands Māori, 9% as being of part Cook Islands Māori descent, and 14% as non-Cook Islands Māori.³²

27. The Cook Islands is a self-governing State in free association with New Zealand, being constituent parts of the Realm of New Zealand, along with the self-governing States of Niue, Tokelau and the Ross Dependency.³³ The Cook Islands' free association relationship with New Zealand operates according to the *Joint Centenary Declaration of the Principles of the Relationship between the Cook Islands and New Zealand* ('JCD') that was signed by the Prime Ministers of the Cook Islands and New Zealand in 2001.³⁴ The JCD states that "all issues affecting the two countries should be resolved on a cooperative and consultative basis"³⁵ and that New Zealand has a responsibility to assist the Government of the Cook Islands with the defence of the Cook Islands as may be requested from time to time by the Government of the Cook Islands."³⁶ As a self-governing State, the Cook Islands has "the full and exclusive power to make its own laws and adopt its policies"³⁷ and interacts with the international community as a "sovereign and independent state."³⁸ The JCD also states that Cook Islanders are entitled to New Zealand citizenship.³⁹
28. Economically, the Cook Islands has a "small, open economy" and its economic growth is "heavily reliant" on the export of services to states like New Zealand, Australia and the US.⁴⁰ Tourism is the major economic driver accounting for approximately two-thirds of economic activity in the Cook Islands.⁴¹ Before the COVID-19 pandemic, the Cook Islands' Gross Domestic Product ('GDP') grew in real terms by 5.3 per cent in 2018/19, increasing from \$505 million in 2017/18 to \$531 million (2016 prices) and continuing a strong run of annual

³¹ Government of the Cook Islands, *Census of Population and Dwellings 2021*, 2021, p.17, available at: <https://stats.gov.ck/2021-census-of-population-and-dwellings/>

³² Government of the Cook Islands, *Census of Population and Dwellings 2021*, 2021, available at: <https://stats.gov.ck/2021-census-of-population-and-dwellings/>

³³ The Governor-General of New Zealand, *New Zealand's Constitution*, available at: <https://gg.govt.nz/office-governor-general/roles-and-functions-governor-general/constitutional-role/constitution/constitution>

³⁴ *Joint Centenary Declaration of the Principles of the Relationship between the Cook Islands and New Zealand*, signed 11 June 2001, available at: <https://www.mfat.govt.nz/assets/Countries-and-Regions/Pacific/Cook-Islands/Cook-Islands-2001-Joint-Centenary-Declaration-signed.pdf>

³⁵ *Joint Declaration*, cl. 1.

³⁶ *Joint Declaration*, cl. 7(2)

³⁷ *Joint Declaration*, preamble.

³⁸ *Joint Declaration*, cl. 4(1).

³⁹ *Joint Declaration*, cl. 2(1)

⁴⁰ Government of the Cook Islands, *Cook Islands Economic Development Strategy 2030*, 2021, p. 8, available at: https://www.mfem.gov.ck/files/ugd/dbdf40_b12184621f3049a18e9a522e36e60b86.pdf

⁴¹ Government of the Cook Islands, *Cook Islands Economic Development Strategy 2030*, 2021, p. 8-9, available at: https://www.mfem.gov.ck/files/ugd/dbdf40_b12184621f3049a18e9a522e36e60b86.pdf

economic growth since 2013/14.⁴² This strong economic growth helped contribute to the Cook Islands graduation from the OECD Development Assistance Committee List of Official Development Assistance ('ODA') recipients on 1 January 2020 making the Cook Islands ineligible to receive ODA as a high-income and developed status country.⁴³ However, the COVID-19 pandemic caused a significant contraction in Cook Islands' tourism-based economy, with growth halting in 2019/20 as a direct result of border closures, resulting in real output falling by 5.9% in 2020/2021.⁴⁴

29. Since 1992, the United Nations Secretariat has recognized the "full treaty-making capacity" of the Cook Islands and its eligibility to become a party to treaties open to all states. Indeed, over the years the Cook Islands has become a party to many multilateral treaties of diverse types including the UN Framework Convention on Climate Change ('UNFCCC') and related agreements.⁴⁵ The Cook Islands is a full member of the World Health Organization ('WHO'), United Nations Educational, Scientific and Cultural Organization ('UNESCO'), the International Civil Aviation Organization ('ICAO'), the International Maritime Organization ('IMO') and the UN Food and Agriculture Organization ('FAO') and among other UN specialized agencies.⁴⁶ As of 8 March 2024, the Cook Islands has established diplomatic relations with 63 sovereign States and the European Union ('EU').⁴⁷

2. *A brief history of the Cook Islands*

30. The Cook Islands respectfully submits that in order to understand the Cook Islands and its particular vulnerabilities to the impacts of climate change, it is important to understand a brief history of the Cook Islands. While it is not possible to capture the vast and rich history of the Cook Islands here,⁴⁸ a summary is provided below to help contextualise the impacts of climate change outlined in **Chapter III, Part B** below.

⁴² Government of the Cook Islands, *Cook Islands Economic Development Strategy 2030*, 2021, p. 9, available at: https://www.mfem.gov.ck/files/ugd/dbdf40_b12184621f3049a18e9a522e36e60b86.pdf

⁴³ Australian Government Department of Foreign Affairs and Trade, Cook Islands country brief, available at: <https://www.dfat.gov.au/geo/cook-islands/cook-islands-country-brief>

⁴⁴ Government of the Cook Islands, *Cook Islands Economic Development Strategy 2030*, 2021, p. 9, available at: https://www.mfem.gov.ck/files/ugd/dbdf40_b12184621f3049a18e9a522e36e60b86.pdf

⁴⁵ United Nations, *Art. 102, Repertory, Suppl. 8, Vol. VI (1989-1994)*, para. 10, available here: http://legal.un.org/repertory/art102/english/rep_supp8_vol6-art102_e_advance.pdf

⁴⁶ United Nations, *Art. 102, Repertory, Suppl. 8, Vol. VI (1989-1994)*, para. 10, available here: http://legal.un.org/repertory/art102/english/rep_supp8_vol6-art102_e_advance.pdf

⁴⁷ Ministry of Foreign Affairs and Immigration – Government of the Cook Islands, *The Cook Islands Formalise Diplomatic Relations With Panama*, 8 March 2024, available here: <https://mfai.gov.ck/news-updates/cook-islands-formalise-diplomatic-relations-panama>

⁴⁸ For a rich and comprehensive history of the Cook Islands from 400 CE to 2022, see Tangata Vainerere, *A Treasury of Momentous Events in Cook Islands History 400 CE – 2023*, 2022, available here: https://parliamentci.wpenGINEpowered.com/wp-content/uploads/2024/02/1.-IPUKAREA-TIMELINE_updated_Feb2024_compressed.pdf

31. According to native history, the Cook Islands are first thought to have become inhabited sometime between 400 and 800 CE, by people who set off from the island of Tubuai in what is now known as French Polynesia. It is believed that these voyagers came in great double-hulled ocean voyaging canoes capable of carrying up to 200 people, navigating by using the sun, the moon, familiar stars, wave movements, wind directions and temperature differences.⁴⁹ Also, from around 725 to 825 CE, other Polynesian peoples thought to come from Samoa and Tonga then voyaged to and settled in the Northern Group, with voyagers from the Society Islands and the Marquesas Islands settling in the Southern Group of Islands.⁵⁰
32. From the late 16th century, the arrival of European explorers saw European names being given to specific islands in the modern Cook Islands.⁵¹ In 1595, the Cook Islands first made contact with European explorers when Spanish navigator Álvaro de Mendaña de Neira traversed the Northern Group atoll of Pukapuka, which he named Hermosa (Beautiful People).⁵² The Cook Islands had no further European contact until 1773, when British captain James Cook arrived at the Southern Group island of Manuae that he named Hervey island after a Lord of the British Admiralty.⁵³ It was not until 1835 that the name, the Cook Islands, appeared, when Baltic German cartographer Johann van Krusenstern gave the name to the Southern Group islands of the Cook Islands to honour Cook more than 50 years after his death, which is now used to refer to the whole country.⁵⁴
33. Throughout the 19th century, other parties from Europe began taking an interest in the Cook Islands peoples and their natural resources. In 1821, the flux of Christian missionaries from England led to the conversion of most of the population to Christianity and the banning of Cook Islanders' traditional singing and dancing.⁵⁵ Also, from at least 1826, foreign ships routinely visited the Cook

⁴⁹ Tangata Vainerere, *A Treasury of Momentous Events in Cook Islands History 400 CE – 2023, 2022*, p. 116. available at: https://parliamentci.wpenginepowered.com/wp-content/uploads/2024/02/1.-IPUKAREA-TIMELINE_updated_Feb2024_compressed.pdf

⁵⁰ Tangata Vainerere, *A Treasury of Momentous Events in Cook Islands History 400 CE – 2023, 2022*, p. 116. available at: https://parliamentci.wpenginepowered.com/wp-content/uploads/2024/02/1.-IPUKAREA-TIMELINE_updated_Feb2024_compressed.pdf

⁵¹ Emma Powell, *Akapapa'Anga Ara Tangata: Genealogising the (Cook Islands) Māori imaginary*, 2021, p. 96.

⁵² Brian Hooker, *The European Discovery of the Cook Islands*, 1998, *Terrae Incognitae*, 30:1, p. 56, available at: DOI: 10.1179/tin.1998.30.1.54

⁵³ Brian Hooker, *The European Discovery of the Cook Islands*, 1998, *Terrae Incognitae*, 30:1, p. 57, available at: DOI: 10.1179/tin.1998.30.1.54

⁵⁴ Brian Hooker, *The European Discovery of the Cook Islands*, 1998, *Terrae Incognitae*, 30:1, p. 57, available at: DOI: 10.1179/tin.1998.30.1.54

⁵⁵ Tangata Vainerere, *A Treasury of Momentous Events in Cook Islands History 400 CE – 2023, 2022*, p. 45-51, 53, 62, 74, available at: https://parliamentci.wpenginepowered.com/wp-content/uploads/2024/02/1.-IPUKAREA-TIMELINE_updated_Feb2024_compressed.pdf

Islands for whaling, food and natural resources, including water and firewood.⁵⁶ In 1862 and 1863, Peruvian slave traders, known as blackbirders, came to the Northern Group and enslaved Cook Islander labourers through subterfuge and outright kidnapping, with the Rakahanga and Penrhyn atolls suffering particularly significant losses.⁵⁷

34. In 1865, there were growing concerns among the Cook Islanders of Rarotonga about the presence of France in Tahiti, resulting in the Ariki (the Queen Sovereign of the Cook Islands) Makea Takau petitioning New Zealand's Governor, George Grey, for British protection in case of French attack. The Foreign Office dismissed the petition on the grounds that the commercial benefits to the British Empire fared poorly against the expenses of installing a protectorate.⁵⁸ In 1888, Makea Takau Ariki formally petitioned again for protectorate status, which the United Kingdom reluctantly agreed to grant in 1890 due to growing fears from British settlers that France was going to annex the Cook Islands.⁵⁹ Then in September 1900, Cook Islands' leaders presented a petition to the United Kingdom requesting for the Cook Islands, including the Northern Group, to be formally annexed as a British territory, along with the country of Niue "if possible".⁶⁰ In 1901, the islands were included within the boundaries of the Colony of New Zealand by Order in Council⁶¹ under the Colonial Boundaries Act, 1895 of the United Kingdom.⁶² The boundary change became effective on 11 June 1901, and the Cook Islands have had a formal relationship with New Zealand since that time.⁶³
35. During the First World War, approximately 500 men from across the islands of the Cook Islands were sent to assist the Māori Contingents for New Zealand and the Australian and New Zealand Mounted Rifles.⁶⁴ Following the war, the surviving men returned to the outbreak of the influenza epidemic in New

⁵⁶ Robert Langdon, *Where the whalers went: an index to the Pacific ports and islands visited by American whalers (and some other ships) in the 19th century*, 1984, p. 16, 24.

⁵⁷ Errol Hunt and Nancy J. Keller, *Lonely Planet Guidebook : Rarotonga & the Cook Islands*, 2003, pp. 11–12; Tangata Vainerere, *A Treasury of Momentous Events in Cook Islands History 400 CE – 2023*, 2022, p. 77, available at: https://parliamentci.wpenginepowered.com/wp-content/uploads/2024/02/1.-IPUKAREA-TIMELINE_updated_Feb2024_compressed.pdf

⁵⁸ Tangata Vainerere, *A Treasury of Momentous Events in Cook Islands History 400 CE – 2023*, p. 79, 2022, available at: https://parliamentci.wpenginepowered.com/wp-content/uploads/2024/02/1.-IPUKAREA-TIMELINE_updated_Feb2024_compressed.pdf

⁵⁹ Charles James Ward, *How Cook Islands Became British*, Pacific Islands Monthly, 1993, IV(3).

⁶⁰ Kenneth Roberts-Wray, *Commonwealth and Colonial Law*, 1996, Stevens, p. 891.

⁶¹ S.R.O. & S.I. Rev. XVI, 862–863; Tangata Vainerere, *A Treasury of Momentous Events in Cook Islands History 400 CE – 2023*, p. 102, 2022, available at: https://parliamentci.wpenginepowered.com/wp-content/uploads/2024/02/1.-IPUKAREA-TIMELINE_updated_Feb2024_compressed.pdf

⁶² Kenneth Roberts-Wray, *Commonwealth and Colonial Law*, 1996, Stevens, p. 891.

⁶³ Kenneth Roberts-Wray, *Commonwealth and Colonial Law*, 1996, Stevens, p. 891.

⁶⁴ Auckland Museum, Manava Toa: the Cook Islands in WWI, available at: <http://www.aucklandmuseum.com/discover/stories/blog/2019/manava-toa-the-cook-islands-in-wwi>

Zealand along with European diseases, which meant that a significant number died in New Zealand or on their return home to the Cook Islands.⁶⁵

36. In 1949, the British Nationality and New Zealand Citizenship Act 1948 came into effect which formally granted Cook Islanders New Zealand citizenship.⁶⁶
37. Another significant moment for the Cook Islands came in 1963, when France announced its plans to carry out nuclear testing in the Gambier group in the south-east of French Polynesia, given that the tests were to be conducted in latitudes similar to the Cook Islands.⁶⁷ The Cook Islands' parliament formally protested France's announcement with a resolution on 6 September 1963, which was renewed again in 1965.⁶⁸ Later in 1995, when the French government resumed its programme of nuclear-weapons testing at Mururoa, the Cook Islands protested again with the Cook Islands' Prime Minister Geoffrey Henry dispatching the vaka (traditional voyaging canoe) Te Au o Tonga with a crew of Cook Islander traditional warriors to protest near the test site alongside the Greenpeace Rainbow Warrior II.⁶⁹ The nuclear tests later concluded in January 1996 and a moratorium was placed on future testing by the French government.
38. The Cook Islands remained a dependent territory of New Zealand until 4 August 1965 when, following an act of self-determination observed by the United Nations, the Cook Islands was granted self-governing status by New Zealand within the Realm of New Zealand with its own unique Constitution.⁷⁰ As noted above, the JCD signed by the Cook Islands and New Zealand Prime Ministers in 2001 sets out the fundamental principles governing the relationship of free association between the two States today.

B. The impacts of climate change on the Cook Islands

1. The scientific consensus on climate change

⁶⁵ Auckland Museum, Manava Toa: the Cook Islands in WWI, available at: <http://www.aucklandmuseum.com/discover/stories/blog/2019/manava-toa-the-cook-islands-in-wwi>

⁶⁶ British Nationality and New Zealand Citizenship Act 1948, available at: http://www.nzlii.org/nz/legis/hist_act/bnanzca19481948n15493/

⁶⁷ David Stone, *The Awesome Glow in the Sky the Cook Islands and the French Nuclear Tests*, The Journal of Pacific History, 1967, p. 154.

⁶⁸ David Stone, *The Awesome Glow in the Sky the Cook Islands and the French Nuclear Tests*, The Journal of Pacific History, 1967, p. 154.

⁶⁹ Tangata Vainerere, *A Treasury of Momentous Events in Cook Islands History 400 CE – 2023, 2022*, p. 238, available at: https://parliamentci.wpenginepowered.com/wp-content/uploads/2024/02/1.-IPUKAREA-TIMELINE_updated_Feb2024_compressed.pdf

⁷⁰ Constitution of the Cook Islands 1965, available at: <https://parliament.gov.ck/wp-content/uploads/2022/07/CONSTITUTION-OF-THE-COOK-ISLANDS-JUNE-2022.pdf>

39. Before noting the impacts of climate change on the Cook Islands specifically, the Cook Islands submits that it is important to first note that the scientific consensus on the causes and impacts of climate change is irrefutable.
40. This consensus is highlighted in the text UNGA Resolution 77/276 that was passed by consensus which relies on the statements in the Summaries for Policymakers of IPCC reports that have been approved by consensus, line-by-line, by all 195 member States of the IPCC.⁷¹ Therefore, the UNGA Resolution 77/276 and Summaries for Policymakers of IPCC reports together evidence both the scientific consensus on climate change and the global consensus of States on the science of climate change.
41. In terms of the causes of climate change, preambular paragraph 9 of the UNGA Resolution 77/276 notes that the scientific consensus is that the dominant cause of climate change is anthropogenic GHG emissions, stating:

Noting with utmost concern the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouse gases are unequivocally the dominant cause of the global warming observed since the mid-20th century

The Summary for Policymakers of the IPCC's 2023 Synthesis Report (6th Assessment Report) further states:

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. Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals.⁷²

42. In terms of the impacts of climate change, preambular paragraph 9 of the UNGA Resolution 77/276 also summarises the scientific consensus on the fact that the conduct causing climate change has had impacts as follows:

Noting with utmost concern the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that human-induced climate change, including more frequent and intense extreme

⁷¹ IPCC, *Principles Governing IPCC Work*, Appendix A: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports, section 4.4, available at: <https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles-appendix-a-final.pdf>

⁷² IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, Summary for Policymakers, statement, A.1, available at: <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>

events, has caused widespread adverse impacts and related losses and damages to nature and people,

The Summary for Policymakers of the IPCC's 2023 Synthesis Report (6th Assessment Report) further states:

Widespread 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). Vulnerable communities who have historically contributed the least to current climate change are disproportionately affected (high confidence)⁷³

43. It is also critical to note that there are other components to the scientific consensus on climate change that are not expressly included in the text of the UNGA Resolution 77/276, but that the UNGA nonetheless “not[es] with utmost concern”. This is indicated by the use of the term “including”, thus opening the reference to other components of the scientific consensus on climate change that are important for the Court to note. The Cook Islands submits that these components include the following points:

The risks associated with such sea level rise are exacerbated for small islands, low-lying coastal areas and deltas,⁷⁴ with resulting damage and adaptation costs of several percentage points of gross domestic product.⁷⁵

Without urgent and significant increase in mitigation efforts beyond those in place today, warming by the end of the 21st century will lead to severe, widespread and irreversible impacts globally,⁷⁶ and it will slow down economic growth, make poverty reduction more difficult, further erode food security, and prolong existing and create new poverty traps.⁷⁷

⁷³ IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, Summary for Policymakers, statement, A.2, available at: <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>

⁷⁴ IPCC, 2018: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, Summary for Policymakers, statement, B.2.3, available at: https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf

⁷⁵ IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, p. 17, available at: https://www.ipcc.ch/site/assets/uploads/2018/02/ar5_wgii_spm_en.pdf

⁷⁶ IPCC: *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, statement, 3.2, available at: https://www.ipcc.ch/site/assets/uploads/2018/02/AR5_SYR_FINAL_SPM.pdf

⁷⁷ IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental*

Countries must urgently increase the level of ambition and action in relation to climate change mitigation, adaptation and finance in this critical decade to address the gaps in the implementation of the goals of the Paris Agreement.⁷⁸

2. *Sea level rise*

44. Sea level rise due to climate change is a significant and growing threat to the Cook Islands, where 7 of the 15 islands have a highest point of less than 15 metres⁷⁹ with only the main island of Rarotonga having peaks over 200 metres above sea level.⁸⁰
45. As noted in the Expert Report for the Cook Islands from the Pacific Community ('**SPC**'), since 1993, the sea level in the Cook Islands has risen 2.5–5.5 mm per year across most of the EEZ.⁸¹
46. In the Cook Islands, maximum tides tend to occur between March-April in the main Southern Group Island of Rarotonga and between February-March in the Northern Group atoll of Tongareva.⁸² Together, these higher tides and short-term raised water levels result in the highest likelihood of extreme water levels being between January and April, peaking in March, at both locations. Notably, 7 of the 10 highest water levels recorded in these two locations occurred during an El Niño. These events were between the months of November to March, especially in Rarotonga. Furthermore, the 5 highest sea-level events at Rarotonga and 4 highest events at Tongareva were associated with tropical cyclones. These results strongly suggest that extreme sea-level events in the

Panel on Climate Change, Summary for Policymakers, p. 20, available at: https://www.ipcc.ch/site/assets/uploads/2018/02/ar5_wgII_spm_en.pdf

⁷⁸ *Glasgow Climate Pact*, Decision 1/CMA.3, FCCC/ PA/CMA/2021/10/Add.1, paragraph 5, available at: https://unfccc.int/sites/default/files/resource/cma2021_10a01E.pdf?download; United Nations Environment Programme (2021), *Emissions Gap Report 2021: The Heat Is On – A World of Climate Promises Not Yet Delivered*, Executive Summary, Conclusions 6 and 7, available at: <https://wedocs.unep.org/handle/20.500.11822/36990;jsessionid=2EE25CE2E8AF3B2BD73700D7A61DDBF5>

⁷⁹ Government of the Cook Islands, *Cook Islands Climate Change Policy 2018-2028*, 2019, p. 9, available at: <https://climatechange.gov.ck/wp-content/uploads/2019/10/Cook-Islands-Climate-Change-Policy-2018-2028.pdf>;

⁸⁰ Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 23, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

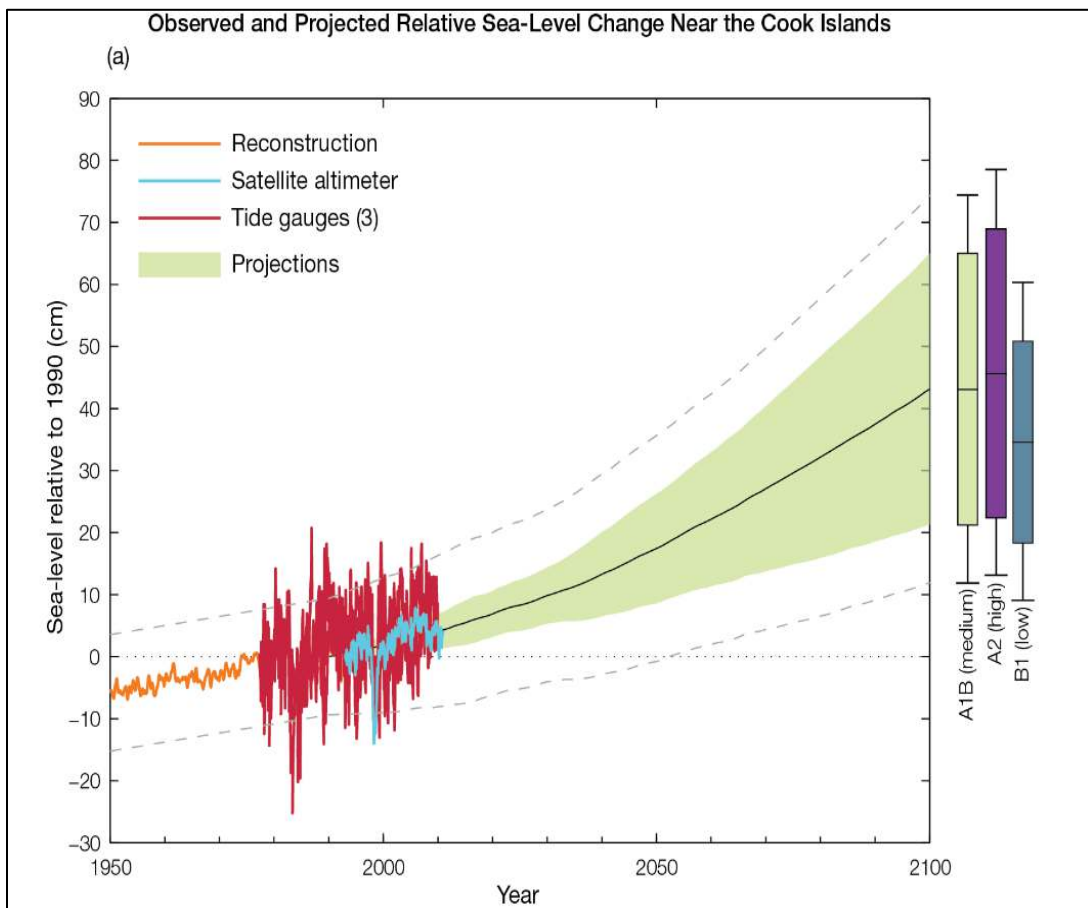
⁸¹ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 11 (**Annex No. 1**).

⁸² Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 40, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

Cook Islands are more often associated with tropical cyclones or high wave events, compared to tides or interannual sea level variability.⁸³

47. It is projected that sea level rise will increase exponentially until 2100, as illustrated in the graph in Figure 1 below which shows the observed and projected relative sea level change for the Cook Islands from 1950-2000.

Figure 1. Sea-level rise observed and projected near the Cook Islands⁸⁴



48. As further detailed in the paragraphs below, sea-level rise is leading to a range of environmental, social and cultural harms. The key environmental harms include groundwater contamination resulting in limited water resources⁸⁵ and coral bleaching.⁸⁶

⁸³ Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 40, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

⁸⁴ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 11.

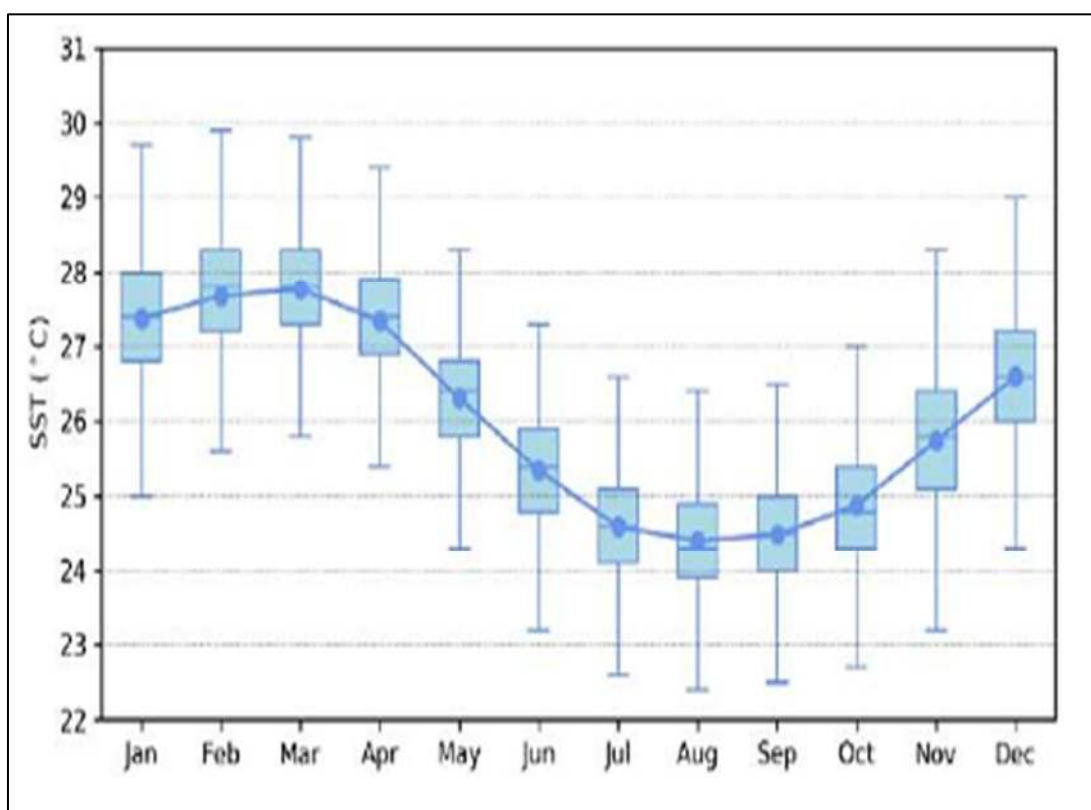
⁸⁵ Cook Islands National Environment Service, *National Environment Policy 2022-32*, 2023, p. 19., available at: <https://environment.gov.ck/tag/nep-2022-2032/>

⁸⁶ Secretariat of the Pacific Regional Environment Programme and the Cook Islands National Environment Service *Cook Islands State of the Environment Report*, p. viii, available at: <https://cookislands-data.sprep.org/dataset/cook-islands-state-environment-report-2018>

3. Ocean warming, acidification, and deoxygenation

49. Climate change has led to significant ocean warming over the past three decades. As noted in the SPC's Expert Report for the Cook Islands, ocean temperature reaches an average of nearly 28°C in February/March but can get as high as 30°C as measured by the Rarotonga tide-gauge from 1993 to 2021 as can be seen in Figure 2 below.⁸⁷

Figure 2. Annual temperatures measured at the Rarotonga tide-gauge⁸⁸



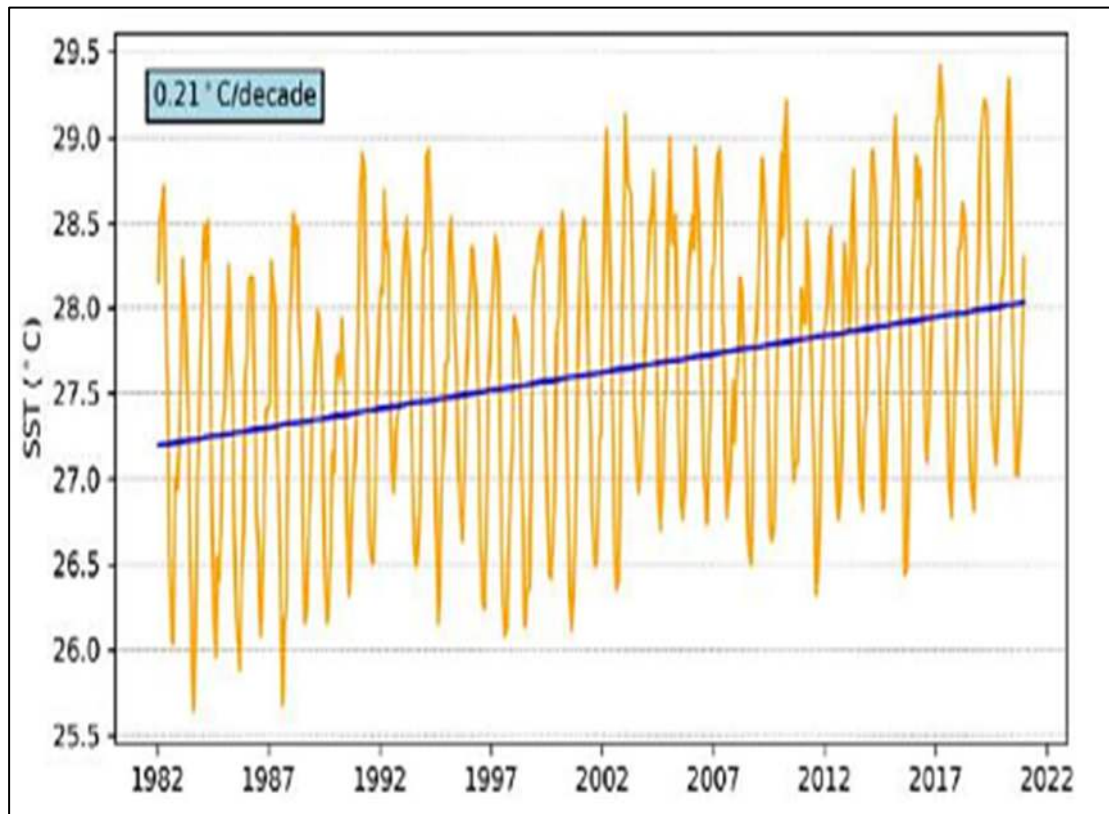
50. Climate change has increased sea surface temperature within the Cook Islands EEZ by 0.21 °C each decade from 1981 to 2021. From 1981–2021, the SST from satellite observations averaged over the Cook Islands EEZ is

⁸⁷ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 8.

⁸⁸ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 8., citing, SPC, *Climate Change in the Pacific 2022*, Chapter 2.7 'Sea surface temperature' at 26. Blue dots show the monthly average, and shaded boxes show the middle 50% of hourly observations. Lines show the top and bottom 25% of hourly observations.

shown in Figure 3 below which shows a trend of 0.21°C increase per decade with a 95% confidence interval of ±0.06 °C.

Figure 3. Historical sea surface temperature from satellite observations averaged across the Cook Islands EEZ⁸⁹



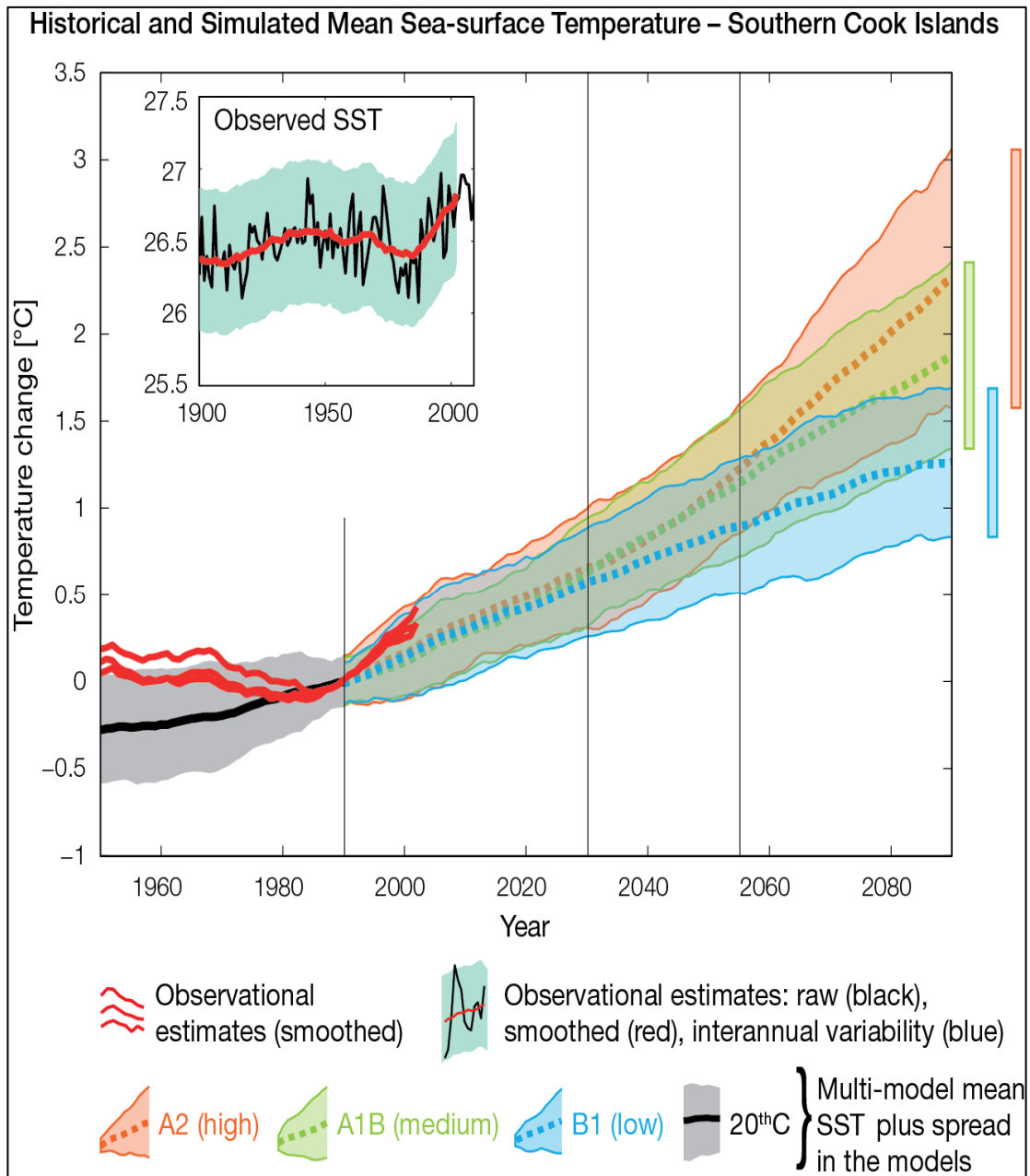
51. The impacts on the marine environment associated with this increase in sea surface temperatures include coral bleaching and bacterial outbreaks in the lagoons, which led to the mass mortalities of pearl oysters in the Northern Group atoll of Manihiki.⁹⁰
52. Current projections for sea surface temperature increases towards 2100 in Figure 4 below show predictions of a significant rise in sea surface temperature for the Southern Group in the near future.⁹¹

⁸⁹ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 8., citing, SPC, *Climate Change in the Pacific 2022*, Chapter 2.7 'Sea surface temperature', p. 26. Blue dots show the monthly average, and shaded boxes show the middle 50% of hourly observations. Lines show the top and bottom 25% of hourly observations.

⁹⁰ Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 41, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

⁹¹ Given the difference between the Northern Group (near the Equator) from the Southern Group, projections for only the Southern Group are shown here.

Figure 4. Sea surface temperature observed and projected in the Southern Cook Islands.⁹²



53. Climate change has led to harmful increases in the acidification of the ocean due to the fact that ocean acidification is primarily caused by the increasing

⁹² SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 8., citing The Pacific Community, *Climate Pacific Climate Change Science, Chapter 2: Cook Islands*, p. 35, available at: <https://www.pacificclimatechangescience.org/wp-content/uploads/2013/09/Cook-Islands.pdf>

oceanic uptake of carbon dioxide in response to rising atmospheric carbon dioxide concentrations.⁹³

54. As shown in Figure 5 below, the decline in the annual maximum aragonite saturation state has led to the ocean in the Cook Islands becoming progressively more acidic for both the Northern Group and Southern Group.⁹⁴
55. It is important to note that the optimal aragonite saturation states for coral growth and healthy reef systems are above 4. The aragonite saturation state in the Cook Islands has declined from about 4.5 in the late 18th century to an observed value of about 4.1 ± 0.2 by 2000.⁹⁵ Figure 5 below also shows how the current aragonite saturation state for the Southern Group is currently under 4. Therefore, the harmful impacts of increased ocean acidification on reef ecosystem health include exacerbating impacts from storm damage, coral bleaching, and fishing pressures,⁹⁶ as well as decreases in the availability of carbonate ions needed by calcifying organisms like corals, shellfish, and many marine plankton, to build their skeleton.⁹⁷
56. Current projections towards 2100 in Figure 5 below show that ocean acidification in the Cook Islands will increase significantly, where the annual maximum aragonite saturation state will reach values below 3.5 by approximately 2050 for the Southern Group and by approximately 2065 for the Northern Group.⁹⁸

⁹³SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 10

⁹⁴ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 10

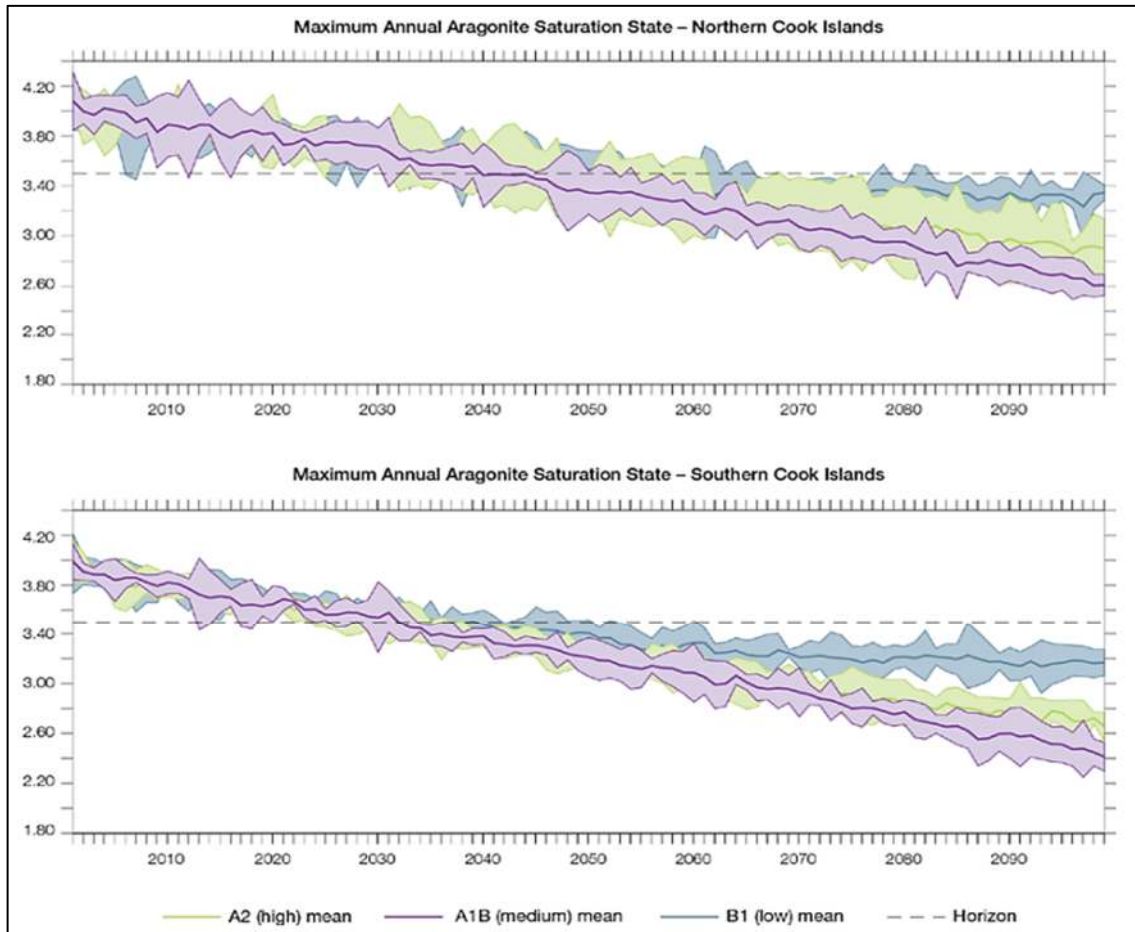
⁹⁵ Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 41, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

⁹⁶ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 10.

⁹⁷ Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 41, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

⁹⁸ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 11.

Figure 5. Ocean acidification in the Northern and Southern Cook Islands over time⁹⁹



4. Fisheries

57. Fish and other marine life are of profound and vital significance to life in the Cook Islands. For example, food security in the Cook Islands is underpinned by the health of fish and other food marine invertebrates, where fish consumption in the Cook Islands is at least two times greater than the global average, especially in the outer islands, known as Pa Enea.¹⁰⁰ Therefore, the

⁹⁹ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 11, citing, The Pacific Community, *Climate Pacific Climate Change Science, Chapter 2: Cook Islands*, p. 38, available at: <https://www.pacificclimatechangescience.org/wp-content/uploads/2013/09/Cook-Islands.pdf>

¹⁰⁰ Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 54, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

harmful impacts of climate change on fish has had significant repercussions for food security in the Cook Islands.¹⁰¹

58. The Cook Islands' economy is also heavily dependent on the health of fisheries. A study by Brander et al. published in 2020 on the valuation of ecosystem services in the Cook Islands strived to estimate the "total economic value" of an ecosystem service that includes all of the net benefits humans receive from that ecosystem service, including subsistence and commercial fishing; trochus; pearls, and coral aggregate; seabed minerals; coastal protection; tourism; recreation; and existence values related to marine biodiversity.¹⁰² The study found that the economic value of subsistence fisheries in the Cook Islands is worth NZ\$3,661,82 per year, commercial fisheries NZ\$50,389,917, trochus NZ\$55,690, and pearls NZ\$300,000.¹⁰³ The harmful impacts of climate change on fisheries are therefore likely to significantly affect these values over time and the Cook Islands' economy overall.¹⁰⁴
59. Offshore fisheries through licensing fees are also an important source of revenue for the Cook Islands as they contribute to approximately 10% of the annual GDP.¹⁰⁵ According to the Ministry of Marine Resources a total of 61 foreign-flagged vessels were licensed and authorised to operate within the Cook Islands EEZ during 2021: 51 longliners and 10 purse seiners.¹⁰⁶ Using price information from the Forum Fisheries Agency ('FFA') and adjusting for in-zone prices (FFA gives delivered prices), the value to fishers of the 4,621 t (tonnes) has been determined to be worth NZ\$15.7 million.¹⁰⁷

¹⁰¹ Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 29, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

¹⁰² Luke Brander, Kelvin Passfield, Kate McKessar, Kate Davey, Victoria Guisado, Florian Eppink, Nicholas Conner and Hayley Weeks, *Cook Islands Marine Ecosystem Services Valuation*, 2020, p. i, 12, available at: https://www.researchgate.net/profile/Luke-Brander/publication/352860040_Cook_Islands_Marine_Ecosystem_Services_Valuation/links/60dcd2a692851ca9449b3fc2/Cook-Islands-Marine-Ecosystem-Services-Valuation.pdf

¹⁰³ Luke Brander, Kelvin Passfield, Kate McKessar, Kate Davey, Victoria Guisado, Florian Eppink, Nicholas Conner and Hayley Weeks, *Cook Islands Marine Ecosystem Services Valuation*, 2020, p. i, 12, available at: https://www.researchgate.net/profile/Luke-Brander/publication/352860040_Cook_Islands_Marine_Ecosystem_Services_Valuation/links/60dcd2a692851ca9449b3fc2/Cook-Islands-Marine-Ecosystem-Services-Valuation.pdf, p. 34.

¹⁰⁴ Government of the Cook Islands, *JNAP II – Are we resilient? The Cook Islands 2nd Joint National Adaptation Plan 2016-2020*, 2016, p. 14, available at: <https://climatechange.gov.ck/wp-content/uploads/2019/10/JNAP-II-The-Second-Joint-National-Action-Plan-for-the-Cook-Islands.pdf>;

¹⁰⁵ Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 54, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

¹⁰⁶ Ministry of Marine Resources, *Cook Islands Annual Report to the Commission 2022*, p. 35, available at: https://www.spc.int/DigitalLibrary/Doc/FAME/Meetings/WCPFC/SC18/AR_CCM_04_Cook_Islands_re_v1.pdf

¹⁰⁷ Ministry of Marine Resources, *Cook Islands Annual Report to the Commission 2022*, p. 35, available at:

60. The detrimental impacts of climate change on fishing are also being felt at more community and familial levels. As Cook Islander Eileen Anne Story notes in her testimonial for the Court, the livelihoods of fisherfolks and their families have been impacted:

Climate change is affecting our livelihoods. There has been a loss of income as fisherman (sic) sell their fish, if they can't go fishing then they can't sell their fish and buy supplies for their families. There have been damages to the foreshore around the harbour area. It's also forced us to be more prepared and stock up supplies on the instance that we don't get ships arriving when they should.¹⁰⁸

61. The negative impacts of climate change on fisheries have also negatively impacted the affordability of fish, food security and the maintenance of culture and traditional skills around fishing as observed by Cook Islander Georgina Agnes Elizabeth Tavioni Bamber in her testimonial for the Court as follows:

I am concerned about the fish stocks in the Cook Islands and its impact on Cook Islanders. I have witnessed an increase in the cost of albacore tuna from around \$25 a kilo when I first moved here in 2018 to \$40 a kilo in 2024. I used to eat fish more regularly and saw more local fishers selling in 2018... *I think this has had a huge impact on the livelihood and culture of Cook Islanders. Tuna is a source of food security for Cook Islanders, and it is culturally important. When we lose access to fish we lose the traditional skills that we have developed as a consequence of relying on that food source.* Skills such as making ka'a (fishing nets) and vaka (traditional canoes), traditional skills around reading the water, saying karakia (prayers) before heading out into the ocean, and so on. If we are no longer using the vaka in our society, then we lose all the culture that is connected to that practice.¹⁰⁹

5. **Pearl farming**

62. Climate change is having a devastating impact on pearl farming in the Cook Islands. As outlined in the SPC's expert report for the Cook Islands, the farming of black-lip pearl oyster (*Pinctada margaritifera*) for black pearl production is

https://www.spc.int/DigitalLibrary/Doc/FAME/Meetings/WCPFC/SC18/AR_CCM_04_Cook_Islands_re_v1.pdf

¹⁰⁸ Eileen Anne Story, *Testimony of Eileen Anne Story Impacted by the Effects of Climate Change*, 15 March 2024, paras. 6, 8 (emphasis added) (**Annex No. 4**).

¹⁰⁹ Georgina Agnes Elizabeth Tavioni Bamber, *Testimony of Georgina Agnes Elizabeth Tavioni Bamber Impacted by the Effects of Climate Change*, 15 March 2024, para. 12 (emphasis added) (**Annex No. 5**).

critical for the local mariculture industry and for the continued employment of Cook Islanders in the fisheries and tourism industries.¹¹⁰

63. The reported number of saleable black pearls produced annually ranges from 37,169 to 56,000. In 2014, an estimated 50,000 pearls worth USD15.63 per pearl were produced, equalling USD 781,250 in value.¹¹¹ Pearl production reached a maximum in the Cook Islands in 1999–2000. At its peak, there were 81 farms with 2 million shells in the water, accounting for more than 90% of national exports and 20% of gross domestic product.¹¹²
64. A crude approximation of the annual volumes and values of fishery and aquaculture harvests in 2021 can be made from the MMR data as noted in Table 1 below. The Statistics Office of the Ministry of Finance and Economic Management refers to the fishing sector as “fishing and pearls”. The official fishing contribution to GDP from 2017 to 2021 is given in Table 2 further below, demonstrating the importance of this sector to the Cook Islands.

Table 1. Summary of fishery and aquaculture harvests in the Cook Islands for 2021¹¹³

Harvest sector	Volume (t and pcs)	Value (NZ\$)
Coastal commercial	150	1,600,000
Coastal subsistence	280	2,300,000
Offshore locally based	100	2,500,000
Offshore foreign-based	4,621	15,700,000
Freshwater	5	41,000
Aquaculture	81,500 pcs	330,500
Total	5,156 t and 81,500 pcs	22,471,500

¹¹⁰ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 11.

¹¹¹ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 11.

¹¹² SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 11, citing Robert Gillett, *Fisheries in the economies of Pacific Island countries and territories*, 2016, p. 684, available at: <https://purl.org/spc/digilib/doc/pvyuo>

¹¹³ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 11, citing Robert Gillett and Merelesita Fong, *Fisheries in the economies of Pacific Island countries and territories (Benefish Study 4)*, 2023, p. 37, available at: <https://purl.org/spc/digilib/doc/ppizh>

Table 2. Contribution of fishing (fishing plus pearls) to Cook Islands GDP¹¹⁴

	2017	2018	2019	2020	2021
Fishing (including pearls)	1.5	1.6	2.3	1.2	2.0
GDP at market prices	486.4	524.2	575.4	437.0	463.3
Fishing as a % of GDP	0.3%	0.3%	0.4%	0.3%	0.4%

Source: Cook Islands Statistics Office (unpublished data)

65. The SPC’s expert report for the Cook Islands also makes clear that the production of pearls has been harmed by, and remains vulnerable to, the impacts of climate change. Increasingly, pearl farmers in the Cook Islands have observed issues with oyster shells being thinner and deformities being more common.¹¹⁵
66. Furthermore, a recent study by Commonwealth Scientific and Industrial Research Organization (‘**CSIRO**’) and Secretariat of the Pacific Regional Environment Programme (‘**SPREP**’) on the historical and projected climate change impacts on the main pearl farming area in the Cook Islands, the water surrounding the Manihiki Lagoon region located 1200km northwest from the island of Rarotanga, found that the effects of high sea surface temperature and ocean acidification has deleteriously affected spat (young pearl oysters) formation.¹¹⁶
67. The SPC’s expert report for the Cook Islands also advises that pearl farming on atolls is strongly dependent on water quality and renewal and wave conditions that are determined by factors that are sensitive to climate change like swells, wave height, and changing ocean currents.¹¹⁷

¹¹⁴ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 11, citing Robert Gillett and Merelesita Fong, *Fisheries in the economies of Pacific Island countries and territories (Benefish Study 4)*, 2023, p. 37, available at: <https://purl.org/spc/digilib/doc/ppizh>

¹¹⁵ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 11.

¹¹⁶ Commonwealth Scientific and Industrial Research Organisation and Secretariat of the Pacific Regional Environment Programme, ‘*NextGen*’ *Projections for the Western Tropical Pacific: Climate change projections to inform black pearl production vulnerability in the Cook Islands - Technical report to the Australia-Pacific Climate Partnership for the Next Generation Climate Projections for the Western Tropical Pacific Project*, 2022, p. 8, available at: <https://doi.org/10.25919/sr2h-8282>

¹¹⁷ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 11.

68. In terms of the current projections on pearl farming in the future in light of the impacts of climate change, the projected increase in ocean temperatures would likely result in more episodes of water surpassing the 34°C threshold by 2030, potentially affecting the productivity of Manihiki Lagoon pearl farming in the future.¹¹⁸
69. Furthermore, increased ocean acidification is projected to further harm pearl farming. Even under low emissions scenarios, the median aragonite saturation state never falls below 3.5, which are considered marginal conditions, so curbing ocean acidification is of special importance to preventing economic harms to Cook Islands' pearl industry by 2050.¹¹⁹

6. **Coral reef health**

70. The detrimental effects of climate change on coral reef health is a major concern for the Cook Islands.¹²⁰ As noted in the expert report by the SPREP on the Cook Islands for the Court, coral reefs are one of “the most vulnerable ecosystems on the planet to anthropogenic pressures, particularly those influenced by climate change, such as mass coral bleaching events, tropical storms, ocean acidification.”¹²¹ All 15 islands in Cook Islands are surrounded by coral reefs which include 136 identified coral species and 650 fish species, with 25 of these coral species and 8 of these fish species being classified as threatened species.¹²²
71. SPREP's expert report notes that climate change, especially through increases in ocean warming, will have a “compounded impact” on reefs by increasing the frequency of bleaching events.¹²³ Figure 6 below provides a

¹¹⁸ Commonwealth Scientific and Industrial Research Organisation and Secretariat of the Pacific Regional Environment Programme, *'NextGen' Projections for the Western Tropical Pacific: Climate change projections to inform black pearl production vulnerability in the Cook Islands - Technical report to the Australia-Pacific Climate Partnership for the Next Generation Climate Projections for the Western Tropical Pacific Project*, 2022, p. 8, available at: <https://doi.org/10.25919/sr2h-8282>

¹¹⁹ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 12.

¹²⁰ Government of the Cook Islands, *Cook Islands Climate Change Policy 2018-2028*, 2019, p. 11, available at: <https://climatechange.gov.ck/wp-content/uploads/2019/10/Cook-Islands-Climate-Change-Policy-2018-2028.pdf>; Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 44, 48, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

¹²¹ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 6 (**Annex No. 2**).

¹²² SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 6, citing Marae Moana, *Biodiversity*, <https://www.maraemoana.gov.ck/biodiversity>

¹²³ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 6.

timeline of events that have impacted the coral reefs of Cook Islands from 1991-2016, which not only include bleaching events but several extreme weather events also.

Figure 6. Timeline of events that have impacted the coral reefs of Cook Islands¹²⁴



72. Climate change will also have a “compounded impact” on coral reefs by leading to more invasive species outbreaks following outbreaks in 1995-1996, 2002 and 2013 as noted in the timeline at Figure 6 above.¹²⁵ One invasive species of concern is the crown of thorns starfish, the populations of which are expected to increase significantly, to the point of outbreak, if water temperatures continue to rise.¹²⁶ The outbreak in 2013 was particularly severe, where it was recorded that the benthic and fish communities in the Southern Group island of Aitutaki were in “significantly worse” condition, particularly

¹²⁴ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 6, citing Charlotte Moritz, Jason Vii, Warren Lee Long, Jerker Tamelander, Aurélie Thomassin and Serge Planes, *Status and Trends of Coral Reefs of the Pacific*, 2018, Global Coral Reef Monitoring Network, p. 124.

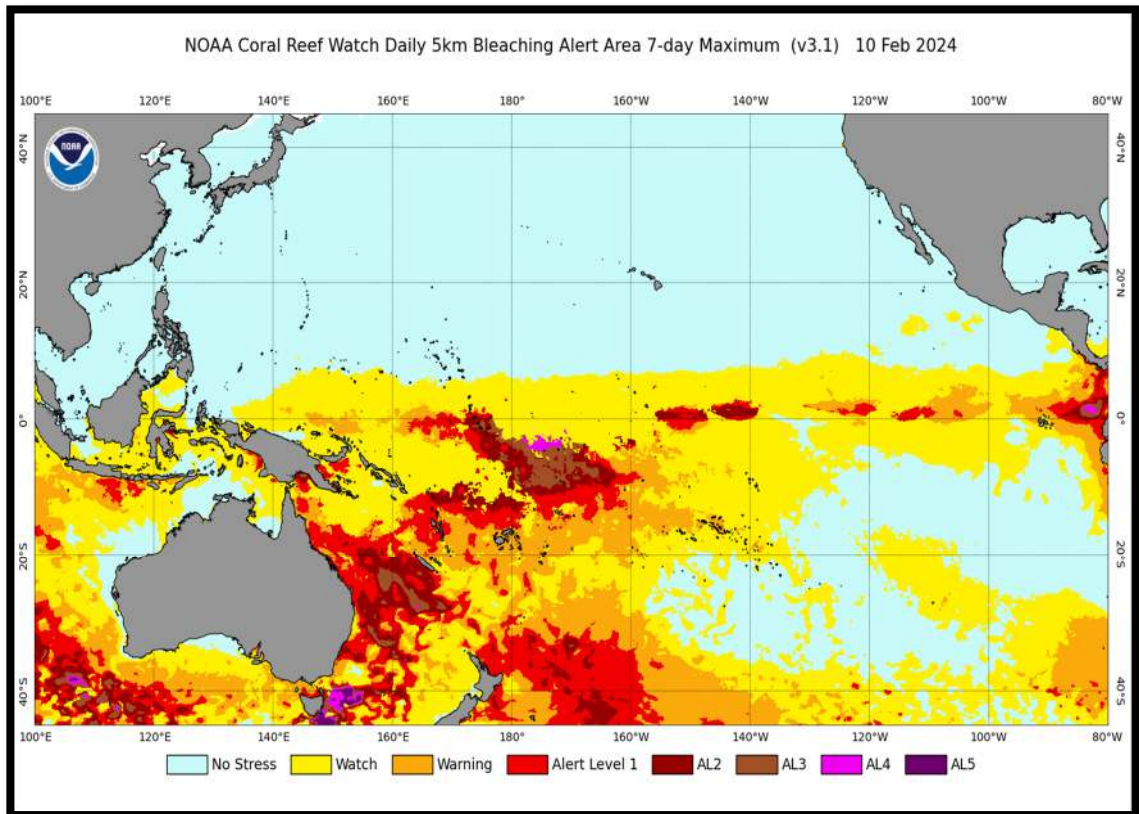
¹²⁵ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 6, citing Charlotte Moritz, Jason Vii, Warren Lee Long, Jerker Tamelander, Aurélie Thomassin and Serge Planes, *Status and Trends of Coral Reefs of the Pacific*, 2018, Global Coral Reef Monitoring Network, p. 124.

¹²⁶ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 6, citing S Purkis et al., *Global Reef Expedition: Cook Islands. Final Report* (Annapolis: Khaled Bin Sultan Living Oceans Foundation, 2018).

compared to those in the other Southern Group islands of Rarotonga and Palmerston.¹²⁷

73. SPC's expert report also notes that the majority of Pacific countries, including the Cook Islands, are facing further potential bleaching harms to coral reef systems, as illustrated by Figure 7 below which is a map from the National Oceanic and Atmospheric Administration ('NOAA') that depicts the Coral Reef watch as of the 10 February 2024.¹²⁸
74. The SPREP expert report also notes that the Cook Islands' EEZ lies between 6-25 degrees south and 155-169 degrees west¹²⁹ which places the Cook Islands, including the outer islands within the 'Alert level 1 and 2' 'watch and 'warning' classifications as can be seen in the map in Figure 7 below.

Figure 7. NOAA Coral Reef Daily 5km Bleaching Alert watch - 10 February 2024¹³⁰



¹²⁷ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 5, citing Samuel Purkis, Alexandra C. Dempsey, Renee D Carlton, Katie Lubarsky, Phillip P. Renaud, *Global Reef Expedition: Cook Islands. Final Report*, 2018.

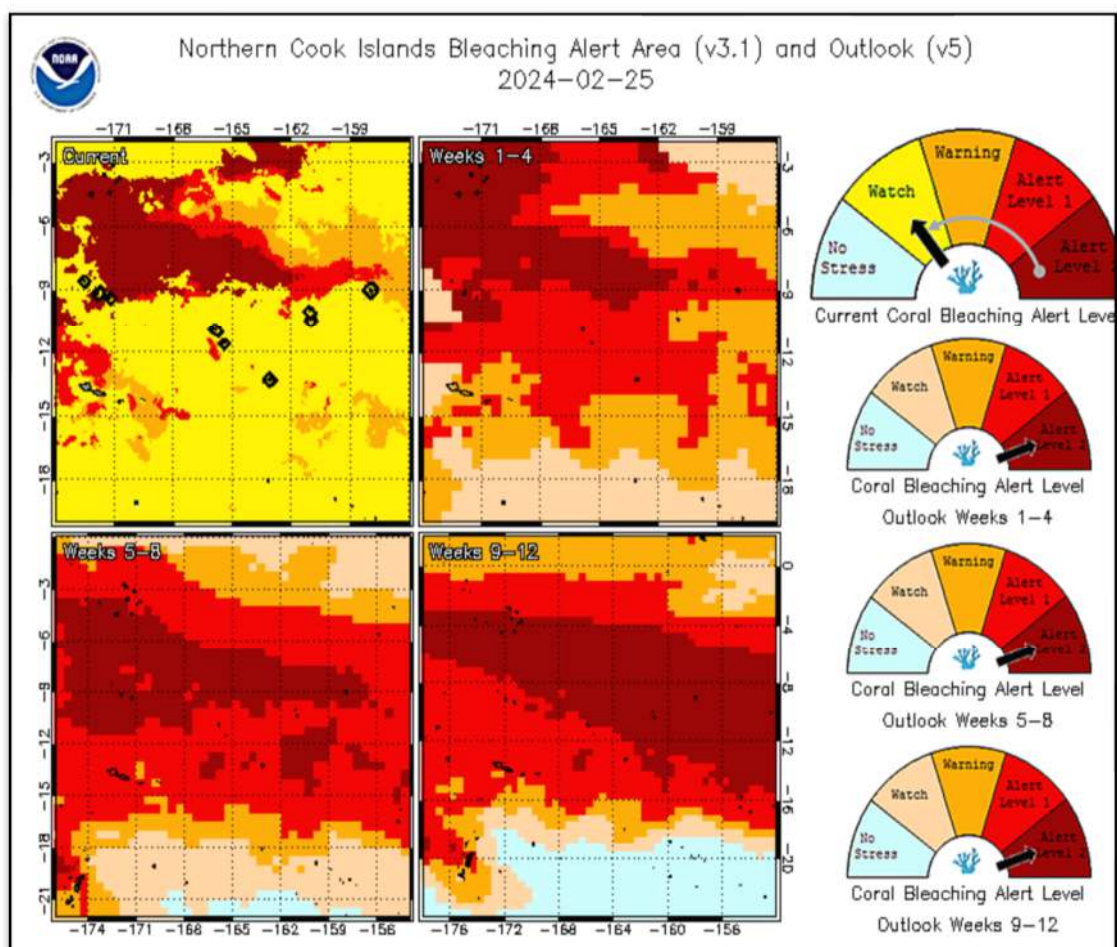
¹²⁸ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 5,

¹²⁹ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 6, citing NOAA, "Northern Cook Islands Bleaching Alert Area 25 Feb", 2024, https://coralreefwatch.noaa.gov/product/vs/gauges/northern_cook_islands.php.

¹³⁰ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 7.

75. Figure 8 below depicts a closer look at the bleaching alert levels for the Northern Group. As at 25 February 2024, short term predictions showed high levels of alert for the Northern Group islands particularly in the 9-12 week prediction period where the significant majority of the area is identified as ‘Alert 2’ category.¹³¹
76. Broader predictions from the IPCC in 2022 also showed this damage is set to worsen where a 1.5 degrees celsius increase would further lead to a 70-90% decline.¹³²

Figure 8. Northern Cook Islands Bleaching Alert Area and Outlook - 25 February 2024



¹³¹ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 7, citing NOAA, "Northern Cook Islands Bleaching Alert Area 25 Feb", 2024, https://coralreefwatch.noaa.gov/product/vs/gauges/northern_cook_islands.php.

¹³² SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 7, citing IPCC, *Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. D.C. Roberts H.-O. Pörtner, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, and V. Möller S. Löschke, A. Okem, B. Rama, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Cambridge, UK and New York, NY, USA: Cambridge University Press, 2022).

7. **Biodiversity**

77. Other areas of major concern for the Cook Islands are threats climate change poses to the country's biodiversity.¹³³ As clearly stated in the SPREP's expert report for the Cook Islands, climate change is a "significant factor in the decline in species populations in Small Islands states such as the Cook Islands and the risk of loss will increase with every increment of warming."¹³⁴
78. Among the key species of particular concern for the Cook Islands is the Kākerōri bird (*Pomarea dimidiata*, Rarotonga flycatcher) which is an endemic species to Rarotonga that has been classified 'critically endangered' under the International Union for Conservation of Nature ('IUCN') classification system since 1989.¹³⁵ The Kākerōri is threatened by climate change due to the higher intensity of tropical cyclones and natural disasters destroying habitats.¹³⁶ These threats posed by climate change exist despite the conservation actions taken by the Cook Islands, which include having 14 terrestrial conservation sites taking up 6% of total land mass.
79. Another nationally and internationally endangered marine species threatened by the impacts of climate change is the Pa'ua (*Tridacna maxima*, Small Giant-Clam) which is native to the Cook Islands and important for traditional food and medicinal purposes. Specifically, increases in sea temperatures and nutrient levels due to climate change are threatening the species.¹³⁷
80. Climate change also poses a threat to the four sea turtle species known to use Cook Islands' waters, namely the green turtle (*Chelonia mydas*), the leatherback turtle (*Dermochelys coriacea*), the hawksbill turtle (*Eretmochelys imbricata*), and the loggerhead turtle (*Caretta caretta*).¹³⁸ The particular threats climate change poses to these sea turtles include warming ocean temperatures, sea level rise, and increased frequency of intense storm events, which can all cause disrupted and changing migration routes for sea turtles, as well as decreasing and changing food, habitat and nesting areas around the

¹³³ Government of the Cook Islands, *Cook Islands Climate Change Policy 2018-2028*, 2019, p. 18, available at: <https://climatechange.gov.ck/wp-content/uploads/2019/10/Cook-Islands-Climate-Change-Policy-2018-2028.pdf>; Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 48, 51, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

¹³⁴ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 9.

¹³⁵ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 9.

¹³⁶ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 9.

¹³⁷ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 10

¹³⁸ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 10.

country. This is because turtles also play an important role as macro herbivores, grazing in marine reef systems, regulating algal and other plant growth, and helping to keep the entire ecosystem in balance.¹³⁹

81. The Cook Islands' whale population is also being harmed by the impacts of climate change, including warming ocean temperatures and changing food web dynamics which have altered whales' migration routes, habitats and breeding and calving grounds.¹⁴⁰ Whales are also vulnerable to pollution in the marine environment through ingestion and strangulation, entanglement with fishing nets and lines which can lead to injury, stranding and death. These threats to whales exist despite the Cook Islands declaring all of its territorial waters as the Cook Islands Whale Sanctuary in 2001, with regulations to protect cetaceans within CIWS waters, and prohibitions against killing, injuring or harassment of any whales or other cetaceans within the sanctuary.¹⁴¹
82. In the Southern Group Island of Palmerston, the loss of biodiversity over time has been observed by Cook Islanders like Julianna Onegirl Teremarike Marsters, the Biosecurity and Agriculture Officer for Palmerston, who notes in her testimonial for the Court that the sea side is "turning into a grave yard" as follows:

Growing up in Palmerston everywhere is very different now to what it was, both land and sea. For the sea side, I can remember that it used to be so clear and so blue, with less algae and colorful fish swimming around. The boomie coral heads had pretty colours. Now it's turning into a grave yard sadly. In the lagoon area surround Palmerston, I've noticed over the years, that marine life has really changed as well as, I guess the food chain as well because now we are eating other fish beside parrot fish. Parrot fish plays a major role in the cleaning of the algae off the bommies in the sea and producing sand as well but because of harvesting of the parrot fish for export to Rarotonga, there are not enough parrot fish left to regenerate, and get rid of the algae. Now the algae on the bommies is causing them to look like dead coral heads. On land, in general you can see that each season has a different reaction of both plants and the weather changes but now it's just like popping out of nowhere.¹⁴²

¹³⁹ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 10

¹⁴⁰ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 10.

¹⁴¹ SPREP, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024, p. 10.

¹⁴² Julianna Onegirl Teremarike Marsters, *Testimony of Julianna Onegirl Teremarike Marsters Impacted by the Effects of Climate Change*, 15 March 2024, para. 6 (emphasis added) (**Annex No. 6**).

8. **Extreme weather events**

83. Another significant challenge that climate change presents to the Cook Islands is the increased frequency of extreme weather events, namely tropical cyclones and droughts.¹⁴³
84. As noted in the SPC's expert report for the Cook Islands, tropical cyclones usually occur during the tropical cyclone season from November to April, but are increasingly occurring outside of that season as a result of climate change.¹⁴⁴
85. Cyclone-related economic losses, including the loss of physical assets and production sites, are immense in the Cook Islands where the majority of the Cook Islands population, infrastructure, and economically important sectors are located in the nation's highly exposed coastlines.¹⁴⁵
86. The impacts of cyclones are also devastating on smaller and less populated islands, as made clear in the testimonial for the Court provided by Rebecca Tina Hosking Ellis, in which she recalls the impacts of Cyclone Martin on the Northern Group atoll of Manihiki in November 1997 as follows:

I then began to hear nearby crying and screaming and discovered that the people in the Sunday schools that we used as cyclone shelters had been washed out by the waves

...

We then heard from Tauhunu on the other side of the island, and *discovered that over 30 people had been dragged out to sea. Some people were found alive on the nearby motu (small islands) but many had died. I recall that some of the bodies of people who had passed were found but around 10 bodies were never found.* All the cyclone shelters in Tauhunu were also destroyed.

...

It took my family and especially my children a long time to psychologically recover from the cyclone. I think around 30-40% of the people of Manihiki never returned after they were evacuated, so there was a huge loss of the Manihiki population. I remember coming back to Manihiki during that recovery period after I had visited my family in Rarotonga. I remember the view from the plane where I could see the buildings that had been dragged out to sea, forming sort

¹⁴³ Cook Islands National Environment Service, *National Environment Policy 2022-32*, 2023, p. 13, available here: <https://environment.gov.ck/tag/nep-2022-2032/>

¹⁴⁴ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 5.

¹⁴⁵ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 6, citing *Local Environment* 2023, Vol. 28, No. 5, 645–661.

of a line out from the coast....The cyclone also impacted the pearl industry, which was the main industry in Manihiki and the source of many livelihoods.¹⁴⁶

87. The scale of immense losses was also made clear in February 2010 when the tropical Cyclone Pat hit the Southern Group island of Aitutaki, destroying 75% of homes on the island. The damage from Cyclone Pat also resulted in the migration of households and a year-long reconstruction process. A photograph of the damage caused by Cyclone Pat is in Figure 10 below.¹⁴⁷

Figure 10. Photograph of damage caused by Cyclone Pat - February 2010



88. Another area that is highly vulnerable to the impacts of tropical cyclones is the capital town of Avarua town located on the north shores of the Southern Group island of Rarotonga. It is the densest residential area in the country and the hub of Cook Islands' economy and industry inclusive of the international airport, main fuel, Avatiu port and harbour, Avarua harbour, and the majority of government buildings.¹⁴⁸

¹⁴⁶ Rebecca Tina Hosking Ellis, *Testimony of Rebecca Tina Hosking Ellis Impacted by the Effects of Climate Change*, 13 March 2024 (**Annex No. 7**)

¹⁴⁷ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 6, citing 'Avarua, Rarotonga: Quantifying Asset Exposure to Extreme Events and Climate Change', 12 March 2022, available at <https://storymaps.arcgis.com/stories/bbb631b99e044255838ade103e85eded>.

¹⁴⁸ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 6.

89. This portion of the shoreline is depicted in the three maps from Figures 11 to 13 below. These maps help to indicate the great socio-economic and environmental consequences of tropical cyclones on coastal zones and nearby infrastructure when extreme wave and storm surges occur, also taking into account climate change effects over time.¹⁴⁹ These maps are coded as follows:

- The blue areas are places that likely experience flooding in an average scenario; the darker the blue, the deeper the water.
- The yellow areas show places likely to experience wave ‘overwash’.¹⁵⁰
- The orange highlighted areas represent places likely to experience ‘overtopping’ wave impacts.¹⁵¹
- The red areas are likely to experience the heaviest surge and wave impacts, with the red blocks representing the buildings in the area that are exposed to these hazards and likely to suffer the most damage.

Figure 11. Map of One in 20-year average recurrence interval (ARI) for tropical cyclone events on the Avarua to Nikao coastline¹⁵²



¹⁴⁹ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 6.

¹⁵⁰ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 6.

¹⁵¹ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 6.

¹⁵² SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 7.

Figure 12. Map of One in 50-year ARI for tropical cyclone events on the Avarua to Nikao coastline¹⁵³



Figure 13. Map of One in 100-year ARI for tropical cyclone events on the Avarua to Nikao coastline¹⁵⁴



¹⁵³ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 7.

¹⁵⁴ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 7.

90. It is critical to note that what was once typically a ‘one in every twenty year event’ can be skewed as increases in extreme weather events, but continue to be unprecedented. For example, five cyclones hit Rarotonga within the two-month period between February and March 2005, four of them being category 5 cyclones.¹⁵⁵ While these cyclones showed an increase in frequency in cyclones for the Cook Islands, they were also wholly unprecedented. The three maps shown from Figures 9 to 11 above depict the average recurrence intervals for these different scenarios, demonstrating how vulnerable the Cook Islands’ economy and society is to extreme weather events as they become more and more frequent due to climate change.

9. Changing rainfall patterns and drought

91. A growing concern for the Cook Islands are the changes in rainfall patterns and risks of drought as a result of climate change.¹⁵⁶ As stated in the SPC’s expert report for the Cook Islands, annual rainfall has decreased significantly in Rarotonga since 1951 due to decreases from May to October in the number of wet days and year-to-year variability associated with El Niño–Southern Oscillation (ENSO).¹⁵⁷ This changing rainfall pattern due to the impacts of climate change is an ongoing threat to water and food security in the Cook Islands. This is because domestic households in the Cook Islands are highly dependent on rainfall water due to the fact that water that can be sourced from stream catchment is limited.¹⁵⁸
92. Severe droughts have also posed a significant threat to water and food security in the Cook Islands and continue to do so.¹⁵⁹ As noted in the 2018 Census, 24.4% of households in the Cook Islands operate land for agricultural purposes with 49% growing fruit and crop trees (e.g., bananas, taro, pawpaw, maniotia), 43.7% growing flowers, 35.6% growing vegetables and 55% collecting

¹⁵⁵ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 6.

¹⁵⁶ Government of the Cook Islands, *Cook Islands Climate Change Policy 2018-2028*, 2019, p. 10, 17, available at: <https://climatechange.gov.ck/wp-content/uploads/2019/10/Cook-Islands-Climate-Change-Policy-2018-2028.pdf>; Government of the Cook Islands, *Cook Islands Third National Determined Contribution: United Nations Framework Convention on Climate Change*, p. 15, available at: <https://unfccc.int/sites/default/files/resource/TNC%20FINAL.%20online.pdf>

¹⁵⁷ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 3.

¹⁵⁸ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 4.

¹⁵⁹ Government of the Cook Islands, *Cook Islands Climate Change Policy 2018-2028*, 2019, p. 9, available at: <https://climatechange.gov.ck/wp-content/uploads/2019/10/Cook-Islands-Climate-Change-Policy-2018-2028.pdf>.

coconuts.¹⁶⁰ The majority of households in the Cook Islands (83.4%), and especially the population in the Southern Group island Rarotonga (90.8%) access water through the public water main, while the second most common source is water tanks. Water tanks remain the main source of water supply in outer islands—with 98.5% of households in the Northern Group and 87.2% in the Southern Group.¹⁶¹

93. Given this degree of dependence on public water and water tanks, droughts in Pacific countries like the Cook Islands have and continue to lead to devastating water and food shortages, fires and electricity shortages due to limited water for hydroelectricity.¹⁶²

10. Increased frequency of high-temperature days

94. As noted in the SPC's expert report for the Cook Islands, the average annual and seasonal temperatures in the Southern Group island of Rarotonga have increased significantly due to climate change, with November to April temperatures warming at approximately the same rate as May to October temperatures, indicating that daily minimum temperatures are warming faster than daily minimum temperatures.¹⁶³
95. The number of hot days and warm nights in the Cook Islands has also increased, and the number of cool days and cold nights has decreased as illustrated in Figure 14 below.

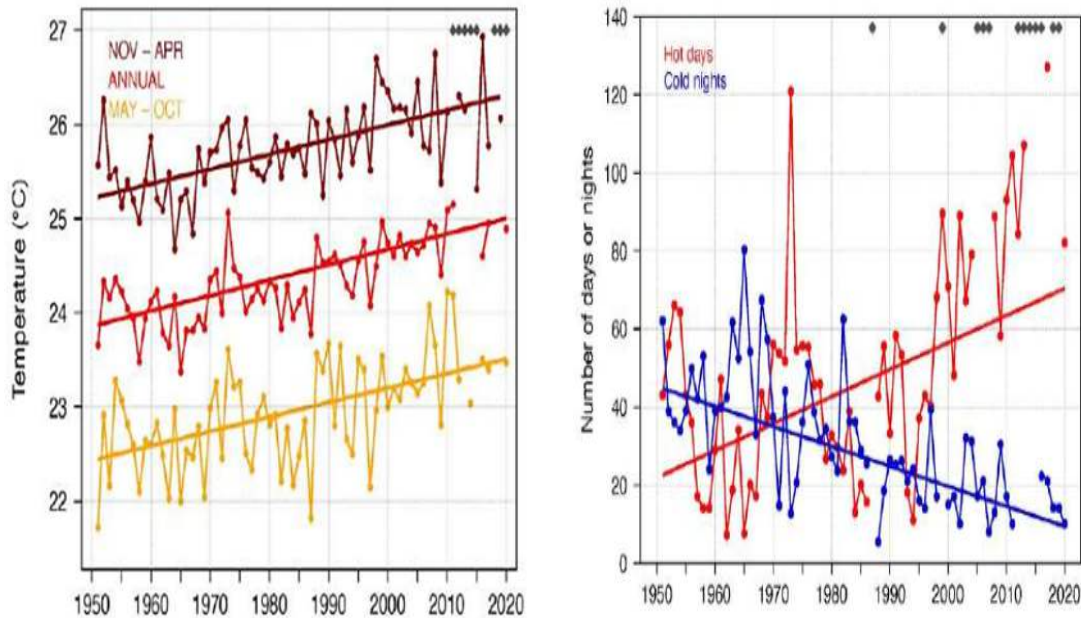
¹⁶⁰ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 4, citing Cook Islands Statistics Office. 2018. *Cook Islands Population Census: Census of Population and Dwellings*. Rarotonga: Cook Islands Statistics Office.

¹⁶¹ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 4, citing Local Environment 2023, Vol. 28, No. 5, 645–661, available at: <https://doi.org/10.1080/13549839.2023.2169912>

¹⁶² SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 4, citing Local Environment 2023, Vol. 28, No. 5, 645–661.

¹⁶³ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 5.

Figure 14. Average annual November–April and May–October temperatures for Rarotonga and the annual number of hot days and cold nights at Rarotonga¹⁶⁴



11. Agriculture

96. Climate change has negatively impacted agricultural land in the Cook Islands, especially in the Northern Group atolls of Rakahanga and Pukapuka.¹⁶⁵
97. In terms of the specific ways climate change has impacted agricultural production, the SPC’s expert report for the Cook Islands notes:

There has been historical reductions in Cook Islands’ food production index due to a decline in both area and yield of major crops like coconuts, roots, and tubers (including cassava and sweet potatoes). This has far-reaching consequences.

...

¹⁶⁴ SPC, *Expert Report for Cook Islands from the Pacific Community’s Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 5, citing *Climate Change in the Pacific 2022*, Chapter 2.5 ‘Air temperature: Trends’ at 23-24. Straight lines indicate linear trends. Diamonds indicate years with insufficient data for one or more variables.

¹⁶⁵ Government of the Cook Islands, *Cook Islands Climate Change Policy 2018-2028*, 2019, p. 9, available at: <https://climatechange.gov.ck/wp-content/uploads/2019/10/Cook-Islands-Climate-Change-Policy-2018-2028.pdf>.

Sea-level rise and saltwater inundation into the freshwater lense impedes crop growth and the loss of land reduces available farmland for agricultural production, compounding the problem. Lack of rain, soil degradation, and shifting seasons also reduce productivity. Low agricultural yields increases the reliance on imported food (which can often be less nutritious), which further impacts human health.¹⁶⁶

98. In terms of the specific impacts of extreme weather events on agricultural production, a recent study by Clissold et al. (2023) captured the following insights from 10 interviews with Cook Islanders from both urban and remote settings who had experienced damage to their crops from cyclones:¹⁶⁷

All the food crops were damaged, breadfruit trees, banana trees on the ground, cannot plant around our house because before the cyclone we had yam, tarua, and kumara near our house. Other fruit trees were also damaged. (Participant #4, 2020)

For about six months we had pretty much no fruit, bananas and pawpaws having to start over again and few vegetables. (Participant #3, 2020)

The loss of crops in the community, the cyclone had ruined all the vegetable plantations, coconuts to feed animals and humans. (Participant #6, 2020)

99. In terms of the future impacts of climate change on agricultural production in the Cook Islands, the SPC's expert report predicts that "[c]limate change and overall climate variability will have heavy impacts on the agricultural and fishery sectors, threatening food security and the ability of Cook Islanders to produce and access safe and nutritious foods."¹⁶⁸

12. Health and wellbeing

100. The impacts of climate change noted above have had great impacts on the health and wellbeing of Cook Islanders. To understand the gravity and depth of these impacts of climate change on Cook Islanders, it is important to understand the Indigenous worldviews of Cook Islanders as Pacific peoples, specifically in relation to Cook Islanders' multidimensional conceptualisations of health and wellbeing.

¹⁶⁶ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 14.

¹⁶⁷ Rachel Clissold, Karen E. McNamara, Ross Westoby and Vaine Wichman, *Experiencing and responding to extreme weather: lessons from the Cook Islands*, 2023, *Local Environment*, 28:5, p 652, available at: DOI: 10.1080/13549839.2023.2169912

¹⁶⁸ SPC, *Expert Report for Cook Islands from the Pacific Community's Geoscience, Energy and Maritime Division, Fisheries, Aquaculture and Marine Ecosystems Division, Land Resources Division, and Human Rights and Social Development Division*, 14 March 2024, p. 13.

101. In terms of the worldviews of Pacific peoples generally, Tiatia et al. (2023) aptly articulates the deep connections Pacific peoples have to their environments, including land, and the threat climate change poses to these deep connections as follows:

For most Pacific peoples, there is a deep and inseparable connection to land; beyond that of belonging, to that of an 'embodiment' of place. Climate change is a threat to that deep tie, which can result for some in psychological distress.¹⁶⁹

102. In terms of Cook Islanders' specific conceptualisations of health and wellbeing, in 2006 the Cook Islands' Ministry of Education created the Pito'enua model of wellbeing which explains that Pito'enua (health and wellbeing) in the Cook Islands goes beyond the physical and mental dimensions common to Western conceptualisations, and encompasses five dimensions: Kopapa (physical wellbeing); Tu Manako (mental and emotional wellbeing); Vaerua (spiritual wellbeing); Kopu Tangata (social wellbeing); and Aorangi (total environment).¹⁷⁰ The model notes that the Aorangi dimension specifically refers to:

How society influences you;
The way individuals are shaped by their environment e.g. the media, church, village, family, peers, school, surroundings, island;
Their kapuanga; the interconnectedness a person has with the enua [land], the rangi [the sky] and the moana [ocean].¹⁷¹

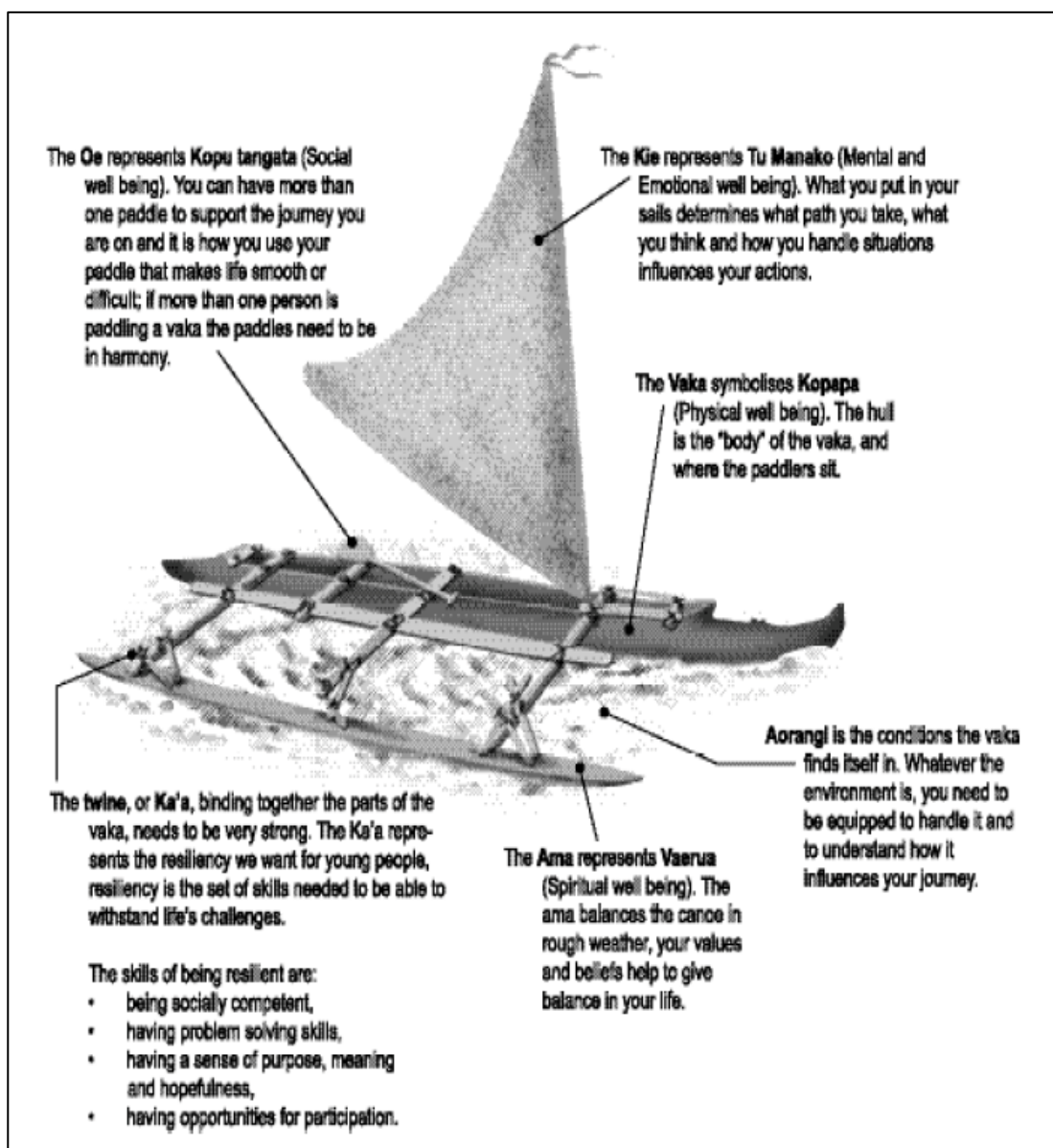
103. The Cook Islands' Ministry of Education depicted this model of wellbeing as a vaka (canoe) in the diagram in Figure 15 below.

¹⁶⁹ Jemaima Tiatia, Fiona Langridge, Christina Newport, Yvonne Underhill-Sem and Alistair Woodward, *Climate change, mental health and wellbeing: privileging Pacific peoples' perspectives – phase one*, 2023, Climate and Development, 15:8, p. 656, available at <https://www.tandfonline.com/doi/pdf/10.1080/17565529.2022.2145171>

¹⁷⁰ Cook Islands Ministry of Education, *Oraanga e te Tupuanga Meitaki: health and physical wellbeing curriculum*, 2006, p. 6-7, available here: <https://unicefaproinasactoolkit.files.wordpress.com/2017/09/cook-islands-health-curriculum.pdf>

¹⁷¹ Cook Islands Ministry of Education, *Oraanga e te Tupuanga Meitaki: health and physical wellbeing curriculum*, 2006, p. 7, available here: <https://unicefaproinasactoolkit.files.wordpress.com/2017/09/cook-islands-health-curriculum.pdf>

Figure 15. Vaka Ama diagram of the Pito'enua model of wellbeing¹⁷²



104. Given this fundamental importance of the environment to Cook Islanders' health and wellbeing made clear by the Pito'enua model, it is unsurprising that climate change has had devastating impacts on Cook Islanders' health and wellbeing.

105. Some of these devastating impacts have been powerfully captured in the findings of a recent study by Clissold et al. (2023), which include the following insights from participants that capture the feelings of worry, sadness, anger,

¹⁷² Cook Islands Ministry of Education, *Oraanga e te Tupuanga Meitaki: health and physical wellbeing curriculum*, 2006, p. 7, available here: <https://unicefaproinasactoolkit.files.wordpress.com/2017/09/cook-islands-health-curriculum.pdf>

and tiredness with the chronic nature of the disaster and the prolonged hardships caused by droughts in the Cook Islands:

During the drought, it was hard not to bring the right food to your family, nerve wrecking and stressful, you just wonder what is happening, sometimes you turn your anger to your family, which is not fair to them, but these are some of the things that I can recall. Having no coconuts to feed the pigs was also harder to bear. (Participant #5, 2020)

When there is drought, we always get unhappy and tired. There is no grass for the goats and no coconuts for the pigs and no water for our house. We have to buy pig food from the shop and for the goats have to cut leaf branches from the hills...We have less animals now, as we did know of the hardship we encounter. We did not want to go through seeing our animals die because of hunger and thirst. I believe my neighbours have the same grievances as we had. (Participant #7, 2020).¹⁷³

106. Clissold et al. (2023) also captured the psycho-social impacts of cyclones on Cook Islanders in the following excerpts from their participants, in which they expressed fear and stress:

The feelings of loss, people were stressed and scared. (Participant #9, 2020)

...

I can remember lying in bed that night asleep and waking up to feeling of the walls moving in and then out and hearing the rain just outside our bedroom door on the floor where the roof had come off our home. I have never forgotten that – so your emotions. The worry that the rest of the roof was going to come off, the wind was so loud, and we were in complete darkness without power, it was scary. (Participant #6, 2020)

...

I am worried about climate change, and the tropical cyclones, these are more regular now and more intense” (Participant #1, 2020).¹⁷⁴

107. Importantly, Clissold et al. (2023) also noted that Cook Islanders have had to experience and respond to overlapping extreme weather events, like a drought, followed by a cyclone and then another drought. These realities of overlapping and repeated extreme weather events have resulted in “heightened and chronic mental health impacts” that are captured in their participants responses below:

¹⁷³ Rachel Clissold, Karen E. McNamara, Ross Westoby and Vaine Wichman, *Experiencing and responding to extreme weather: lessons from the Cook Islands*, 2023, *Local Environment*, 28:5, p. 652, available at: DOI: 10.1080/13549839.2023.2169912

¹⁷⁴ Rachel Clissold, Karen E. McNamara, Ross Westoby and Vaine Wichman, *Experiencing and responding to extreme weather: lessons from the Cook Islands*, 2023, *Local Environment*, 28:5, p. 652-653, available at: DOI: 10.1080/13549839.2023.2169912

...the effect after the other, I think makes the struggle harder. (Participant #5, 2020)

...the fact we were dealing with one cyclone after the other, was extremely stressful. (Participant #10, 2020)

The whole island was weary, it just felt like we were all exhausted for most of that year. (Participant #3, 2020).¹⁷⁵

108. The anxieties that Cook Islanders have around extreme weather events are ongoing, as Cook Islander Tetryanna Louis Teokotai Ngariki Utanga expresses in her testimonial for the Court as follows:

I find myself very anxious when I hear of approaching weather disasters as I do not know what to expect and how well our country will survive it. I'm also anxious that at any time, an unexpected disaster should strike and I am unable to protect my family.

I believe people in my community are increasingly anxious border lining fearful because despite living in a modern world of technology we are still susceptible and vulnerable to climate impacts. We are experiencing sea level rise, irregular weather patterns, and unpredictable seasons due to climate change.¹⁷⁶

109. The detrimental impacts of climate change on mental health and wellbeing in the Cook Islands also relate to increasing discourses around climate-induced mobility and forced relocation in the Cook Islands and throughout the Pacific region. This reality has been poignantly captured in the expert report provided to the Court by Professor Yvonne Te Ruki Rangi a Tangaroa Underhill-Sem and Dr Christina Newport on climate-induced mobility in the Cook Islands. In their report, Professor Underhill-Sem and Dr Newport explain the profound spiritual impacts of contemplating the loss of Cook Islanders' ancestral homes as follows:

In the Cook Islands, the significance of one's ties to their 'ipukarea' inherited land, homeland, ancestral home is profound. *Contemplating the loss of belonging to one's place, to one's ancestral home is more than a loss of indigenous ties to land sea and sky, it is a loss of deep belonging to one's generations past, present and future.* Following the birth of a child, it is customary to bury the placenta on ones inherited land. Thereby maintaining the spiritual ancestral ties between past and future generations to their lands.

¹⁷⁵ Rachel Clissold, Karen E. McNamara, Ross Westoby and Vaine Wichman, *Experiencing and responding to extreme weather: lessons from the Cook Islands*, 2023, Local Environment, 28:5, p 653, available at: DOI: 10.1080/13549839.2023.2169912

¹⁷⁶ Tetryanna Louis Teokotai Ngariki Utanga, *Testimony of Tetryanna Louis Teokotai Ngariki Utanga, Impacted by the Effects of Climate Change*, 14 March 2024, paras. 5, 9-10 (emphasis added) (**Annex No. 8**).

To be without a connection to one's land, diminishes a fundamental interconnected dimension of holistic wellbeing.¹⁷⁷

110. Therefore, despite legal and political discourses around climate-induced mobility and relocation, Professor Underhill-Sem and Dr Newport underscore the critical importance of honouring Cook Islanders' aspirations to remain on their ancestral homelands for their health and wellbeing as follows:

Climate mobility is not what Cook Islands people want. They want to stay on their home islands and they want the ability to move between family members. The evidence we have gathered and Christina's experience as a resident of the Cook Islands over the last two decades shows that these views remain. However, increasingly discussion arise around leaving because of climate induced effects. If some communities don't plan to leave, the damage caused to their home islands and the livelihoods they depend on, will mean forced relocation. If this happens, it would be unlikely they could return home. The emotional toll of this dislocation from home and even thinking about it, has traumatic effects over generations. Just because Cook Islands people have demonstrated considerable innovation as mobile people, does not mean that they have an unqualified predisposition to move. Being mobile it's not the same is being a climate migrant forced to move because of the impacts of climate change.¹⁷⁸

13. Culture, language and tradition

111. Climate change has had, and continues to have, significantly detrimental impacts on culture and tradition in the Cook Islands. These impacts are of major concern to Cook Islanders, given the great importance of Cook Islanders' culture, language, traditional knowledge, skills and practices to combatting the impacts of climate change in the Cook Islands.
112. In terms of the loss of culture and traditional knowledge, skills and practices due to the impacts of climate change and other colonial processes, Dr Teina Rongo, a Cook Islander marine biologist and chairman of environmental non-government organization, Korero o te Orau, has noted the particular impacts of biodiversity loss over his lifetime in his testimonial as follows:

¹⁷⁷ Yvonne Te Ruki Rangī a Tangaroa Underhill-Sem and Christina Newport, *Knowledge of climate-induced mobility in the Cook Islands - Expert Report by Professor Yvonne Te Ruki Rangī a Tangaroa Underhill-Sem and Dr Christina Newport, both of University of Auckland, Auckland, New Zealand*, 10 March 2024, para. 4 (**Annex No. 3**).

¹⁷⁸ Yvonne Te Ruki Rangī a Tangaroa Underhill-Sem and Christina Newport, *Knowledge of climate-induced mobility in the Cook Islands - Expert Report by Professor Yvonne Te Ruki Rangī a Tangaroa Underhill-Sem and Dr Christina Newport, both of University of Auckland, Auckland, New Zealand*, 10 March 2024, p. 4.

Unfortunately...*traditional skills and practices have been on the decline in the last few decades, which is likely associated with westernization.* While this shift is particularly visible today, this loss of our culture and language happened over time.

...

I grew up, like other Cook Islanders of my generation, practicing a traditional and subsistence lifestyle daily. We worked in the wetland area for taro cultivation, dryland for other crops, and we raised pigs and fished for our protein.

I have noticed that since my time growing up, many species which we used to rely on have declined. For example, we used to regularly eat a local mussel called kuku which was abundant in the lagoon, but are not around anymore. We used to regularly fish a species of parrotfish we called ‘ūmoemoe that lived in sargassum, a seaweed that also used to be common.¹⁷⁹

113. Liam Ramsay Tuaivi Koka’ua, a Cook Islander environmental sciences researcher and museum curator for Indigenous knowledges, speaks to the loss of traditional knowledge over time as a barrier to using traditional knowledge to combat the impacts of climate change today, in his testimonial for the Court as follows:

I think the barriers to using Indigenous knowledge in response to climate change would be, partly, what has been lost already...

Part of having all that knowledge, we have a lot of people that come from a long, unbroken line of fishermen or planters of taro. These are the people that know how much we've lost, because we've lost a lot of knowledge as well. There used to be people that can just look at the tiniest little detail, on a leaf of a tree or,, what the fish look like when they pull it up and make more larger statements about, “okay, well, this is going to be a good season”, or “this is going to be a bad season”, or “there's going to be an abundance of fish this year”, all that stuff. That's something that we need to retrain another generation of people with - that really deeper set of knowledge. *The challenge is what has been lost.*¹⁸⁰

114. In terms of how climate change is currently impacting culture, language and traditional knowledge today, 15 year old Cook Islander Cole Ikurangi Tavioni Bamber notes that climate change is and will continue to amplify the loss of culture and language in his testimonial for the Court as follows:

I also value the Cook Islands Maori language, but I have noticed that *our language is almost disappearing* and I think it needs to be prioritized more...

¹⁷⁹ Teina Rongo, *Testimony of Teina Rongo Impacted by the Effects of Climate Change*, 14 March 2024, paras. 5, 9-10 (emphasis added) (**Annex No. 9**).

¹⁸⁰ Liam Ramsay Tuaivi Koka’ua, *Testimony of Liam Ramsay Tuaivi Koka’ua Impacted by the Effects of Climate Change*, 14 March 2024, para. 25 (emphasis added) (**Annex No. 10**).

Factors like colonialism have already slowed down the teaching and progressing of our culture. *If climate change forces our people from the Pa Enuā and other islands to move because of decreased land mass, it would make this loss of our culture even worse.* Especially in the Pa Enuā because culture is diverse across our islands; we have different dialects and unique traditions in each island.¹⁸¹

115. The use and implementation of traditional knowledge for combatting the impacts of climate change in the Cook Islands is vitally important. As Dr Rongo notes below, this is because Cook Islanders' traditional knowledge and practices are how Cook Islanders were able to live sustainably "for centuries":

I believe that traditional knowledge is important in combatting climate change. This knowledge was developed by people living and adapting to their environments for centuries; they knew the most sustainable way to live in a space they called home. For example, while the pa'i taro (taro patches) provide us food, by using it, we protect this habitat from being developed to maintain the ecosystem service it provides. Wetland areas where taro is planted play a role in soaking up the nutrients from land; by the time runoff water enters the lagoon, the nutrients in the water are removed by the plants that grow in the pa'i taro habitat, thus preventing nutrients from reaching the lagoon and causing problems...

*We are trying to go back to traditional lifestyles to help combat climate change impacts. People have a responsibility to take care of their own immediate and local environments.*¹⁸²

116. Te Pa Mataiapo Imogen Ingram,¹⁸³ a Cook Islander elder who holds and shares Cook Islander's traditional knowledge and practices also highlights the enduring importance of traditional practices and traditional guardianship to addressing the impacts of climate change in her testimonial for the Court as follows:

Traditionally the important issues dealt with by customary leaders involved land distribution, justice, and politics. These areas are now all dealt with by modern democratic and Westminster systems, such as the Court, the Government, and legislation. *Guardianship of the environment however, remains an area that*

¹⁸¹ Cole Ikurangi Tavioni Bamber, *Testimony of Cole Ikurangi Tavioni Bamber Impacted by the Effects of Climate Change*, 12 March 2024, paras. 5-6 (emphasis added) (**Annex No. 11**).

¹⁸² Teina Rongo, *Testimony of Teina Rongo Impacted by the Effects of Climate Change*, 14 March 2024, paras. 18-19 (emphasis added).

¹⁸³ Te Pa Mataiapo Imogen Ingram holds the traditional title of Te Pa Mataiapo and according to Cook Islands custom, they will hold it for my lifetime, as noted in their testimonial, see Te Pa Mataiapo Imogen Ingram, *Testimony of Imogen Pua Ingram Impacted by the Effects of Climate Change*, 12 March 2024, para. 1, 11 (**Annex No. 12**) (emphasis added).

*has always been traditionally important, and we still see our traditional role in this areas as important and relevant today.*¹⁸⁴

117. Te Pa Mataiapo’s testimonial also describes the importance of traditional conservation practices like Ra’ui, as well as the importance of sharing and exchanging such knowledge with other Polynesian peoples of other vulnerable areas and Small Island Developing States to combat environmental issues as follows:

Ra’ui is a traditional conservational practice where traditional leaders place bans on the use of a particular resource in a particular area, and they are commonly used to regulate fishing. Ra’ui were and are still used in the Pa Enea (outer islands) frequently, *but they had fallen into disuse on the main island of Rarotonga by around 1998*. Around this time we traditional leaders made efforts to revive this practice, and 8 ra’ui were reestablished. *After that there were strong efforts and interest in other similar Polynesian cultures in doing the same*. French Polynesia implemented a very effective rahui system (a similar custom to ra’ui). We visited their rahui to see how this shared cultural practice was being implemented in a different way and we shared our knowledge and experiences...

*We all have similar cultural values and principles and are being faced with similar environmental issues and are exchanging our knowledge with each other, so that our people can continue to practice subsistence fishing and continue to feed our families from the sea as we always have done.*¹⁸⁵

118. Given the importance of traditional knowledge to combatting the impacts of climate change, the Cook Islands government has made the use and implementation of traditional knowledge in climate change policy and action a key priority.
119. For example, the *Cook Islands’ Climate Change Policy 2018-2028* provides that one of the eight priority policy measures is “Policy Measure F: Akono’anga Māori” which commits the Government to “[w]ork with traditional leaders and utilise traditional methods and knowledge to assist in minimising the impacts of climate change”.¹⁸⁶
120. Additionally, the Cook Islands’ *National Environment Policy 2022-32* (**‘NEP’**) includes significant references to traditional knowledge and practices. For example, the first of the “guiding principles” of the NEP is stated as follows:

¹⁸⁴ Te Pa Mataiapo Imogen Ingram, *Testimony of Imogen Pua Ingram Impacted by the Effects of Climate Change*, 12 March 2024, para. 8 (emphasis added).

¹⁸⁵ Te Pa Mataiapo Imogen Ingram, *Testimony of Imogen Pua Ingram Impacted by the Effects of Climate Change*, 12 March 2024, para. 9 (emphasis added).

¹⁸⁶ Cook Islands Climate Change Office, *Cook Islands’ Climate Change Policy 2018-2028*, 2019, p. 19.

4.2.1 TRADITIONAL KNOWLEDGE AND PRACTICES - are the blueprint of environmental custodianship and promote nature-based solutions to address environmental issues. These practices must be respected when developing contemporary environmental management systems.¹⁸⁷

121. The *NEP* also includes two broad policy goals and cross-cutting goals around land and water that explicitly emphasize the importance of using and implementing traditional knowledge, landowners' rights, and practices for environmental management in the Cook Islands:¹⁸⁸
122. However, despite these goals there are a number of barriers to the use and implementation of traditional knowledge in climate change initiatives in the Cook Islands. In addition to the barrier of the traditional knowledges and practices that have already been lost overtime as noted by Koka'ua and Dr Rongo, qualitative empirical research by Diamir de Scally and Associate Professor Brent Doberstein on the use of local knowledge in climate change adaptation in the Cook Islands found that another major barrier is the lack of understanding of local knowledge and the low value placed on that knowledge by adaptation donors and funders as follows:

*One key informant highlighted that there were adaptation donors or funders, government officials, and islanders themselves who place very low value on local knowledge and consider it irrelevant in a more modern world (KI10). While Cook Islanders are traditionally deeply connected to their environments, a shift towards a more modern society has resulted in a disconnect, making it difficult for many to see the importance of local knowledge in addressing climate change.*¹⁸⁹

123. Cook Islander elder Ngatae Mitaera Teatuakaro Tavioni Teranginui-o-iva shares similar concerns about traditional fishing practices being “overlooked” and lost in his testimonial for the Court as follows:

Cook Islanders have customary conservational practices such as Ra'ui, which are restrictions on exploitation of certain resources until stocks replenish. We have been practising this custom since before colonization. Nowadays these cultural aspects are being *overlooked* because people are more concerned with financial security than environmental health and security of natural resources. *Through this Cook Islanders are losing traditionally developed food security skills.*¹⁹⁰

¹⁸⁷ Cook Islands National Environment Service, *National Environment Policy 2022-32*, 2023, p. 19.

¹⁸⁸ Cook Islands National Environment Service, *National Environment Policy 2022-32*, 2023, p. 16, 19.

¹⁸⁹ Diamir de Scally and Brent Doberstein, *Local knowledge in climate change adaptation in the Cook Islands*, 2021, Climate and Development, p. 7.

¹⁹⁰ Ngatae Mitaera Teatuakaro Tavioni Teranginui-o-iva, *Testimony of Ngatae Mitaera Teatuakaro Tavioni Teranginui-o-iva Impacted by the Effects of Climate Change*, 14 March 2024, para. 6 (emphasis added) (**Annex No. 13**).

124. Importantly, Koka'ua's testimonial also highlights the lack of support and value placed on traditional knowledge at the UNFCCC level, including by donors and funders as follows:

[W]e just are not resourced to really undertake a full scale Indigenous knowledge revitalisation at the moment. So that's the major barrier. And yeah, it's not really valued. Again, by the colonial powers, when we talk about funding at the COP meetings, for example, like *Indigenous knowledge, it's a very small mention. Funding that goes directly to Indigenous peoples is very small. don't know what the stats are, but it'd be in the single digits of overall climate funding that would go to Indigenous peoples, probably around one to two percent.* So yeah, those are obviously clear areas where we could be supported to bring knowledge that can help us with, you know, help the planet with our adaptation and eventually mitigation to climate change as well.¹⁹¹

14. Impacts on vulnerable groups

125. One of the groups most vulnerable to the impacts of climate change in the Cook Islands are the youth or young people. As 16-year old Cook Islander Emma Louisa Papalii notes in her testimonial for the Court, she has had to adapt and become resilient to the impacts of climate change:

Growing up, the environment I have lived in has always made me embrace change and how to counteract, especially during floods with sleepless nights and having to go out into the rain to stop the water from going through the house. *I've become more resilient and normalised to this routine during periods of heavy rain.*

...

A climate event that I experienced that made me aware of the realities of the climate crisis and how serious it is, is beach erosion. As the sea level rises, I have seen how small the beaches here in Rarotonga are becoming. Another experience that I have been through or have seen is on the island of Manihiki. The atoll is becoming narrower due to sea level rise making the island more vulnerable with less land mass.¹⁹²

126. Similarly, 16-year old Cook Islander Maddyson Kaylee Spurle-Lowe has observed the impacts of climate change when she is paddling in the water as follows:

When we're out on the ocean, I've noticed that the tides are higher and more

¹⁹¹ Liam Ramsay Tuaivi Koka'ua, *Testimony of Liam Ramsay Tuaivi Koka'ua Impacted by the Effects of Climate Change*, 14 March 2024, para. 25 (emphasis added).

¹⁹² Emma Louisa Papalii, *Testimony of Emma Louisa Papalii Impacted by the Effects of Climate Change*, 14 March 2024, paras. 6, 8 (emphasis added) (**Annex No. 14**).

unpredictable. *Climate change has affected my paddling community in that the tides are staying out longer than usual. Now we're carrying our canoes in from a further distance than we used to and the current, when the tide comes back in, has more of a surge power to it. Knocking our boats against the harbor walls or other boats.*

In terms of the Cook Islands, I know climate change affects more than the ocean. With the heavy rains we had last year, you could see the plantations and vegetable crops that were impacted. Our food security is in danger on land as well as in the sea.¹⁹³

127. There is also concern about the impacts of climate change on children's health, particularly children with allergies and health conditions as Cook Islander Henry Herman notes in his testimonial for the Court. In recounting the negative impacts of climate change on his young daughter, and his family as a whole, Herman speaks to his worry for his children and "all future generations in the Cook Islands" as follows:

In my experience climate change or specifically warmer climates can also impact the Cook Islands in relation to health issues. My daughter has allergies that are susceptible to heat fluctuations, pollen and dirt in the air, however I feel as the warmer weather becomes more warmer and more intense for longer periods her allergies in the last two years has intensified which sadly has caused her to miss quite a number of days of school. At its extreme, she in fact ended up in Starship Hospital, Auckland, New Zealand for some weeks and lived in New Zealand with my wife for about three months last year for a rare allergic skin reaction to chicken pox. *The economic and social (family separation and education) costs were therefore significant for our family in the Cook Islands.*

*Unless something is done to address climate change then I worry for my children and all future generations in the Cook Islands. As a small island state (15 islands) 15 dots on the world map, given our small size (land and population) we are extremely vulnerable to the varied impacts of climate change whether it is extreme and frequent natural disasters, droughts or pollutants in the air and water.*¹⁹⁴

128. Given the detrimental impacts of climate change on the Cook Islands, Papalii states there is an urgent need for climate action from those outside of the Cook Islands who may not be as impacted by climate change as Cook Islanders are:

¹⁹³ Maddyson Kaylee Spurle-Lowe, *Testimony of Maddyson Kaylee Spurle-Lowe Impacted by the Effects of Climate Change*, 14 March 2024, paras. 12 (emphasis added) (**Annex No. 15**).

¹⁹⁴ Henry Herman, *Testimony of Henry Herman Impacted by the Effects of Climate Change*, 8 March 2024, paras. 10-11 (emphasis added) (**Annex No. 16**).

We need to make those outside of our community better understand that climate change is real. We should say that climate change is like cancer, it doesn't tell you that it's coming and it doesn't tell you how it's going to affect you. No. It will just come and all of sudden you need to figure it out.¹⁹⁵

129. Another vulnerable group in the Cook Islands are Cook Islander women, whose livelihoods are especially affected by the impacts of climate change on the Cook Islands. These impacts are highlighted in the testimonial for the Court provided by Vaine Wichman, the president of the Cook Islands National Council of Women, as follows:

Supply and access to the raw materials many Cook Islands women rely on are now being hampered by the impacts of climate change, and as a result I believe that the Cook Islands handicraft sector has been under threat and stress for over the last 10 years. This is an issue as women who work in this sector rely on this revenue, and it very important to their home security and their opportunities in life such as education and community participation options, and decision making.

Handicraft production is the main income source of many women who live in the outer islands (Pa Enea) of the Cook Islands, and it is also a way that cultural knowledge stays alive.¹⁹⁶

130. Importantly, Wichman emphasizes that the particular impacts of climate change of Cook Islander women indicate the need for increased participation of Cook Islander women in climate change decision making as follows:

I believe that increased participation of women and vulnerable groups in decision making processes, along with training activities, will strengthen local capacities to undertake key initiatives for climate change adaptation. This can be through enhancing food systems resilience, water security and economic recovery. This can also, over time, contribute to change in social, cultural, and gender norms. In addition to helping meet immediate basic needs, livelihood interventions can improve the future prospects of women and girls, and change the way the community treats them when their contribution to economic security is recognized.¹⁹⁷

¹⁹⁵ Emma Louisa Papalii, *Testimony of Emma Louisa Papalii Impacted by the Effects of Climate Change*, 14 March 2024, paras. 6, 8 (emphasis added).

¹⁹⁶ Vaine Wichman, *Testimony of Vaine Wichman Impacted by the Effects of Climate Change*, 14 March 2024, paras. 4-5 (emphasis added) (**Annex No. 17**).

¹⁹⁷ Vaine Wichman, *Testimony of Vaine Wichman Impacted by the Effects of Climate Change*, 14 March 2024, paras. 7 (emphasis added).

IV. THE COOK ISLANDS' APPROACH TO QUESTION (A)

131. This brief chapter explains the Cook Islands' approach to its submissions on the Question (a) put to the Court in the UNGA Resolution 77/276. This approach seeks to read and synthesize different sources and areas of international law together to articulate obligations of States ('**synthesizing approach**'). This is opposed to an approach that separates and organises obligations strictly according to the different sources of international law they derive from, and/or according to the different areas or categories of law they are located in ('**separating approach**'). The Cook Islands respectfully submits that the synthesizing approach is both permissible and necessary for four reasons:¹⁹⁸

132. **First**, this synthesizing approach aligns with the UNGA Resolution 77/276 which requests for the Court not to limit itself to the interpretation and application of one or two treaties, but to identify the relevant obligations from the entire corpus of international law and assess the legal consequences of the conduct causing climate change under international law. This particular request to the Court is made in the first paragraph of the questions put to the Court, which states:

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.

133. The UNGA Resolution 77/276 also makes clear that the list of sources of international law in its text is non-exhaustive and that "other instruments" can be considered and drawn upon as noted in the following preambular paragraph of the UNGA Resolution 77/276 below:

Emphasizing the importance of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the United Nations Convention on the Law of the Sea, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification

¹⁹⁸ While the Cook Islands only presents its views on Question (a) in this Statement, it is respectfully submitted that the synthesizing approach is also permissible and necessary for the Court to address Question (b).

in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, among other instruments, and of the relevant principles and relevant obligations of customary international law, including those reflected in the Declaration of the United Nations Conference on the Human Environment and the Rio Declaration on Environment and Development, to the conduct of States over time in relation to activities that contribute to climate change and its adverse effects

134. Therefore, the Cook Islands respectfully submits that adopting the separating approach risks undermining UNGA's request in the UNGA Resolution 77/276 by unduly leading States and the Court itself to only consider a few of the sources of international law listed in the text of the UNGA Resolution 77/276 in a rigid and mechanical manner, let alone other important and relevant sources not noted in the text.
135. **Second**, this synthesizing approach is permissible because the UNFCCC, including the Paris Agreement, is not a *lex specialis*¹⁹⁹ regime that regulates all climate action and singularly provides for all of States' obligations in respect of climate change, and legal consequences under States' obligations, to the exclusion of all other general rules of international law, including States' human rights obligations. Rather, the Cook Islands respectfully submits that in regard to States' climate change obligations under the UNFCCC, the principle of *lex specialis* applies only to a limited extent, for example in respect of certain core principles such as the common but differentiated responsibility ('**CBDR**') principle.²⁰⁰ This is because the texts of the UNFCCC, including the Paris Agreement, make clear that other rules of international law, such as customary international law and States' human rights obligations, are not to be excluded as important sources of States' obligations in respect of climate change, and legal consequences under these obligations.
136. In regards to customary international law, one of the preambulatory paragraphs in the UNFCCC explicitly refers to both the UN Charter and the no-harm principle of customary international law,²⁰¹ thus suggesting that States Parties to the UNFCCC did not intend for customary international law to be rendered inapplicable to States' obligations under the UNFCCC.²⁰²
137. In regards to general principles of international law, the guiding principles for the regime outlined in Article 3 of the UNFCCC, explicitly include the

¹⁹⁹ The principle of *lex specialis* or *lex specialis derogat legi generali* provides for the exclusive application of rules in a specialised field and follows that a specialised treaty law takes precedence over general rules of international law, see Ilias Bantekas and Lutz Oette, *International Human Rights: Law and Practice*, 2016, ch. 15.4; Malcolm N. Shaw, *International Law*, 2003, p. 116.

²⁰⁰ Margreet Wewerinke and Curtis F. J. Doebbler, *Exploring the Legal Basis of a Human Rights Approach to Climate Change*, 2011, Chinese Journal of International Law, p. 145.

²⁰¹ UNFCCC [1992] 1771 UNTS 107, preamble ('**UNFCCC**').

²⁰² Alice Venn, *Rendering International Human Rights Law Fit for Purpose on Climate Change*, Human Rights LawReview, 2023, p. 6.

precautionary principle and the principles of intra-generational equity, sustainable development and CBDR.²⁰³ As Teresa Thorp has persuasively argued, the inclusion of these principles follows that Article 3 is intrinsically linked to general principles of international law and raises the importance of the broader principles of equity, solidarity and good neighbourliness to States' obligations under the UNFCCC.²⁰⁴ Also, as Dr Alice Venn aptly posits, a broadened approach to *lex specialis* in regards to the UNFCCC is advantageous for States Parties as it increases the "capacity of the more general principles of equity and precaution to help address the uncertainty and multifaceted nature of climate challenge."²⁰⁵

138. In regard to States' human rights obligations, the Cook Islands submits that the UNFCCC allows, if not encourages, the inclusion and synthesis of States' human rights obligations and States' obligations under the UNFCCC. This is made clear in the preambular text of the Paris Agreement makes explicit reference to States' human rights obligations and their importance to addressing climate change as follows:

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, *respect, promote and consider their respective obligations on human rights*, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to and the right to development, as well as gender equality, empowerment of women and intergenerational equity,²⁰⁶

139. Importantly, States Parties to the Paris Agreement also affirmed this commitment to fulfilling their human rights obligations in the Glasgow Climate Pact agreed to at COP 26 in 2022, which calls for States Parties "to respect, promote, and consider their respective obligations on human rights."²⁰⁷

140. The Cook Islands submits that the words "promote" and "consider" indicate that States are strong and instructive in encouraging States to actively, not passively, fulfil their human rights obligations in taking climate action under the UNFCCC. Further below, this Statement outlines in some of the specific ways

²⁰³ UNFCCC, Article 3.

²⁰⁴ Teresa Thorp, *Climate Justice: A Constitutional Approach to Unify the Lex Specialis Principles of International Climate Law*, 2012, *Utrecht Law Review*, p. 36-37.

²⁰⁵ Alice Venn, *Rendering International Human Rights Law Fit for Purpose on Climate Change*, *Human Rights Law Review*, 2023, p. 6.

²⁰⁶ Paris Agreement, [2015] (signed 12 December 2015) entered into force 4 November 2016, C.N.92.2016.TREATIES-XXVII.7.d , preamble.

²⁰⁷ UN Framework Convention on Climate Change, Decision 1/CMA.3 'Glasgow Climate Pact', Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its third session, held in Glasgow from 31 October to 13 November 2021 (8 March 2022) FCCC/PA/CMA/2021/10/Add.1, preamble.

in which States' must act in accordance with their human rights obligations in order to fulfil the proposed obligations in respect of climate change (See **Chapter V, Part A, Section 6** and **Chapter V, Part B, Section 4, Subsection (d), below**).

141. In submitting that principle of *lex specialis* applies to the UNFCCC to a very limited extent, the Cook Islands acknowledges the importance of and rationale for the principle of *lex specialis*, which includes the need to preserve the sovereignty of states and their freedom to choose the specialised rules they are bound by in certain contexts and fields, and the need to ensure the effective operation of rules by reducing the likelihood of unclear exceptions and inconsistencies.²⁰⁸
142. However, the Cook Islands respectfully submits, as compellingly argued by Dr Venn, that this rationale can be “called into question if the designation of *lex specialis* serves to restrict or prevent the attainment of the overarching aims of ...of the UNFCCC, the ‘stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.’”²⁰⁹
143. **Third**, this synthesizing approach helps the Court and all States to clarify how existing sources of law provide the obligations and legal consequences they contain, and does not in any way seek to articulate obligations and legal consequences under these obligations that are new, unfamiliar and unlike the obligations that States have consented to. As the Cook Islands argues in its submissions below (See **Chapter V, Part A, Section 5** and **Chapter V, Part B, Sections 3-4, below**), the obligations that the Cook Islands proposes derive from international treaties that have received near universal treaty ratification, as well as widely accepted principles of customary international law. Therefore, the Cook Islands respectfully submits that the vast majority of States consent not only to various obligations and consequences from these sources co-existing together, but being synthesized and connected to each other where necessary and appropriate.
144. **Fourth**, this synthesizing approach enables the Court and all States to understand and articulate key connections between various sources of international law that are deeply engaged and implicated by the impacts of climate change, particularly in relation to present and future generations and small island developing States which are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change.

²⁰⁸ Bruno Simma and Dirk Pulkowski, *Of Planets and the Universe: Self-contained Regimes in International Law*, 2006, *European Journal of International Law*, p. 486-487.

²⁰⁹ Alice Venn, *Rendering International Human Rights Law Fit for Purpose on Climate Change*, *Human Rights Law Review*, 2023, p. 6, citing UNFCCC, Article 2.

145. As the Cook Islands further argues in its submissions below, the impacts of climate change not only make clear that human rights, and the obligations of States they entail, are indivisible, interdependent and interrelated,²¹⁰ but that many, if not most of States' obligations at international law, are indivisible, interdependent and interrelated too, especially when it comes to climate change. As compellingly argued by Professor Margaret Young below, the global problem of climate change demands that the international community strive to understand the relationships, connections and tensions between the different norms and legal orders that are implicated by climate change:

Different areas of legal specialization are involved—including, but not limited to, trade, environmental law, and human rights, and we need to work to understand how norms and legal orders fit together. We also need to continue to ask how these legal orders *should* fit together, united as we are by the global problem, but highly unequal, both within and between states, in our contributions and capacities to deal with it.²¹¹

146. Here, Professor Young draws attention to the reality that the impacts of climate change, and the inequalities and injustices they exacerbate and create, cannot be addressed by drawing on just one or a few treaties and regimes. Accordingly, the Cook Islands submits that the synthesizing approach it adopts in this Statement allows for the Court and all States to articulate obligations of States, and legal consequences under those obligations, that are clear, exacting and practical enough to serve the needs and aspirations of present and future generations, particularly those from small island developing States that are particularly vulnerable to the adverse effects of climate change. This follows that adopting the alternative separating approach would be detrimental to honouring the spirit of climate justice driving the UNGA Resolution 77/276.

147. In adopting this synthesizing approach to its submissions, the Cook Islands acknowledges that the various sources of international law that it strives to read and synthesize will not all fit seamlessly together, and in fact, some have points of tension with one another. However, the Cook Islands respectfully submits that the existence of these tensions should not be viewed as being fatal to the synthesizing approach. This is not only because of the four reasons noted above, but also because the Court, as well as other courts and treaty bodies, and States themselves have opportunities, both in these advisory proceedings and beyond them, to consider and address these tensions when and where appropriate.

²¹⁰ The indivisibility of human rights is an official doctrine of the UN as affirmed by the UNGA in 1977, see General Assembly Resolution 32/130, 16 December 1977, para .1(a).

²¹¹ Margaret A. Young, *Charting the Course When International Law Is Fragmented*, Proceedings of the ASIL Annual Meeting, 2021, p. 212. See also Margaret A. Young and Markus W. Gehring, *The Climate Regime and Other Areas of Law*, 2023, Climate Law, p.151-161.

V. THE COOK ISLANDS' VIEWS ON QUESTION (A): THE OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

148. This chapter presents the Cook Islands' views on Question (a) put to the Court regarding the obligations of States in respect of climate change. **Part A** proposes that States have an obligation to take all necessary measures to mitigate their GHG emissions to protect and preserve the marine environments of other States in accordance with their extraterritorial human rights obligations ('**Proposed Obligation A**'). Then **Part B** proposes that States have an obligation to support, assist and finance the use and implementation of traditional knowledge in adaptation actions in accordance with their human rights obligations ('**Proposed Obligation B**').

A. States have an obligation to take all necessary measures to mitigate their GHG emissions to protect and preserve the marine environments of other States in accordance with their extraterritorial human rights obligations

1. *Introduction*

149. To explain how various sources of international law have been synthesized to articulate Proposed Obligation A, this part has 6 sections. Following this introduction, **Section 2** outlines the legal core of this proposed obligation, which is Article 192 of the United Nations Convention on the Law of the Sea ('**UNCLOS**') and notes how this legal core informs States' obligations under Part XVII of the UNCLOS, including obligation under Article 194. **Section 3** then explains how Article 194 imports and embeds the duty of diligence and the principle to prevent significant harm to the environment of another State. **Section 4** submits that States have an obligation under Article 194 to take all necessary measures to mitigate their GHG emissions to protect and preserve the marine environments of other States. **Section 5** then submits that this obligation can and must be fulfilled in accordance with States human rights obligations. Finally, **Section 6** submits the necessary measures States must take under this proposed obligation.

2. *The legal core: Article 192 of the UNCLOS*

150. The legal core of this proposed obligation is Article 192 of the UNCLOS which states in very general terms that "States have the obligation to protect and preserve the marine environment."²¹²

²¹² United Nations Convention on the Law of the Sea, 10 December 1982, 1833 UNTS 397, Article 192 ('**UNCLOS**')

151. This broad and general phrasing of the Article 192 obligation makes clear its highly generalised scope in requiring all States to “protect and preserve the marine environment” against all acts and omissions that threaten or cause harm to the marine environment, regardless of the vector or form of the harm.
152. Regarding the meaning of “marine environment” under Article 192, this term is notably not defined in the UNCLOS. Nevertheless, the Cook Islands submits that the whole of the UNCLOS text makes clear that “marine environment” includes all maritime zones and the entire marine ecosystem, including the living and non-living species and resources of the ocean, the seabed, and the whole water column.
153. Furthermore, the text of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (**‘BBNJ Agreement’**) makes clear that the general Article 192 obligation applies to the entire marine environment including beyond national jurisdiction. Specifically, the first paragraph of the preambular text of the BBNJ Agreement recalls the general Article 192 obligation to protect and preserve the marine environment.²¹³ Additionally, Article 27(b) of the BBNJ Agreement requires States to conduct environmental impact assessments to satisfy their obligation to “protect and preserve the marine environment” in areas beyond national jurisdiction.²¹⁴ While the BBNJ Agreement has not yet entered into force, the Cook Islands respectfully submits that it is still important to note how these provisions extend the reach of the general Article 192 obligation to matters of biodiversity beyond national jurisdiction.
154. Regarding the meaning of “protect and preserve” in Article 192, this phrase is also not defined in the UNCLOS text. However, the tribunal in *South China Sea* helpfully explained that:

This “general obligation” extends both to “protection” of the marine environment from future damage and “preservation” in the sense of maintaining or improving its present condition. Article 192 thus entails the positive obligation to take active measures to protect and preserve the marine environment, and by logical implication, entails the negative obligation not to degrade the marine environment.²¹⁵

²¹³ Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, 20 September 2023, C.N.202.2023.TREATIES-XXI.10, preamble (**‘BBNJ Agreement’**).

²¹⁴ BBNJ Agreement, Article 27(b).

²¹⁵ *South China Sea Arbitration (Philippines v. China)*, PCA Case No. 2013-19, Award, 12 July 2016, (**‘South China Sea’**), p. 941 (emphasis added).

155. In interpreting the tribunal’s explanation here, the Cook Islands submits that the obligation to “protect” requires States to take steps to actively prevent further and future harm from being inflicted on the marine environment, and the obligation to “preserve” requires States to take steps to maintain and improve the present condition of the marine environment that go beyond just maintaining its present condition.

156. it is critical to note that this general obligation informs, shapes and colours the other provisions from Articles 193-196 in Part XII, including Article 194. This point was clearly articulated by Professor Alan Boyle as follows:

[I]t is clear from the totality of Articles 192–196 that Part XII was never intended to be simply about pollution, and that it encompasses protection of ecosystems, conservation of depleted or endangered species of marine life and control of alien species.²¹⁶

157. With the legal core of Proposed Obligation A now established, **section 3 below** outlines the other major foundation of Proposed Obligation A, which is Article 194(2), and the duty of due diligence and principle of prevention of significant harm to the environment it imposes on States.

3. Article 194 of the UNCLOS imposes on States the duty of due diligence and principle of prevention of significant harm to the environment

158. Article 194 sets out States obligations to “prevent, reduce and control pollution of the marine environment”. Specifically, Article 194(1) states:

States shall take, individually or jointly as appropriate, *all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source*, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, *and they shall endeavour to harmonize their policies in this connection.*²¹⁷

159. Importantly, Article 194(2) further obliges States to take all measures necessary to ensure they do not cause damage by pollution to the *other* States and their environment as follows:

States shall take *all measures necessary* to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or

²¹⁶ Alan Boyle, *The Environmental Jurisprudence of the International Tribunal for the Law of the Sea*, 2007, Int’l J. Marine & Coastal L, p. 373.

²¹⁷ UNCLOS, Article 194(1).

activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.²¹⁸

160. As noted by the Court in *Pulp Mills*, Article 194(2) clearly imposes the duty of due diligence on States.²¹⁹
161. The duty of due diligence is a well-established norm of customary international law. As noted by the Court in the *Corfu Channel* case, the duty of due diligence entails “[E]very State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States” and to exercise its jurisdiction in a manner “corresponding to circumstances” to prevent harm within its own territory or under its control from infringing on “the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory”.²²⁰
162. The appropriate standard of care that the duty of due diligence imposes is determined by a number of factors, including the risk of the harm, the degree of certainty regarding the harm and the severity of the harm.²²¹
163. Regarding the risk of harm and the degree of certainty regarding the harm, States are required to act with diligence to prevent all reasonably foreseeable risks, even where those risks cannot be characterised with complete certainty.²²² As the ITLOS Seabed Chamber explained, the due diligence obligation “applies in situations where scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient but where there are plausible indications of potential risks.”²²³
164. Regarding the severity of harm, there is no specific threshold of significant harm that needs to be met before the duty of due diligence is triggered. Instead, the duty is triggered whenever there is any degree of risk, and it must then be exercised in proportion to the degree of risk.²²⁴

²¹⁸ UNCLOS, Article 194(2).

²¹⁹ *Pulp Mills Judgment*, para. 101.

²²⁰ *Corfu Channel (United Kingdom v. Albania)*, I.C.J. Reports 1949, p. 22.

²²¹ *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, p. 130.

²²² *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion of 1 February 2011, ITLOS Case No. 17, para. 131.

²²³ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion of 1 February 2011, ITLOS Case No. 17, para. 131.

²²⁴ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*, Advisory Opinion of 1 February 2011, ITLOS Case No. 17, para. 131, referring further to *Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan)*, Order of 27 August 1999, ITLOS Reports 1999, p. 274, para. 77.

165. Importantly, because the duty of due diligence is understood to be deeply interlinked with the principle of prevention of significant harm to the environment beyond jurisdiction,²²⁵ the Cook Islands submits that Article 194(2) imports this principle of international law as well.
166. The principle of prevention of significant harm to the environment is a well-established customary norm of general international law that provides that no State has the right to use or permit the use of its territory in such a manner as to cause injury to the environment of another State.²²⁶ As such, the principle imposes extraterritorial responsibilities on States.
167. The principle has been affirmed by the Court in a number of contentious cases and advisory opinions as forming part of the corpus of international law,²²⁷ with the Court in *Chile v. Bolivia* noting that the principle obliges States to “use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State.”²²⁸ Accordingly, the principle extends to the activities of third parties occurring within a State’s territory, jurisdiction or control.
168. The principle is also captured in Article 3 of the Convention on Biological Diversity (**‘CBD’**), which states:

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 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.*²²⁹

²²⁵ As noted in the *Commentaries to the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities*, Yearbook of the International Law Commission, 2001, para. 7, cited in Phillippe Sands and Jacqueline Peel, *Principles of International Environmental Law*, 2019, p. 211.

²²⁶ P ‘Stockholm Declaration, Principle 21; Rio Declaration, Principle 2.

²²⁷ See, *Legality of the Threat or Use of Nuclear Weapons*, I.C.J. Reports 1996, paras. 27-28, p. 226. (noting “The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment”); *Gabcikovo-Nagymaros Project (Hungary/Slovakia)* I.C.J. Reports 1997, para. 140, p.7; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, I.C.J. Reports 2010, para.101, p. 14; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* I.C.J. Reports 2015 (II), para. 104, p. 706; *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, Judgment, I.C.J. Reports 2022, paras. 83, 99, p. 614.

²²⁸ *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, Judgment, I.C.J. Reports 2022, p. 614, paras. 83 and 99 (quoting *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), p. 55-56, para. 101).

²²⁹ Convention on Biological Diversity, 5 June 1992, 1760 UNTS 69, Article 3 (emphasis added) (**‘CBD’**).

169. In terms of what is meant by “significant”, the ILC defines “significant” as meaning “more than detectable but need not rise to the level of serious or substantial”, as defined by the ILC.²³⁰

170. In terms of “harm”, the ILC’s definition of “harm” includes harm caused to “persons”, “property” and “the environment”.²³¹ The Court in *Legality of the Threat or Use of Nuclear Weapons* also helpfully clarified that the environment is “not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.”²³²

4. States’ obligation under Article 194(2) applies to mitigating GHG emissions to protect and preserve the marine environment of other States

171. The Cook Islands submits that States’ obligations under Article 194(2) applies to States’ conduct in respect of GHG emissions because GHG emissions meet the definition of “pollution of the marine environment” under the UNCLOS.

172. Article 1(1)(4) defines “pollution of the marine environment” for Article 194(2) and the rest of the UNCLOS as follows:

[T]he introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.²³³

173. The Cook Islands submits that GHG emissions meet the components of this definition as they are undoubtedly caused “by man”.

174. As the Cook Islands notes above, GHG emissions also effectively “directly or indirectly” introduce “substances or energy” into the marine environment both within and beyond States’ territorial boundaries which result in ocean warming, sea-level rise, and ocean acidification (See **Chapter III, Part B, Sections 1-3, above**) and in turn “deleterious effects” to the marine environment as

²³⁰ Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, with commentaries, 12 December 2001, GA Res. 56/82, UN Doc. A/RES/56/82, commentary to Article 2, at para. 4.

²³¹ Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, with commentaries, 12 December 2001, GA Res. 56/82, UN Doc. A/RES/56/82, commentary to Article 2, at para. 4.

²³² *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, paras. 27-28.

²³³ UNCLOS, Article 1(1)(4).

illustrated by the impacts of GHG, as the predominant cause of climate change, on the Cook Islands (See **Chapter III, Part B, Sections 1-8, above**).

175. Therefore, the duty of due diligence and the principle of prevention of significant harm to the environments of other States applies to States' conduct in respect of GHG emissions as well.
176. Specifically, as noted above, to determine the standard of care for States' duty of due diligence in respect of GHG emissions, the factors that need to be considered include the risk of the harm, the degree of certainty regarding the harm and the severity of the harm (See **Chapter V, Part A, Section 3, Paragraph 162, above**).
177. In considering these factors, it is necessary to consider the scientific consensus on GHG emissions and the particular impacts of GHG emissions on States which can be illustrated by the impacts of climate change on the Cook Islands as noted above (See **Chapter III, Part B, Sections 2-14**).
178. Accordingly, the Cook Islands submits that the significant risk of harm that GHG emissions poses on States, the immense severity of this harm, and the great degree of certainty regarding the harm together follow that the appropriate standard of care imposed on States regarding their GHG emissions is extremely high and demands GHG emissions mitigation to the greatest degree possible.
179. Similarly, in considering these key elements of the principle of prevention of significant harm to the environment of other States, the Cook Islands submits that this principle requires States to use all means at their disposal to ensure that activities which result in the pollution of GHG emissions emanating from their territory, or in any area under its jurisdiction or control, do not cause significant harm to the environment of another State, including to individuals and communities of individuals in other States.
180. Further below, this Statement explains the ways in which the extreme standard of due diligence and the principle of prevention of significant harm to the environment of other States help to determine the necessary measures States must take to fulfil Proposed Obligation A (see **Chapter V, Part A, Section 6, below**). However, before doing so, it is necessary to first explain why this obligation under Article 194(2) must also be fulfilled in accordance with States' human rights obligations owed to individuals in other States.

5. *The obligation of States to mitigate emissions to protect and preserve the marine environments of other States from the impacts of climate change must also be fulfilled in accordance with States' extraterritorial human rights obligations owed to individuals in other States*

181. The Cook Islands submits that the obligation of States to mitigate emissions to protect and preserve the marine environments of other States must be fulfilled in accordance with States' human rights obligations owed to individuals in other States.

182. This particular adoption of a synthesizing approach to synthesize States' obligations under Article 194(2) of the UNCLOS and their obligations under human rights treaties is not only permissible but necessary for four interrelated reasons. The following three **subsections (a) to (c)** outline these reasons below.

(a) States' obligations under human rights treaties can be extraterritorial in scope to create a point of convergence with States' extraterritorial obligation under Article 194(2) of the UNCLOS

183. The Cook Islands acknowledges that States might argue that States' human rights obligations cannot be synthesized with State's obligations under Article 194(2) because the UNCLOS is an international treaty that provides for States' obligations in respect of other States, whereas international human rights treaties provide for States' obligations to individuals.

184. In response to this possible argument, the Cook Islands respectfully submits that States' human rights obligations in certain circumstances can be extraterritorial in scope, meaning that States can owe human rights obligations to individuals outside their own State's territory or jurisdiction. When States do owe human rights obligations to individuals extraterritorially, it is submitted that the extraterritorial scope of Article 194(2) of the UNCLOS is engaged, creating a point of convergence in which States must fulfil their extraterritorial obligation under Article 194(2) in accordance with their extraterritorial human rights obligations.

185. In terms of the extraterritorial scope of States' human rights obligations under the International Covenant on Economic, Social and Cultural Rights ('ICESCR'), the Cook Islands submits that the wording of Article 2(1) of the ICESCR is framed in an open and inclusive manner in obliging all States Parties to take steps both individually and "through international assistance and co-operation, especially economic and technical, to the maximum of its

available resources”.²³⁴ As Dr Venn remarked, this “leaves the door open to the development of extraterritorial duties at the global level.”²³⁵ Notably, Professor John Knox also acknowledged the extraterritorial extension of the ICESCR rights as being “plausible” for States’ obligations in respect of climate change.²³⁶

186. In terms of the extraterritorial scope of States’ human rights obligations under the International Covenant on Civil and Political Rights (**‘ICCPR’**), Article 2(1) obliges States Parties to “respect and to ensure to all individuals *within its territory and subject to its jurisdiction* the rights recognized in the present Covenant.”²³⁷ Similarly, Article 2(1) of the UN Convention on the Rights of the Child (**‘UNCRC’**) establishes that States should respect and ensure the Convention rights “*within their jurisdiction*.”²³⁸
187. Although this phrasing in both the ICCPR and the UNCRC might be interpreted as strictly limiting States’ obligations under the ICCPR and UNCRC to their territorial boundaries, the Cook Islands respectfully submits that such an interpretation should not be adopted by the Court. This is on the grounds that the Court has previously interpreted these jurisdictional boundaries broadly and flexibly to effectively allow both the ICCPR and the UNCRC to have extraterritorial scope where and when appropriate and necessary to uphold the object and purpose of human rights treaties.
188. For example, the Court in the *Wall* Advisory Opinion stated that a State’s “jurisdiction” could be exercised outside of the territory and, in light of the object and purpose of the Covenant, “it would seem natural” that human rights obligations under the ICCPR and the UNCRC would apply under such circumstances.²³⁹ Accordingly, the Court held that the human rights obligations contained in the ICCPR, the ICESCR and the CRC applied to Israeli activities in the Occupied Palestinian Territories.

²³⁴ ICESCR, Article 2(1).

²³⁵ Alice Venn, *Rendering International Human Rights Law Fit for Purpose on Climate Change*, Human Rights Law Review, 2023, p. 21-22.

²³⁶ John H. Knox, *Climate Change and Human Rights Law*, 2009, Virginia Journal of International Law p. 207-208, as cited in Alice Venn, *Rendering International Human Rights Law Fit for Purpose on Climate Change*, Human Rights Law Review, 2023, p. 222.

²³⁷ International Covenant on Civil and Political Rights [1966] UN Treaty Series, Vol. 999, 171, Article 2(1) (emphasis added) (**‘ICCPR’**).

²³⁸ Convention on the Rights of the Child [1989] United Nations Treaty Series, Vol. 1577., Article 2(1) (emphasis added) (**‘UNCRC’**).

²³⁹ Wall Advisory Opinion, p. 47.

189. Furthermore, the Court in the *DRC v Uganda* case found that Uganda was internationally responsible, inter alia, for violations of the ICCPR and the CRC rights committed by armed groups in the territory of the DRC.²⁴⁰
190. The Cook Islands respectfully submits that despite the clear contextual differences between States' conduct of their armed militaries and States' conduct around their GHG emissions, the principles and findings by the Court nonetheless extends to States' conduct around GHG emissions to enable the ICCPR and UNCRC to have extraterritorial scope in these circumstances. This is for the following two interrelated reasons:
191. **First**, it is submitted that because GHG emissions from States, particularly high emitting States, have resulted in the incessant release of pervasive and immensely damaging pollution to other States' territories with profound impacts on those States' environments and peoples, GHG emissions from high emitting States should constitute actual or attempted acts of exercising jurisdiction over other States.
192. **Second**, it is submitted that the ways in which States have the ability to both foresee and determine if or to what extent their armed military can violate the human rights of individuals in other States, is deeply analogous to the ways in which States have the ability to both foresee and determine if or to what extent their emissions damage the environments of other States and the human rights of individuals in other States. Therefore, when and where States have the foresight and ability to violate or not violate the human rights of individuals outside their State's territory, that State's human rights obligations must be engaged to ensure that they avoid or cease violating the human rights of individuals outside of their territory.
193. It is also important to note that in regard to human rights under the ICCPR specifically, the Human Rights Committee ('**Committee**') issued a general comment that the ICCPR broadly entails the obligations of States to ensure the rights "to anyone within the power or effective control of that State Party, even if not situated within the territory."²⁴¹
194. The Cook Islands submits that the same arguments submitted in **Paragraphs 191-192 above** can be extended to apply to the Committee's comment as well, where States, particularly high emitting States, exercise power and effective control over individuals in other States who are damaged and profoundly impacted by GHG emissions as pollution to the marine environment.

²⁴⁰ Case Concerning Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v Uganda*) [2005] Judgment, I.C.J. Reports 2005, p. 168, at 79–81.

²⁴¹ The Committee, *General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant*, 29 March 2004, available at: www.unhcr.org/4963237716.pdf

(b) States Parties to the UNCLOS are also States Parties to key human rights treaties

195. The Cook Islands acknowledges that States might argue that human rights obligations cannot apply to States' obligations under Article 194(2) because States Parties to both the UNCLOS and human rights treaties have not consented to these broad sets of obligations being synthesized together.
196. In response to this possible argument, the Cook Islands submits that because the majority of State Parties to the UNCLOS are also States Parties to key human rights treaties, these States have effectively consented to these broad types of obligations co-existing and being read and synthesized together.
197. As of 8 March 2024, there are 169 States Parties to the UNCLOS.²⁴² In terms of some of the key human rights treaties, as of 8 March 2023, the International Covenant on Civil and Political Rights ICCPR has been ratified by 174 States²⁴³ and the ICESCR has been ratified by 172 States.²⁴⁴ Furthermore, as of 8 March 2024, 196 States have ratified the UNCRC, which in substantive scope covers the whole catalogue of human rights.
198. In light of these near universal ratification patterns for these key human rights treaties, the Cook Islands submits that the vast majority of States by 2024 have accepted as international treaty obligations the whole catalogue of human rights enshrined in the Universal Declaration of Human Rights ('UDHR') and in customary international law.²⁴⁵
199. Accordingly, the Cook Islands submits that States Parties to the UNCLOS and human rights treaties not only contemplate these sets of obligations and their various instruments they derive from being read and synthesized together to

²⁴² Division for Ocean Affairs and the Law of the Sea, *Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements*, available at: https://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm. The 15 UN Member states who have neither signed nor ratified the UNCLOS are Andorra, Eritrea, Israel, Kazakhstan, Kyrgyzstan, Peru, San Marino, South Sudan, Syria, Tajikistan, Turkey, Turkmenistan, the US, Uzbekistan and Venezuela.

²⁴³ United Nations Treaty Collection, *International Covenant on Civil and Political Rights*, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en

²⁴⁴ United Nations Treaty Collection, *International Covenant on Economic, Social and Cultural Rights*, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en

²⁴⁵ The one qualification that needs to be made here is that the United States of America has not ratified the ICCPR and the UN Convention on the Rights of the Child. In light of this, the United States of America's acceptance of some of economic and social treaty obligations and child specific obligations is based on other treaties it has ratified, such as certain Conventions of the International Labour Organization ('ILO Conventions') and the International Convention on the Elimination of All Forms of Racial Discrimination ('ICERD').

articulate specific obligations like Proposed Obligation A. This is on four interrelated grounds.

200. **First**, the Cook Islands respectfully submits that if States did intend to have obligations under the UNCLOS be subject to and synthesized with their human rights obligations, such States would not have signed and ratified both the UNCLOS and human rights treaties or would have withdrawn from either the UNCLOS or human rights treaties.
201. **Second**, the Cook Islands respectfully submits that if States Parties to the UNCLOS did not intend for their obligations under the UNCLOS be subject to and synthesized with their human rights obligations, then there would be explicit or at least strongly implicit prohibitions and limitations against synthesizing these two broad sets of obligations in the UNCLOS. As there are no such prohibitions and limitations in the UNCLOS text, the synthesis of States' obligations under the UNCLOS and human rights treaties is permissible.
202. **Third**, the Cook Islands respectfully submits that while the UNCLOS text does not make explicit reference to "human rights" and does not explicitly provide for the consideration or application of States' human rights obligations under the UNCLOS, the absence of such explicit references should not be interpreted as meaning that human rights obligations cannot apply and be synthesized with obligations under the UNCLOS. It is argued that human rights, and States' obligations to protect human rights, are fundamental to the whole corpus and system of international law, that such a restrictive interpretation requires explicit prohibitions or limitations on the application of human rights obligations to States' obligations under the UNCLOS.
203. **Fourth**, the Cook Islands respectfully submits that the UNCLOS text makes clear that States' human rights obligations should not be separated and isolated from States' obligations under the UNCLOS but should co-exist and be synthesized where appropriate. This is evident in a number of implicit but strong connections between these two broad sets of obligations in the UNCLOS.
204. One of these connections is made in the seventh paragraph of the preamble of the UNCLOS which states:

Believing that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and

*social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter,*²⁴⁶

205. In considering this preambular paragraph, the Cook Islands submits that reading together and synthesizing States' obligations under the UNCLOS with States' human rights obligations is one important way the law of the sea can pursue "progressive development" to contribute to "the principles of equal rights" and promotion of economic and social advancement of all peoples", particularly in accordance with the UN Charter, which states that two of the purposes of the UN is as follows:

To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in *promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;*

To be a centre for *harmonizing the actions of nations* in the attainment of these common ends.²⁴⁷

206. Additionally, the eighth paragraph of the preamble of the UNCLOS affirms that "matters not regulated by this Convention continue to be governed by the rules and principles of general international law."²⁴⁸ The Cook Islands submits that this particular paragraph effectively opens the door for human rights obligations to regulate matters where human rights obligations are engaged and intersect with UNCLOS obligations but are not fully provided for in the text of the UNCLOS itself.

207. Another strong connection between human rights in the UNCLOS text is captured in Article 146 concerning the "[p]rotection of human life" states:

With respect to activities in the Area, necessary measures shall be taken to *ensure effective protection of human life*. To this end the Authority shall adopt appropriate rules, regulations and procedures to supplement existing international law as embodied in relevant treaties.²⁴⁹

208. In addition, a broader implicit reference to human rights considerations is Article 140 concerning the "[b]enefit of mankind" states:

1. Activities in the Area shall, as specifically provided for in this Part, be carried out for *the benefit of mankind as a whole, irrespective of the geographical location of States, whether coastal or land-locked, and taking into particular consideration the interests and needs of developing States and of peoples who*

²⁴⁶ UNCLOS, preamble.

²⁴⁷ UN Charter, Article 1(3)-(4).

²⁴⁸ UNCLOS, preamble.

²⁴⁹ UNCLOS, Article 146.

have not attained full independence or other self-governing status recognized by the United Nations in accordance with General Assembly resolution 1514 (XV) and other relevant General Assembly resolutions.

2. The Authority shall provide for *the equitable sharing of financial and other economic benefits* derived from activities in the Area through any appropriate mechanism, on a *non-discriminatory basis*, in accordance with article 160, paragraph 2(f)(i).²⁵⁰

(c) States' extraterritorial human rights obligations are engaged by the extraterritorial pollution of States' GHG emissions

209. The Cook Islands submits that States' extraterritorial obligation under Article 194(2) of the UNCLOS to mitigate GHG emissions to protect and preserve the marine environments of other States are engaged States' extraterritorial human rights obligations.
210. To support this submission, **sub-subsection (i)** below outlines the findings and comments of UN Human Rights Treaty Bodies, UN Special Rapporteurs, and international courts that have emphasized how climate change, which is caused by GHG emissions, have broadly engaged, if not already violated, the human rights of individuals. Importantly these findings and comments do not state or implicitly indicate that States' particular GHG emissions, or emissions under their control, have only engaged or violated the human rights of individuals in their own States. This affirms that because GHG emissions are extraterritorial in nature, the human rights engagements and potential violations are extraterritorial in nature too.
211. Following this, **sub-subsections (ii)-(iv)** below provide three brief case studies of particular human rights obligations that are engaged, affected, if not violated, by the extraterritorial impacts of GHG emissions, namely the right to food under the ICESCR, the right to enjoy a minority culture under the ICCPR and the right of children to enjoy a minority culture under the UNCRC. The Cook Islands emphasizes these three case studies should not be taken as an exhaustive list of all of the relevant human rights obligations that States must act in accordance with to fulfil their Article 194(2) obligation and Proposed Obligation A more broadly. Rather, the Cook Islands acknowledges that there are many more human rights engaged, including, but not limited to those, listed below by the Special Rapporteur on Human Rights and Climate Change in 2022 (See **Chapter V, Part B, Section 5, Subsection (i), Paragraph 215, below**).

²⁵⁰ UNCLOS, Article 140 (emphasis added).

(i) Broad comments and findings by UN Human Rights Treaty Bodies, UN Special Rapporteurs, and international courts on the impacts of climate change on human rights

212. One significant comment by UN Human Rights Treaty Bodies on the impacts of climate change on human rights include the *Statement on Climate Change and the International Covenant on Economic, Social and Cultural Rights* issued by the Committee on Economic, Social and Cultural Rights ('CESCR') in 2018. This Statement declared that the detrimental impacts of climate change on a range of rights guaranteed under the ICESCR "have been amply documented" and said that "Climate Change already affects, in particular, the rights to health, food, water and sanitation; and it will do so at an increasing pace in the future."²⁵¹
213. In 2019, the Committee on the Elimination of Discrimination against Women, the CESCR, 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 ('CRC') and the Committee on the Rights of Persons with Disabilities issued a Joint Statement on Human Rights that stated that the "adverse impacts on human rights are already occurring with 1°C of global warming, every additional increase will further undermine the realization of rights".²⁵²
214. The reports of UN Special Rapporteurs have also strongly noted that human rights have been engaged, if not violated, by the impacts of climate change and have emphasized that the human rights obligations of States have been engaged. For example, the report of the UN Special Rapporteur on Human Rights and the Environment in 2019 stated:

States have obligations to protect human rights from environmental harm and obligations to fulfil their international commitments. The foreseeable and potentially catastrophic adverse effects of climate change on the enjoyment of human rights *give rise to extensive duties of States to take immediate action to prevent those harms.*²⁵³

215. The report by the Special Rapporteur on Human Rights and Climate Change in 2022 emphasized that given the clear and well evidenced link between climate change and human rights, States cannot ignore these clear obligations, duties and responsibilities as follows:

²⁵¹ Committee on Economic, Social and Cultural Rights, *Statement on Climate Change and the International Covenant on Economic, Social and Cultural Rights*, E/C.12/2018, para. 4.

²⁵² *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*, 14 May 2020, HRI/2019/1, para. 5.

²⁵³ David R. Boyd, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/74/161, para.62.

There is a growing body of work linking responsibilities on climate change to human rights treaties. Nevertheless, many countries have yet to make the link between climate change and human rights, even though *they have clear obligations under international law that must be guaranteed in both of those legal fields*. As such, States cannot ignore their human rights responsibilities when addressing climate change; this is of critical importance given the impacts that climate change is having on the rights and freedoms of people across the globe....

[T]he world is faced with a global crisis in the name of climate change. *Climate change is negatively affecting and violating the rights of individuals*, including their rights to life, water and sanitation, health, food, housing, a healthy environment and development, among many others. Furthermore, the climate change has a disproportionate impact on the poor, women and children, persons with disabilities, Indigenous Peoples and other disadvantaged rights holders. The impacts of climate change intersect with other factors, such as race, gender, age and socioeconomic status.²⁵⁴

216. International courts have also recognized the impacts of climate change on human rights. For example, the IACtHR in its Advisory Opinion on the Environment and Human Rights recognized the relationship between the environment, climate change and human rights as “undeniable” as follows:

This Court has recognized the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights.²⁵⁵

217. Similarly, the European Court of Human Rights (‘ECHR’) and the African Commission on Human and Peoples also made the link between the environment and human rights.²⁵⁶ The ECHR has recognized that severe environmental degradation may affect the well-being of the individual and, as a consequence, violate the right to life, to respect private and family life and to property.²⁵⁷

(ii) Case Study 1: The Right to Food

²⁵⁴ Ian Fry, *Report of the Special Rapporteur on the issue of human rights obligations relating to the promotion and protection of human rights in the context of climate change*, A/78/255, para. 2. .

²⁵⁵ IACtHR, *The Environment and Human Rights*, Advisory Opinion OC-23/17, 15 Nov. 17 at para.47.

²⁵⁶ *Social and Economic Rights Center and Center for Economic and Social Rights v. Nigeria*, Communication 155/96 (27 October 2001) para. 51.

²⁵⁷ See for easy reference, Guide to the case-law of the European Court of Human Rights - Environment, last updated 31 August 2022 at https://www.echr.coe.int/documents/d/echr/Guide_Environment_ENG (last accessed 5 March 2024).

218. The Cook Islands submits that States' extraterritorial obligation under Article 194(2) of the UNCLOS must be fulfilled in accordance with the States' extraterritorial human rights obligation to recognize and ensure the realization of the right to food under the Article 11 of the ICESCR.

219. Article 11 of the ICESCR provides for the right to food, as well as the right to clothing, housing and water,²⁵⁸ as follows:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including *adequate food, clothing and housing*, and to the continuous improvement of living conditions. *The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.²⁵⁹

220. The ways that GHG emissions have engaged, violated and continue to violate the right to food have been highlighted by UN Special Rapporteurs. For example, the UN Special Rapporteurs on the Right to Food in their 2015 report outlining the adverse impacts of climate change on the right to food remarked:

[C]limate change is undermining the right to food, with disproportionate impacts on those who have contributed least to global warming and are most vulnerable to its harmful effects. Urgent action must be taken to prevent climate change from intensifying, to mitigate greenhouse gas emissions and to adapt to its

²⁵⁸ The right to water is a human right that is necessarily derived from Articles 11(1) and 12 of the International Covenant on Economic, Social and Cultural Rights ('ICESCR') as confirmed by the CESCR in a General Comment, see CESCR, *No 15 (2002): The Right to Water (Arts 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc E/C.12/2002/11, 20 January 2003. The right to water has also been recognized by the UNGA as an independent human right, see General Assembly Resolution 64/292, 28 July 2010; ICESCR [1966] United Nations Treaty Series, Vol. 993, Articles 11(1) and 12.

²⁵⁹ ICESCR, Article 11 (emphasis added).

unavoidable effects. A policy shift is necessary to respond to the challenges posed by climate change beyond mitigation and adaptation so as to *respect peoples' human rights, including the right to food*, while sustaining the Earth's renewable resources.²⁶⁰

221. Importantly, the UN Special Rapporteur on Climate Change in 2022 emphasized that the right to food is affected by the detrimental impacts of climate change on coral reefs and the ecosystems that rely on reefs as follows:

Higher sea surface temperatures are causing coral reef bleaching, affecting the viability of reefs and the complex ecosystems they support. *This is affecting the right to food for people reliant on coral reefs as a food source.*²⁶¹

222. Some of the specific ways in which the conduct of States, particularly high emitting States, in respect of GHG emissions engage and affect, if not violate, the right to food of individuals in other States is illustrated by the impacts of climate change on food security in the Cook Islands noted above (See **Chapter III, Part B, Sections 4 and 9, above**).

(iii) Case Study 2: The Right to Enjoy a Minority Culture

223. The Cook Islands submits that States' extraterritorial obligation under Article 194(2) of the UNCLOS must be fulfilled in accordance with the States' extraterritorial human rights obligation to recognize and ensure the realization of the right to enjoy a minority culture under Article 27 of the ICCPR.

224. Article 27 of the ICCPR provides for the right to enjoy a minority culture as follows:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.²⁶²

225. In *Billy v. Australia*, the Committee interpreted Article 27 in light of the UN Declaration on the Rights of Indigenous Peoples ('**UNDRIP**') to find that Article 27 "enshrines the inalienable right of indigenous peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity."²⁶³

²⁶⁰ Hilal Ever, *Report of the Special Rapporteur on the right to food*, A/70/287, 5 August 2022, para. 3.

²⁶¹ Ian Fry, *Report of the Special Rapporteur on the issue of human rights obligations relating to the promotion and protection of human rights in the context of climate change*, A/77/226, 26 July 2022, para. 49.

²⁶² ICCPR, Article 27.

²⁶³ *Daniel Billy et al. v. Australia* (Communication No. 3624/2019) CCPR/C/135/D/3624/2019 ('**Billy v. Australia**'), para. 8.13.

226. Accordingly, the Committee concluded that Australia had failed to satisfy its obligations under Article 27 by failing to protect Indigenous Torres Strait Islanders from the detrimental impacts of rising sea levels. This included impacts on traditional fishing and farming, and cultural ceremonies unique to these islands. The Committee applied a foreseeability test, finding that these impacts had been foreseeable for some time.²⁶⁴

227. Importantly, the Committee in *Billy* also affirmed that Article 27 also encompasses the right to transmit a culture inherited from earlier generations to new generations, including both those already living and those yet to be born, as follows:

... the Committee considers that the information made available to it indicates that the State party's failure to adopt timely adequate adaptation measures to protect the authors' collective ability to maintain their traditional way of life and to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State party's positive obligation to protect the authors' right to enjoy their minority culture.²⁶⁵

228. While *Billy* concerned a State's human rights violations in respect of peoples within the State's territory, the Cook Islands respectfully submits that the Committee's findings in *Billy* with regard to Article 27 apply extraterritorially to create a point of convergence with States' extraterritorial obligation under Article 194(2) of the UNCLOS. This is on the grounds submitted above that obligations under the ICCPR are extraterritorial in the circumstances of States' conduct around GHG emissions (See **Chapter V, Part A, Section 5, Paragraphs 190-193 above**), where the impacts of climate change on cultural identity in the Cook Islands noted above make clear how States' failures to comply with their extraterritorial obligation under Article 194(2) of the UNCLOS impacts the Article 27 rights of peoples outside those States (See **Chapter III, Part B, Section 13**).

(iv) **Case Study 3: The Rights of the Child to Culture**

229. In light of the Committee's findings in *Billy* around the right to transmit a culture to future generations under Article 27 of the ICCPR, the Cook Islands submits that States' extraterritorial obligation to mitigate GHG emissions under Article 194(2) of the UNCLOS must be fulfilled in accordance with the States' extraterritorial human rights obligation to protect the rights of the child to culture.

²⁶⁴ *Billy v. Australia*, para. 8.14 (emphasis added).

²⁶⁵ *Billy v. Australia*, para. 8.14.

230. The right of the child to culture is protected under Article 30 of the UNCRC, as follows:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, 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.²⁶⁶

231. As the wording of Article 30 of the UNCRC is largely similar to the wording of Article 27 of the ICCPR, the Cook Islands respectfully submits that the broad findings of the Committee in *Billy* around Article 27 of the ICCPR can be transferred to Article 30 of the UNCRC to find that the right of the child to culture is engaged, if not violated, by the impacts of climate change, and the impacts of the failures of States to address the impacts of climate change in line with various obligations at international law.

232. The CRC also provided important guidance on how the rights of the child under UNCRC apply in respect of climate change in *Sacchi v. Argentina*. Here, the CRC noted that States may owe obligations under the UNCRC if it is established that they failed to protect children's rights from threats related to climate change that are both serious and foreseeable as follows:

The Committee considers that, as children, the authors are particularly affected by climate change, both in terms of the manner in which they experience its effects and the potential of climate change to have an impact on them throughout their lifetimes, particularly if immediate action is not taken. *Due to the particular impact on children*, and the recognition by States parties to the Convention that *children are entitled to special safeguards, including appropriate legal protection*, States have heightened obligations to protect children from foreseeable harm.²⁶⁷

233. In applying *Saachi* to the extraterritorial impacts of GHG emissions, the Cook Islands submits that children of other States are particularly affected by climate change and that the harms of these affects on children of other States, particularly small island developing States, are at this point, very foreseeable by States, particularly high emitting States. As such, children are entitled “special safeguards” for their rights under the UNCRC, and States have “heightened obligations” to protect these rights. The Cook Islands submits that these “safeguards” an “heightened obligations” include, but are not limited to, States taking all necessary measures to take all necessary measures to mitigate their GHG emissions to protect and preserve the marine environments

²⁶⁶ UNCRC, Article 30.

²⁶⁷ *Sacchi v. Argentina*, CRC/C/88/D/104/2019, para. 10.13.

of other States in accordance with the rights of the child under UNCRC, including the right to culture under Article 30.

234. While *Saachi* concerned States' human rights violations of children within the territories of those States, the Cook Islands respectfully submits that the CRC's findings in regard to UNCRC rights obligations apply extraterritorially to converge with States' extraterritorial obligation under Article 194(2) of the UNCLOS. This is on the grounds submitted above that obligations under the UNCRC are extraterritorial in the circumstances of States' GHG emissions (See **Chapter III, Part B, Section 13, above**), where the impacts of climate change on cultural identity on children of the Cook Islands noted above (See **Chapter III, Part B, Section 13**) make clear how States' failures to comply with their extraterritorial obligation under Article 194(2) of the UNCLOS impacts the Article 30 rights of children outside those States.

6. *The necessary measures States must take under Proposed Obligation A*

235. To fulfil Proposed Obligation A, the Cook Islands submits that the duty of due diligence embedded in Article 194(2) of the UNCLOS follows States must take several necessary measures to mitigate their GHG emissions to protect and preserve the marine environments of other States in accordance with States' human rights obligations.
236. These measures include, but are not at all limited to, those taken in respect to a number of States' other obligations under the UNCLOS which are also intertwined with the Article 194(2) obligation in respect of other States.
237. For example, Article 193 states that "States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment."
238. The Cook Islands submits that when States exercise their "sovereign right" to exploit their marine environment under Article 193, the measures States must take include implementing procedures and decision-making processes that require them as States, as well as non-State parties acting under their authority and control, to explicitly take into account and account for their obligations under Article 194(2) to mitigate their GHG emissions to protect and preserve the marine environments of other States and their extraterritorial human rights obligations as well.
239. The Cook Islands submits that necessary measures must also be taken when States exercise their duty to monitor the effects of activities under Article 204, which states:

1. States shall, consistent with the rights of other States, endeavour, as far as practicable, directly or through the competent international organizations, to *observe, measure, evaluate and analyse*, by recognized scientific methods, the risks or effects of pollution of the marine environment.
2. In particular, States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment.²⁶⁸

240. The Cook Islands submits that these measures include States' ensuring that they employ the necessary measures and procedures to "observe, measure, evaluate and analyse" and "keep under surveillance" the GHG emissions emanating from their territories and how these emissions impact and damage the marine environments of other States in accordance with Article 194(2) and the human rights of individuals in other States as well.

241. The Cook Islands submits that necessary measures must also be taken when States exercise their duty to publish reports pursuant to Article 204 under Article 205, which states:

Publication of reports States shall publish reports of the results obtained pursuant to article 204 or provide such reports at appropriate intervals to the competent international organizations, which should make them available to all States.²⁶⁹

242. The Cook Islands submits that necessary measures include ensuring that these reports contain specific information on how a States' estimated GHG emissions impact the marine environments of other States and the human rights of individuals in those States as well.

243. The Cook Islands submits that necessary measures must also be taken when States exercise their duty to undertake environmental impact assessments under Article 206 of the UNCLOS, which states:

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.²⁷⁰

²⁶⁸ UNCLOS, Article 204.

²⁶⁹ UNCLOS, Article 205.

²⁷⁰ UNCLOS, Article 206.

244. Accordingly, the Cook Islands submits that States' environmental impact assessments under Article 206 must explicitly account for the impacts of GHG emissions emanating from their territory on other States and the human rights implications for individuals of other States, including the risks of potential human rights violations of planned activities as well.
245. The Cook Islands submits that other necessary measures for States to fulfil Proposed Obligation A relate to States' obligations around mitigation under the Paris Agreement. This synthesizing of obligations under the UNCLOS and the Paris Agreement is permissible and necessary because as noted above the Paris Agreement is not the *lex specialis* regime for all of States' obligations in respect of climate change at international (See **Chapter IV, Paragraphs 135-142, above**). Furthermore, as also noted above, the preamble of the UNCLOS affirms that "matters not regulated by this Convention continue to be governed by the rules and principles of general international law", meaning synthesis with obligations under the Paris Agreement is permissible if the text of the UNCLOS does not provide guidance on a particular matter regarding the law of the sea.²⁷¹
246. Accordingly, the Cook Islands submits that an important measure States must take to fulfil Proposed Obligation A is to explicitly take into account their obligations to other States under Article 194(2) and their extraterritorial human rights obligations when setting their mitigation targets for their National Determined Contributions ('NDC') under the Paris Agreement and when formulating their plans, strategies and policies to meet these targets.²⁷² This includes ensuring that States Parties' National Communications submitted under Article 4 of the Paris Agreement include clear, detailed, rigorous and transparent information about how their NDC targets and plans for meeting these targets uphold their obligations under Article 194(2) and under human rights treaties.
247. The Cook Islands also submits that this measure is also necessary for States to be able to fulfil these mitigation-related obligations under the Paris Agreement and the collective goal of State Parties to limit the increase of the global average temperature to 1.5°C above pre-industrial levels.²⁷³
248. With all these necessary measures submitted above, the Cook Islands underscores the guidance for the duty of due diligence under Article 194(1)

²⁷¹ UNCLOS, preamble.

²⁷² Paris Agreement, Article 4, with Article 4(4) stating: "Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances."

²⁷³ Paris Agreement, Article 2.

which states to use “*the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection*”.²⁷⁴

249. As such, the Cook Islands submits that all of these measures must be implemented through robust and binding policy and legislative measures that are clear, transparent and subject to democratic processes and legal consequences if States or non-State parties acting under the authority or control of States fail to comply with these necessary measures and the Proposed Obligation A as a whole.

²⁷⁴ UNCLOS, Article 194(1) (emphasis added).

B. States have an obligation to support, assist and finance the implementation of traditional knowledge in adaptation actions in accordance with their human rights obligations

1. Introduction

250. To explain how various sources of international law have been synthesized to articulate Proposed Obligation B, this part has 4 sections and proceeds as follows. Following this introduction, **Section 2** submits that provisions in the Paris Agreement around traditional knowledge in adaptation actions, capacity-building and climate finance follow that States have an obligation to support, assist and finance the use and implementation of traditional knowledge in adaptation actions. **Section 3** then explains how provisions in both the CBD and the BBNJ Agreement also provide for States' obligations to support, assist and finance the implementation of traditional knowledge in adaptation actions within the specific contexts of these treaties. Finally, **Section 4** then submits that these particular obligations under the Paris Agreement, the CBD and the BBNJ Agreement can and must be fulfilled in accordance with States' human rights obligations, both internally and extraterritorially.

2. States have an obligation to support, assist and finance the use and implementation of traditional knowledge in adaptation actions under the Paris Agreement

251. The Cook Islands submits that Articles 7, 11 and 9 of the Paris Agreement together provide that States have an obligation to support, assist and finance the use and implementation of traditional knowledge in adaptation actions under the Paris Agreement.

252. Article 7 provides States' obligations around climate change adaptation, with Article 7(1) establishing "a global goal on adaptation to enhance adaptive capacity by strengthening resilience and reducing vulnerability to climate change"²⁷⁵ and Article 7(2) emphasizing the need to take "into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change."²⁷⁶

253. The particular obligation to acknowledge that adaptation actions "should be based on and guided by the best available...traditional knowledge, knowledge

²⁷⁵ Paris Agreement, Article 7(1).

²⁷⁶ Paris Agreement, Article 7(2).

of indigenous peoples and local knowledge systems”²⁷⁷ is specifically noted in Article 7(5) of the Paris Agreement as follows:²⁷⁸

Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, *traditional knowledge, knowledge of indigenous peoples and local knowledge systems*, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.”

254. The Cook Islands submits that the phrasing of “as appropriate” in Article 7(5) does not suggest that there are weaker or any less important obligations of States in respect of “traditional knowledge, knowledge of indigenous peoples and local knowledge” compared to “science”. Nor does it provide States’ the discretion to not at least, take into consideration the use and implementation of “traditional knowledge, knowledge of indigenous peoples and local knowledge” in adaptation actions to render the use of “traditional knowledge, knowledge of indigenous peoples and local knowledge” as simply optional compared to “science”. Rather, it is submitted that “as appropriate” makes clear that States’ requirements around “traditional knowledge” requires particular care to ensure that the processes around the use and implementation of “traditional knowledge, knowledge of indigenous peoples and local knowledge systems” are carried out appropriately by States.
255. The Cook Islands also submits that the word “acknowledge” in Article 7(5) does not provide a weak obligation of States to passively recognize the need to ensure that adaptation “should be based on and guided by the best available...traditional knowledge, knowledge of indigenous peoples and local knowledge systems.” Rather, it is submitted that “acknowledge” denotes a set of obligations of States which they must actively fulfil to ensure such acknowledgement is clear and always evident in their adaptation actions, which include the instruction to actively ensure that their adaptation actions are “based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems”. Furthermore, as the Cook Islands submits in the paragraphs below, the more detailed obligations of States around adaptation actions in the

²⁷⁷ The Cook Islands uses “traditional knowledge” when referring to Obligation B broadly, rather than “traditional knowledge, knowledge of indigenous peoples and local knowledge systems” noted in Article 7(5) in order to find broad consistency with the BBNJ Agreement and CBD which only use the term “traditional knowledge”. However, the Cook Islands acknowledges that “traditional knowledge” is unlikely to be wholly synonymous and interchangeable with “knowledge of indigenous peoples” and “local knowledge systems” as noted in Article 7(5) as suggested by the inclusion of all three terms in the text of Article 7(5).

²⁷⁸ Paris Agreement, Article 7(5) (emphasis added).

provisions of Article 7, 11 and 9 inform States how these obligations in Article 7(5) around traditional knowledge are to be fulfilled.

256. For example, the Cook Islands submits that Article 7(7) below provides more specific obligations of States around “traditional knowledge, knowledge of indigenous peoples and local knowledge systems” in adaptation actions to “strengthen their cooperation on enhancing actions”:

Parties should strengthen their cooperation on enhancing action on adaptation, taking into account the Cancun Adaptation Framework, including with regard to:...

(b) Strengthening institutional arrangements, including those under the Convention that serve this Agreement, to *support the synthesis of relevant information and knowledge*, and the provision of technical support and guidance to Parties;

...

(d) *Assisting developing country Parties in identifying effective adaptation practices, adaptation needs, priorities, support provided and received for adaptation actions and efforts, and challenges and gaps, in a manner consistent with encouraging good practices.*²⁷⁹

257. Another key obligation under Article 7(7) obliges States take into account the need to assist “developing country Parties in identifying effective adaptation practices...challenges and gaps” which must include those related to “traditional knowledge, knowledge of indigenous peoples and local knowledge systems” which under Article 7(5).

258. Article 7(9) also provides for further obligations of States around “traditional knowledge, knowledge of indigenous peoples and local knowledge systems”, specifically in relation to adaptation planning and implementation, as follows:

Each Party shall, as appropriate, engage in adaptation planning processes and the *implementation* of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include:

(a) *The implementation of adaptation actions, undertakings and/or efforts;*

(b) The process to formulate and implement national adaptation plans;

(c) The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems;

(d) Monitoring and evaluating and learning from adaptation plans, policies, programmes and actions; and

²⁷⁹ Paris Agreement, Article 7(7) (emphasis added).

(e) Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources.²⁸⁰

259. With all of these obligations around adaptation actions, the Cook Islands also notes that Article 7(6) obliges States to recognize the “importance of supporting and promoting international cooperation”:

Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, *especially those that are particularly vulnerable to the adverse effects of climate change.*

260. The Cook Islands submits that this Article 7(6) obligation requires States to recognize the importance of support and cooperation for the appropriate use of “traditional knowledge, knowledge of indigenous peoples and local knowledge systems” in adaptation actions. This is especially given that traditional knowledge is an urgent need and priority for the Cook Islands and other States who are “particularly vulnerable to the adverse effects of climate change” (See **Chapter III, Part 5, Section 13, Paragraph Z**).

261. The Cook Islands also submits that that States’ obligations around providing support and assistance for the use and implementation of “traditional knowledge, knowledge of indigenous peoples and local knowledge systems” also includes enhancing capacity-building for such adaptation actions under Article 11, which provides the following relevant obligations:

1. Capacity-building under this Agreement should enhance the capacity and ability of developing country Parties, in particular countries with the least capacity, such as the least developed countries, and those that are particularly vulnerable to the adverse effects of climate change, *such as small island developing States, to take effective climate change action, including, inter alia, to implement adaptation and mitigation actions,* and should facilitate technology development, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and the transparent, timely and accurate communication of information.

2. Capacity-building should be *country-driven, based on and responsive to national needs, and foster country ownership of Parties,* in particular, for developing country Parties, including at the national, subnational and local levels. Capacity-building should be guided by lessons learned, including those from capacity-building activities under the Convention, and should be an

²⁸⁰ Paris Agreement, Article 7(9) (emphasis added).

effective, iterative process that is participatory, cross-cutting and gender-responsive.

3. All Parties should cooperate *to enhance the capacity of developing country Parties to implement this Agreement*. Developed country Parties should enhance support for capacity-building actions in developing country Parties.²⁸¹

262. Accordingly, the Cook Islands submits that these provisions in Article 7 and 11 follow that States have an obligation to support and assist the use and implementation of traditional knowledge for adaptation action by “developing country Parties” and “small islands developing States”.

263. Additionally, the Cook Islands submits that Article 9 obliges States, particularly “developed country Parties” to provide financial assistance for the use and implementation of traditional knowledge in adaptation actions by “developing country Parties” and “small islands developing States”. Specifically, it is submitted that the following three paragraphs in Article 9 particular these obligations clear:

3. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including *supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.*

4. *The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation.*

...

9. The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, shall aim to ensure efficient access to financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.²⁸²

264. Therefore, the Cook Islands submits that States have an obligation to “support”, “assist” and finance the use and implementation of traditional

²⁸¹ Paris Agreement, Article 11(1)-(3) (emphasis added).

²⁸² Paris Agreement, Article 9(3)-(4), (9) (emphasis added).

knowledge in adaptation actions under the Paris Agreement. The words “support” and “assist” are taken from the various provisions above to broadly encompass the various obligations contained in these provisions, and “finance” is used to refer to the financing obligations in Article 9. The Cook Islands uses the word “use” is used to broadly refer to all the ways in which traditional knowledge may be used in adaptation according to these provisions from the earliest stages of adaptation preparation and planning to “implementation”, and “implementation” refers to uses including those in Article 7(9) that require States to “implement” as noted above.

3. States have an obligation to support, assist and finance the use and implementation of traditional knowledge in adaptation actions under the CBD and the BBNJ Agreement

265. The Cook Islands submits that Proposed Obligation B also extends to adaptation actions taken under other two other environmental treaties: the CBD and the BBNJ Agreement.

266. This is on two interrelated grounds. **First**, as the Cook Islands argues above, the Paris Agreement is not a *lex specialis* treaty covering all of States’ obligations in respect of climate change at international law, nor is the UNFCCC a *lex specialis* regime or system to govern all climate action for States. Instead, other sources of international law, like the CBD and the BBNJ Agreement, can provide for States’ obligations in respect of climate change, and these sources can be synthesized with the UNFCCC, Paris Agreement and other sources of international law where appropriate and necessary as noted above (See **Chapter IV, Paragraphs 135-142 above**). **Second**, the CBD and the BBNJ Agreement contain several provisions which make it clear that States have an obligation to support, assist and finance the use and implementation of traditional knowledge in adaptation actions within their specific contexts and respective scopes. **Subsection (a)** outlines the relevant provisions in the CBD, followed by **Subsection (b)** which outlines the relevant provisions in the BBNJ Agreement.

(a) The CBD

267. The Cook Islands acknowledges that the text of the CBD does not include any explicit reference to “climate change” and that as a result it could be argued that the obligations of States in the CBD cannot be used by States to take climate action, including adaptation actions.

268. However, the Cook Islands notes that the absence of explicit references to “climate change” in the CBD text can be explained by a lack of knowledge

about the crucial links between biological diversity and climate change at the time the CBD and the UNFCCC texts were negotiated and signed, rather than a lack of intention to make these linkages. As noted by Dr Himangana Gupta and Dr Neeraj Kumar Singh, while the CBD and the UNFCCC were both negotiated in the Rio Earth Summit in 1992, “the interlinkages between these two concerns were less recognized and structured which impaired the development of streamlined policies to tackle both simultaneously.”²⁸³

269. However despite these initial disconnects, Dr Gupta and Dr Singh aptly observe that over time, an “outstanding academic push” by scientists to provide a robust body of scholarship demonstrating the synergistic links between biodiversity loss and climate change has led to these links or moreover “synergies” being recognized in UNFCCC Conference of the Parties (**COP**) decisions and agreements as an area of priority for States.²⁸⁴

270. This recognition is evident in the Paris Agreement which references the need to protect biodiversity in the fourteenth preambular Paragraph as follows:

Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the *protection of biodiversity*, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of “climate justice”, when taking action to address climate change,²⁸⁵

271. Another more recent expression of these synergies is in the preamble of the Sharm el-Sheikh Implementation Plan agreed to by States Parties to the UNFCCC at COP 27 as follows:

*Underlines the urgent need to address, in a comprehensive and synergetic manner, the interlinked global crises of climate change and biodiversity loss in the broader context of achieving the Sustainable Development Goals, as well as the vital importance of protecting, conserving, restoring and sustainably using nature and ecosystems for effective and sustainable climate action,*²⁸⁶

272. Therefore, the Cook Islands respectfully submits that there are important synergies between the CBD and the UNFCCC, including the Paris Agreement, that make it clear that the CBD provides important obligations of States to support, assist and finance the use and implementation of traditional knowledge in adaptation action.

²⁸³ Himangana Gupta and Neeraj Kumar Singh, *Climate Change and Biodiversity Synergies: A Scientometric Analysis in the Context of UNFCCC and CBD*, 2023, Anthropocene Science, p. 1.

²⁸⁴ Himangana Gupta and Neeraj Kumar Singh, *Climate Change and Biodiversity Synergies: A Scientometric Analysis in the Context of UNFCCC and CBD*, 2023, Anthropocene Science, p. 13

²⁸⁵ Paris Agreement, preamble (emphasis added).

²⁸⁶ UNFCCC, *Decision 1/CP.27. Sharm el-Sheikh Implementation Plan*, 2022, preamble, available here: https://unfccc.int/sites/default/files/resource/cop27_auv_2_cover%20decision.pdf (emphasis added).

273. The Cook Islands also submits that the general language and broad scope of CBD obligations follow that they can and do apply to States' obligations in respect of adaptation action. Indeed, it is important to note that there is no explicit or implicit indication in the text of the CBD that States' obligations under the CBD cannot apply to States' actions and conduct regarding adaptation action.

274. Therefore, key provisions in the CBD that provide for the use and implementation of traditional knowledge for adaptation action, include Article 8(j) which provides for States' obligations in relation to in-situ conservation states:

Each Contracting Party shall, as far as possible and as appropriate... Subject to its national legislation, *respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities* embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and *promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices* and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;²⁸⁷

275. Similarly, Article 17 provides the following obligations of States to facilitate the exchange of information relevant to conservation and sustainable use of biological diversity, including "indigenous and traditional knowledge" as follows:

1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.

2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, *indigenous and traditional knowledge* as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.²⁸⁸

276. Article 18(4) also provides the following obligations of States to encourage and develop methods of cooperation for the development and use of technologies, including "indigenous and traditional knowledge":

²⁸⁷ CBD, Article 8(j) (emphasis added).

²⁸⁸ CBD, Article 17(1)-(2) (emphasis added).

The Contracting Parties shall, in accordance with national legislation and policies, *encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention.* For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.²⁸⁹

277. In terms of obligations around financing the use and implementation of traditional knowledge for adaptation action under the CBD, the Cook Islands submits that Articles 20 and 21 oblige States to establish a financial mechanism for these actions among others.

278. Specifically, Article 20 makes clear the special obligations developed States own in respect to developing States as follows:

1. Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those national activities which are intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.

2. *The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention and to benefit from its provisions and which costs are agreed between a developing country Party and the institutional structure referred to in Article 21, in accordance with policy, strategy, programme priorities and eligibility criteria and an indicative list of incremental costs established by the Conference of the Parties... The implementation of these commitments shall take into account the need for adequacy, predictability and timely flow of funds and the importance of burden-sharing among the contributing Parties included in the list.*

...

5. The Parties shall take full account of the specific needs and special situation of least developed countries in their actions with regard to funding and transfer of technology.²⁹⁰

279. Crucially, Article 20(6)-(7) also make specific mention of the particular financing obligations of “developed country Parties” in respect of the “special condition” of “small island [developing] States”, and the “special situation of developing countries” that are “environmentally vulnerable” as follows:

6. The Contracting Parties shall also take into consideration the special conditions resulting from the dependence on, distribution and location of,

²⁸⁹ CBD, Article 18(4) (emphasis added).

²⁹⁰ CBD, Article 20(1)-(2), (5) (emphasis added).

biological diversity within developing country Parties, in particular small island States.

7. Consideration shall also be given to the special situation of developing countries, including those that are most environmentally vulnerable, such as those with arid and semi- arid zones, coastal and mountainous areas.²⁹¹

280. Article 21 provides further obligations of States' in relation to the governance of the financial mechanism that emphasize the particular obligations of developing country Parties as follows:

1. There shall be a mechanism for the provision of financial resources to developing country Parties for purposes of this Convention on a grant or concessional basis the essential elements of which are described in this Article....The contributions shall be such as to take into account *the need for predictability, adequacy and timely flow of funds* referred to in Article 20 in accordance with the amount of resources needed to be decided periodically by the Conference of the Parties and the *importance of burden-sharing* among the contributing Parties included in the list referred to in Article 20, paragraph 2. Voluntary contributions may also be made by the developed country Parties and by other countries and sources. *The mechanism shall operate within a democratic and transparent system of governance.*

281. The Cook Islands also notes other key provisions in Article 21 include obligations of States to “review the effectiveness of the mechanism” and to “consider strengthening existing institutions” as follows:

3. The Conference of the Parties shall review the effectiveness of the mechanism established under this Article, including the criteria and guidelines referred to in paragraph 2 above, not less than two years after the entry into force of this Convention and thereafter on a regular basis. Based on such review, it shall take appropriate action to improve the effectiveness of the mechanism if necessary.

4. The Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity.²⁹²

282. In reading these provisions of the CBD together, the Cook Islands submits that States Parties to the CBD, particularly “developed country Parties” have obligations to provide support, assistance and financing to “developing country Parties” and “small island States” for the use and implementation of traditional knowledge in adaptation action through this mechanism.

²⁹¹ CBD, Article 20(6)-(7) (emphasis added).

²⁹² CBD, Article 21(3)-(4).

283. Furthermore, the Cook Islands submits that the obligation of States under Article 21(3) to review on a “regular basis” the extent to which the CBD’s funding mechanism provides effective assistance to “developing country Parties” and “small island States” must also include a review of the effectiveness of funding for the use and implementation of traditional knowledge for adaptation action under the CBD.
284. Also, the Cook Islands submits that if such a review finds that funding for the use and implementation of traditional knowledge in adaptation action is inadequate or in need of improvement to “ensure the conservation and sustainable use of biological diversity”, States’ must consider “strengthening” their “existing financial institutions” under Article 21(4) accordingly.
285. Accordingly, the Cook Islands submits that States have an obligation to “support”, “assist” and finance the use and implementation of traditional knowledge in adaptation actions under the CBD. The words “support” and “assist” are taken from the various provisions above to broadly encompass the various obligations contained in these provisions, and “finance” is used to refer to the financing obligations in Articles 20 and 21. The Cook Islands also adopts the word “use” to broadly refer to all the ways in which traditional knowledge may be used in adaptation according to these provisions from the earliest stages of adaptation preparation and planning to “implementation”, and “implementation” refers to uses of traditional knowledge once adaptation actions are initiated in accordance with the provisions above.

(b) The BBNJ Agreement

286. The Cook Islands submits that there are several provisions in the BBNJ Agreement that make clear that States have an obligation to support, assist and fund the implementation of traditional knowledge in adaptation actions within the scope of the BBNJ Agreement.
287. Notably, as of 8 March 2024, the BBNJ Agreement has not yet entered into force with only 88 signatories and 2 State Parties so far after only recently being opened for signature on 20 September 2023.²⁹³ Nevertheless, the Cook Islands respectfully submits that this should not prohibit or preclude the Court from considering submissions regarding the BBNJ Agreement in this

²⁹³ United Nations Treaty Collection, *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction*, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-10&chapter=21&clang=en

Statement or providing its views on obligations under the BBNJ in its advisory opinion for future reference if the BBNJ Agreement enters into force.

288. These provisions includes the third paragraph of the preamble, which explicitly makes clear the link between biodiversity loss and degradation of ecosystems and the impacts of climate change as follows:

Recognizing the need to address, in a coherent and cooperative manner, biological diversity loss and degradation of ecosystems of the ocean, due, in particular, *to climate change impacts* on marine ecosystems, such as warming and ocean deoxygenation, as well as ocean acidification, pollution, including plastic pollution, and unsustainable use.²⁹⁴

289. Furthermore, the Cook Islands argues that this paragraph in the preamble also emphasizes the need for all States to strive towards “coherence” in a “cooperative manner” between the BBNJ Agreement and the Paris Agreement, other features of the UNFCCC, - as well as any other source of international law engaged by climate change in order to address the impacts of climate change on biological diversity loss as noted in the preambular text above.

290. The Cook Islands also submits that it is important to note that there is no explicit or implicit indication in the text of the BBNJ Agreement that States’ obligations under the BBNJ Agreement are irrelevant to adaptation actions generally or States’ obligations around adaptation under the Paris Agreement more specifically.

291. In terms of how the BBNJ Agreement then permits the use and implementation of traditional knowledge for adaptation actions, the starting point is Article 7(j) which states that one of the general principles of the BBNJ Agreement is “[t]he use of relevant traditional knowledge of Indigenous Peoples and local communities, where available.”²⁹⁵

292. The Cook Islands submits that other key and relevant obligations of States regarding traditional knowledge in the BBNJ Agreement that are relevant to adaptation actions include Article 13 obligations around genetic resources, which states:

Parties shall take legislative, administrative or policy measures, where relevant and as appropriate, with the aim of *ensuring that traditional knowledge associated with marine genetic resources in areas beyond national jurisdiction that is held by Indigenous Peoples and local communities shall only be accessed with the free, prior and informed consent or approval and*

²⁹⁴ BBNJ Agreement, preambular paragraph 3 (emphasis added).

²⁹⁵ BBNJ Agreement, Article 7(j).

involvement of these Indigenous Peoples and local communities. Access to such traditional knowledge may be facilitated by the Clearing-House Mechanism. Access to and use of such traditional knowledge shall be on mutually agreed terms.

293. Relevant obligations also include those around the proposals for the establishment of area-based management tools, including marine protected areas under Article 19, which states:

1. Proposals regarding the establishment of area-based management tools, including marine protected areas, under this Part shall be submitted by Parties, individually or collectively, to the secretariat.

2. Parties shall collaborate and consult, as appropriate, with relevant stakeholders, including States and global, regional, subregional and sectoral bodies, as well as civil society, the scientific community, the private sector, *Indigenous Peoples and local communities*, for the development of proposals, as set out in this Part.

3. Proposals shall be formulated on the basis of the best available science and scientific information and, *where available, relevant traditional knowledge of Indigenous Peoples and local communities*, taking into account the precautionary approach and an ecosystem approach.²⁹⁶

294. Furthermore, the use and implementation of traditional knowledge in adaptation action can also be taken in accordance with States' obligations relating to capacity-building and the transfer of marine technology under Article 41, which states:

1. Parties shall *cooperate, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, to assist Parties, in particular developing States Parties*, in achieving the objectives of this Agreement through capacity-building and the development and transfer of marine science and marine technology.

2. In providing capacity-building and the transfer of marine technology under this Agreement, Parties shall cooperate at all levels and in all forms, including through partnerships with and involving all relevant stakeholders, such as, where appropriate, the private sector, civil society, and *Indigenous Peoples and local communities as holders of traditional knowledge, as well as through strengthening cooperation and coordination between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies.*

3. In giving effect to this Part, Parties shall give full recognition to the special requirements of *developing States Parties, in particular the least developed*

²⁹⁶ BBNJ Agreement, Article 19.

countries, landlocked developing countries, geographically disadvantaged States, small island developing States, coastal African States, archipelagic States and developing middle income countries. Parties shall ensure that the provision of capacity-building and the transfer of marine technology is not conditional on onerous reporting requirements.²⁹⁷

295. In terms of financing any adaptation action that use and implement traditional knowledge under these provisions, Article 52 provides the obligations of States must establish a funding mechanism that finances programmes for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, not only those by “developing States Parties” but also those by “Indigenous Peoples and local communities as holders of traditional knowledge” as follows:

3. A mechanism for the provision of *adequate, accessible, new and additional and predictable financial resources* under this Agreement is hereby established. The mechanism shall assist developing States Parties in implementing this Agreement, including through funding in support of capacity-building and the transfer of marine technology, and perform other functions as set out in this article for the conservation and sustainable use of marine biological diversity.

...

4. The mechanism shall include: ...

(b) A special fund...

(c) The Global Environment Facility trust fund.

...

6. The special fund and the Global Environment Facility trust fund shall be utilized in order to:

(a) Fund capacity-building projects under this Agreement, including effective projects on the conservation and sustainable use of marine biological diversity and activities and programmes, including training related to the transfer of marine technology;

(b) Assist developing States Parties in implementing this Agreement;

(c) *Support conservation and sustainable use programmes by Indigenous Peoples and local communities as holders of traditional knowledge;...*²⁹⁸

296. The Cook Islands submits that these provisions in Article 52 provide that States are obliged to fund and support the use and implement of traditional knowledge in adaptation action. Importantly, this financing must be “adequate, accessible, new and additional and predictable”, particularly for “developing States Parties” and “Indigenous Peoples and local communities in developed and developing States”.

²⁹⁷ BBNJ Agreement, Article 41(1)-(3).

²⁹⁸ BBNJ Agreement, Article 52(3)-(4), (6).

297. Accordingly, the Cook Islands submits that States have an obligation to “support”, “assist” and finance the use and implementation of traditional knowledge in adaptation actions under the BBNJ Agreement. The words “support” and “assist” are taken from the various provisions above to broadly encompass the various obligations contained in these provisions, and “finance” is used to refer to the financing obligations in Articles 52. The word “use” is used to broadly refer to all the ways in which traditional knowledge may be used in adaptation according to these provisions from the earliest stages of adaptation preparation and planning to “implementation”, and “implementation” refers to uses once adaptation actions are initiated in accordance with the provisions above.

4. *The obligation of States to support, assist and finance the use and implementation of traditional knowledge in adaptation actions must be fulfilled in accordance with States’ human rights obligations*

298. The Cook Islands submits that the obligation of States to support, assist and finance the use and implementation of traditional knowledge in adaptation actions must be fulfilled in accordance with States’ human rights obligations, including States’ extraterritorial human rights obligations.

299. The Cook Islands submits that this particular synthesizing of States’ obligations under the Paris Agreement, CBD and BBNJ Agreement together with their obligations under human rights treaties is not only permissible but necessary on four interconnected grounds that are outlined in **subsections (a)-(d)** below.

(a) *The texts of the Paris Agreement, the CBD and the BBNJ make it clear that obligations under these treaties must be fulfilled in accordance with States’ human rights obligations*

300. The Cook Islands acknowledges that States might argue that their human rights obligations cannot be synthesized with their obligations under the Paris Agreement, the CBD and the BBNJ Agreement because these international treaties provide for States’ obligations in respect of other States, whereas international human rights treaties provide for States’ obligations to individuals. Furthermore, these States could argue that there are no explicit human rights obligations under these three environmental treaties.

301. In response to this argument, the Cook Islands submits that the Paris Agreement, CBD and the BBNJ Agreement make explicit or very strong and implicit connections to human rights obligations, and that these connections make it make clear that States Parties to the three environmental treaties must

fulfil their obligations under those treaties in accordance with their human rights obligations. The Cook Islands further argues that these strong connections also make clear that States must not only fulfil their obligations under the Paris Agreement, CBD and the BBNJ Agreement in accordance human rights obligations' internally within their own territories and jurisdictions, but extraterritorially as well.

302. Regarding the Paris Agreement, the preambular text of the Paris Agreement makes explicit reference to States' human rights obligations and their importance to addressing climate change as follows:

Acknowledging that climate change is a common concern of humankind, *Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights*, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,²⁹⁹

303. Although the Cook Islands acknowledges that preambles of international treaties like the Paris Agreement do not create binding obligations themselves,³⁰⁰ the Cook Islands submits that the instructive wording of "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights" makes it abundantly and unequivocally clear that States are to fulfil their obligations under the Paris Agreement in accordance with their human rights obligations. Therefore, the synthesis of States Parties' obligations under the Paris Agreement with those States' human rights obligations in human rights treaties is authorised, while making clear that the human rights dimensions of synthesized obligations remain sourced in human rights treaties, not the Paris Agreement itself.

304. Regarding the CBD, while there is no explicit reference to human rights in the text of the Convention, the Cook Islands submits that there are a number of strong implicit references and connections to human rights and human rights treaties. These connections include the following paragraph in the preamble which makes implicit connections between the CBD and the rights of indigenous peoples and minorities to their natural resources and to enjoy their culture under treaties, including but not limited to the ICCPR, ICESCR and the UNCRC:

Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and

²⁹⁹ Paris Agreement, preamble.

³⁰⁰ Benoit Mayer, *Human rights in the Paris Agreement*, 2016, *Climate Law*, p. 113.

the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components,³⁰¹

305. Another key implicit reference to human rights in the CBD's preamble regards the particular rights of women in the Convention on the Elimination of All Forms of Discrimination Against Women ('**CEDAW**') and the right to freedom from discrimination on the basis of sex and gender in treaties including but not limited to the CEDAW, ICCPR and ICESCR:

Recognizing also the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation,³⁰²

306. Furthermore, States' obligations around economic, social and cultural rights under the ICESCR and other treaties are also implicitly referred to in the preamble of the CBD as follows:

Acknowledging that substantial investments are required to conserve biological diversity and that there is the expectation of a broad range of environmental, economic and social benefits from those investments,

Recognizing that economic and social development and poverty eradication are the first and overriding priorities of developing countries,³⁰³

307. The preamble also makes mention to the benefit of "future generations", making an implicit reference and clear connection to the rights of the child under the UNCRC to natural resources and to enjoy their culture:

Determined to conserve and sustainably use biological diversity for the benefit of present and future generations,

308. The Cook Islands acknowledges that the preambles of international treaties like the CBD do not create binding obligations themselves,³⁰⁴ and that unlike the Paris Agreement, the connections to human rights obligations in the CBD are implicit. Nevertheless, the Cook Islands respectfully submits that these connections are strong and exacting enough to make clear that States' are to fulfil their obligations under the CBD in accordance with their human rights obligations. Specifically, the inclusion of particular references to individuals and groups like "indigenous and local communities", "women" and "present

³⁰¹ CBD, preamble.

³⁰² CBD, preamble.

³⁰³ CBD, preamble.

³⁰⁴ Benoit Mayer, *Human rights in the Paris Agreement*, 2016, *Climate Law*, p. 113.

and future generations”, rather than just “developing States”, makes this requirement to fulfil obligations under the CBD in accordance with relevant human rights obligations to these individuals abundantly and unequivocally clear. Accordingly, the synthesis of States Parties’ obligations under the CBD with those States’ human rights obligations in human rights treaties is permitted. However, it is important to note that the human rights dimensions or aspects of synthesized obligations remain sourced in human rights treaties, not in the CBD itself.

309. The Cook Islands submits that it is also important to note that while there might be only a few specific human rights implicitly referred to in the CBD, these are not the only human rights States Parties to the CBD are obliged to protect and uphold when fulfilling their obligations under the CBD. Rather, it is submitted that States Parties are obliged to protect all human rights contained in various human rights treaties they have ratified. This is due to the widely recognized indivisibility of human rights doctrine that follows that all human rights are “indivisible, interdependent and interrelated” as noted above (See **Chapter IV, Paragraph 146, above**).³⁰⁵

310. Regarding the BBNJ Agreement, the Cook Islands acknowledges that like the CBD, the BBNJ Agreement text itself does not explicitly mention human rights. However, it is submitted that there are a number of very strong implicit references and connections to States’ human rights obligations in the preamble. These connections include the following paragraph which makes implicit reference to economic, social and cultural rights in the ICESCR and beyond as follows:

Recognizing the importance of contributing to the realization of a just and equitable international economic order which takes into account the interests and needs of humankind as a whole and, in particular, the special interests and needs of developing States, whether coastal or landlocked,³⁰⁶

311. Additionally, a connection to the rights of the child under the UNCRC is made in the following paragraph of the preamble which refers to “present and future” generations as follows:

Desiring to act as stewards of the ocean in areas beyond national jurisdiction on behalf of present and future generations by protecting, caring for and ensuring responsible use of the marine environment, maintaining the integrity

³⁰⁵ The indivisibility of human rights is an official doctrine of the UN as affirmed by the UNGA in 1977, see General Assembly Resolution 32/130, 16 December 1977, para .1(a), and a number of times since, including in 2022, see General Assembly Resolution 77/167, 7 January 2022, preamble (with the tenth preambular paragraph stating: “*Reaffirming* that all human rights are universal, indivisible, interdependent and interrelated...”).

³⁰⁶ BBNJ Agreement, preamble.

of ocean ecosystems and conserving the inherent value of biological diversity of areas beyond national jurisdiction,³⁰⁷

312. It is also important to note that the definition of “sustainable use” that applies to all references to “sustainable use” in the BBNJ Agreement text also explicitly mentions “present and future generations” as follows:

“Sustainable use” means the use of components of biological diversity in a way and at a rate that does not lead to a long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.³⁰⁸

313. Notably, the preamble makes reference to the existing rights of Indigenous peoples “including” as set out in the UNDRIP as follows:

Affirming that nothing in this Agreement shall be construed as diminishing or extinguishing the existing rights of Indigenous Peoples, including as set out in the United Nations Declaration on the Rights of Indigenous Peoples, or of, as appropriate, local communities,³⁰⁹

314. With this particular paragraph, the Cook Islands submits that the use of “including” indicates that the rights of Indigenous Peoples and “as appropriate, local communities” affirmed in the BBNJ Agreement are not limited to those set out in the UNDRIP, but include those set out in other human rights instruments at international law.

315. Importantly, the BBNJ Agreement also provides for the obligation of States to obtain the “the free, prior and informed consent or approval and involvement of ...Indigenous Peoples and local communities”.³¹⁰ This particular obligation of States derives from Article 19 of the UNDRIP and is linked to other human rights treaty norms and rights, in particular, the right of self-determination.³¹¹

³⁰⁷ BBNJ Agreement, preamble.

³⁰⁸ BBNJ Agreement, Article 1(13).

³⁰⁹ BBNJ Agreement, preamble.

³¹⁰ BBNJ, Articles 13, 44(1)(b), annex. 2(iii).

³¹¹ UNDRIP, Article 19. As noted by the UN Office of the Human Rights Commissioner, “The principle of free, prior and informed consent is linked to treaty norms, including the right to self-determination affirmed in common Article 1 of the International Human Rights Covenants. When affirming that the requirement flows from other rights, including the right to develop and maintain cultures, under article 27 of the International Covenant on Civil and Political Rights (ICCPR) and article 15 of the International Covenant on Economic Social and Cultural Rights (ICECSR), the treaty bodies have increasingly framed the requirement also in light of the right to self-determination”, UN Office of the Human Rights Commissioner, *Free, Prior and Informed Consent of Indigenous Peoples*, September 2013, available at:

<https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>

316. The Cook Islands submits that while there are specific human rights explicitly and implicitly referred to in the BBNJ Agreement, these are not the only human rights States Parties to the BBNJ Agreement are obliged to protect when fulfilling their obligations under the BBNJ Agreement. Rather, States Parties are obliged to protect all human rights contained in various human rights treaties they have ratified. This is due to the widely recognized indivisibility of human rights doctrine that follows that all human rights are “indivisible, interdependent and interrelated” as noted above (See **Chapter IV, Paragraph 144, above**).³¹²
317. In considering all of these strong references and connections to human rights obligations across the texts of the Paris Agreement, the CBD and the BBNJ Agreement, the Cook Islands submits that States are obliged to fulfil their obligations under these agreements in accordance with their human rights obligations. Importantly, these human rights obligations not only apply internally for individuals and peoples with States’ respective territory and jurisdiction, but extraterritorially as well.
318. In making this submission, the Cook Islands acknowledges that States might argue that even if States’ human rights obligations can be synthesized with State’s obligations under the Paris Agreement, the CBD and the BBNJ Agreement, then the connections in these texts only authorise for these human rights obligations only apply to individuals within their own territories or jurisdictions.
319. In response to this possible argument, the Cook Islands submits in the following **Subsection (b)** that States’ human rights obligations in this context are both internal and extraterritorial in scope, meaning that States owe human rights obligations to individuals both inside outside their own State’s territory or jurisdiction when fulfilling their obligations around traditional knowledge under the Paris Agreement, the CBD and the BBNJ Agreement.
- (b) States’ obligations under human rights treaties are extraterritorial in scope**
320. In terms of the extraterritorial scope of States’ human rights obligations under the ICESCR, the Cook Islands submits that the wording of Article 2(1) of the ICESCR is framed in an open and inclusive manner in obliging all States Parties to take steps both individually and “through international assistance

³¹² The indivisibility of human rights is an official doctrine of the UN as affirmed by the UNGA in 1977, see General Assembly Resolution 32/130, 16 December 1977, para .1(a), and a number of times since, including in 2022, see General Assembly Resolution 77/167, 7 January 2022, preamble (with the tenth preambular paragraph stating: “*Reaffirming* that all human rights are universal, indivisible, interdependent and interrelated...”).

and co-operation, especially economic and technical, to the maximum of its available resources”.³¹³ As Dr Venn remarked, this “leaves the door open to the development of extraterritorial duties at the global level.”³¹⁴ Notably, Professor John Knox also acknowledged the extraterritorial extension of the ICESCR rights as being “plausible” for States’ obligations in respect of climate change.³¹⁵

321. In terms of the extraterritorial scope of States’ human rights obligations under the ICCPR, Article 2(1) obliges States Parties to “respect and to ensure to all individuals *within its territory and subject to its jurisdiction* the rights recognized in the present Covenant.”³¹⁶ Similarly, Article 2(1) of the UNCRC establishes that States should respect and ensure the Convention rights “*within their jurisdiction*.”³¹⁷
322. Although this phrasing in both the ICCPR and the UNCRC might be interpreted as strictly limiting States’ obligations under the ICCPR and UNCRC to their territorial boundaries, the Cook Islands respectfully submits that such an interpretation should not be adopted by the Court. This is on the grounds that the Court has previously interpreted these jurisdictional boundaries broadly and flexibly to effectively allow both the ICCPR and the UNCRC to have extraterritorial scope where and when appropriate and necessary to uphold the object and purpose of human rights treaties.
323. For example, the Court in the *Wall* Advisory Opinion stated that a State’s “jurisdiction” could be exercised outside of the territory and, in light of the object and purpose of the Covenant, “it would seem natural” that human rights obligations under the ICCPR and the UNCRC would apply under such circumstances.³¹⁸ Accordingly, the Court held that the human rights obligations contained in the ICCPR, the ICESCR and the CRC applied to Israeli activities in the Occupied Palestinian Territories.
324. Furthermore, the Court in the *DRC v Uganda* case found that Uganda was internationally responsible, inter alia, for violations of the ICCPR and the CRC rights committed by armed groups in the territory of the DRC.³¹⁹

³¹³ ICESCR, Article 2(1).

³¹⁴ Alice Venn, *Rendering International Human Rights Law Fit for Purpose on Climate Change*, Human Rights Law Review, 2023, p. 21-22.

³¹⁵ John H. Knox, *Climate Change and Human Rights Law*, 2009, Virginia Journal of International Law p. 207-208, as cited in Alice Venn, *Rendering International Human Rights Law Fit for Purpose on Climate Change*, Human Rights Law Review, 2023, p. 222.

³¹⁶ ICCPR, Article 2(1) (emphasis added).

³¹⁷ UNCRC, Article 2(1) (emphasis added).

³¹⁸ *Wall* Advisory Opinion, p. 47.

³¹⁹ *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* [2005] Judgment, I.C.J. Reports 2005, p. 168, at 79–81.

325. The Cook Islands submits that despite the contextual differences between States' conduct around their armed militaries and States' conduct around supporting, assisting and financing the use and implementation of traditional knowledge in adaptation actions, the principles and findings by the Court above nonetheless extend to States' conduct around supporting, assisting and financing the use and implementation of traditional knowledge in adaptation actions, thus enabling the ICCPR and UNCRC to have extraterritorial scope in these circumstances. This is for the following two interrelated reasons:
326. **First**, the Cook Islands submits that if States, particularly developed States, fail to support, assist and finance the use and implementation of traditional knowledge in adaptation action, such failure constitutes actual or attempted acts of exercising jurisdiction or control over individuals in other States, particularly the developing States and small island developing States that are most vulnerable to the impacts of climate change. Specifically, when States fail to provide adequate support, assistance and funding for traditional knowledge to be used and implemented in adaptation action, or place insufficient importance on traditional knowledge when providing or donating adaptation funding as seen in the Cook Islands (See **Chapter III, Part B, Section 13, Paragraphs 122 and 124, above**), they effectively exercise jurisdiction on individuals in receiving States by controlling the ways and the extent to which individuals in these States can adapt to the impacts of climate change. This submission is supported by the literature as well as the testimonials of Cook Islanders that make clear that traditional knowledge is important for adaptation action against the impacts of climate change (See **Chapter III, Part B, Section 13, above**).
327. **Second**, it is submitted that the ways in which States have the ability to both foresee and determine if or to what extent the conduct of their armed militaries harm and violate the human rights of individuals outside of their territories is deeply analogous to the ways in which States have the ability to both foresee and determine if or to what extent their failures to support, assist and finance the use and implementation of traditional knowledge in adaptation action violates the human rights of individuals in other States. Therefore, when and where States have the foresight and ability to violate or not violate the human rights of individuals outside their State's territory, that State's human rights obligations must be engaged to ensure that they avoid or cease violating the human rights of individuals outside of their territory.
328. It is also important to note that in regard to human rights under the ICCPR specifically, the Committee issued a general comment that the ICCPR broadly entails the obligations of States to ensure the rights "to anyone within the

power or effective control of that State Party, even if not situated within the territory.”³²⁰

329. The Cook Islands submits that the same arguments above in **Paragraphs 326-327 above** can be extended to apply to the Committee’s comment as well, where States, particularly developed States, who have obligations to support, assist and finance the use and implementation of traditional knowledge in adaptation action, effectively exercise “power and effective control” over Individuals in other States when they fail to fulfil such obligations.

(c) States Parties to the Paris Agreement and the CBD are also States Parties to key human rights treaties

330. The Cook Islands acknowledges that another argument States might make is that human rights obligations, whether or not they are extraterritorial, cannot apply to State’s obligations under the Paris Agreement, the CBD and the BBNJ because States have not specifically consented to these broad sets of obligations co-existing and being synthesized together.

331. In response to this possible argument, the Cook Islands submits that because the majority of State Parties to the Paris Agreement and the CBD, are also States Parties to the core human rights treaties, these States have effectively consented to these broad types of obligations co-existing and being read and synthesized together.

332. Regarding the Paris Agreement, the majority of State Parties to the Paris Agreement have also ratified the core human rights treaties at international law, thus making it clear that these States consent to these broad types of obligations being read and synthesized together. As of 8 March 2024, 195 Parties out of 198 Parties to the UNFCCC are Parties to the Paris Agreement.³²¹ The CBD also has near universal ratification.³²²

333. As noted above, the BBNJ Agreement has not yet entered into force. However, the Cook Islands respectfully submits that the submissions and arguments made below also apply to the BBNJ Agreement if it does enter into force.

334. In terms of human rights instruments, as noted above, the majority of States as of 8 March 2024 have accepted as international treaty obligations the whole

³²⁰ The Committee, *General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant*, 29 March 2004, available at: www.unhcr.org/4963237716.pdf

³²¹ The only 3 UN Member States who have not ratified the Paris Agreement are Iran, Libya and Yemen, United Nations Treaty Collection, Paris Agreement, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=en

³²² The only State that has not ratified the CBD is the US.

catalogue of human rights enshrined in the UDHR and in customary international law, through their voluntary treaty ratifications (See **Chapter V, Part B, Section 5, Paragraphs 198, above**).³²³

335. In light of these near universal ratification patterns, the Cook Islands submits that the vast majority of States by 2024 have accepted as international treaty obligations the whole catalogue of human rights enshrined in the UDHR in customary international law.
336. Accordingly, the Cook Islands also submits that States Parties to the Paris Agreement, the CBD and various human rights treaties not only contemplate these sets of obligations and their various instruments they derive from being read and synthesized together to articulate specific obligations of States like Proposed Obligation B. This is on four interrelated grounds.
337. **First**, the Cook Islands respectfully submits that if States did intend to have obligations under the Paris Agreement and the CBD be subject to and synthesized with their human rights obligations, such States would not have signed and ratified the Paris Agreement, the CBD and human rights treaties or would have either withdrawn from either the Paris Agreement and the CBD or various human rights treaties.
338. **Second**, the Cook Islands respectfully submits that if States Parties to the Paris Agreement and the CBD did not intend for their obligations under these treaties to be subject to and synthesized with their human rights obligations, then there would be explicit or at least strongly implicit prohibitions and limitations against synthesizing these two broad sets of obligations in the Paris Agreement and the CBD. As there are no such prohibitions and limitations in the either, the synthesis of States' obligations under the Paris Agreement and the CBD and those under human rights treaties is permissible.
339. **Third**, the Cook Islands respectfully submits that while neither the Paris Agreement nor the CBD texts provide for specific human rights obligations, the absence of such obligations should not be interpreted as meaning that human rights obligations cannot apply and be synthesized with obligations under the UNCLOS. It is argued that human rights, and States' obligations to protect human rights, are fundamental to the whole corpus and system of international law, that such a restrictive interpretation requires explicit prohibitions or limitations on the application of human rights obligations to States' obligations under the UNCLOS.

³²³ As noted above at footnote 245, the one qualification that needs to be made here is that the US has not ratified the ICESCR and the UNCRC. In light of this, the US' acceptance of some of economic and social treaty obligations and child specific obligations is based on other treaties it has ratified, such as certain ILO Conventions and the ICERD.

340. **Fourth**, the Cook Islands respectfully submits that the text makes clear that States' human rights obligations should not be separated and isolated from States' obligations under the UNCLOS but should co-exist and be synthesized where appropriate. This is evident in a number of implicit but strong connections between these two broad sets of obligations in the Paris Agreement and the CBD (See **Chapter V, Part B, Section 4, Subsection (a)**). The Cook Islands also emphasises that neither of these connections and references explicitly or implicitly indicate that human rights considerations and obligations for States only apply to individuals and peoples within their specific territories or jurisdictions, making it clear that human rights considerations and obligations should be extraterritorial in nature.

(d) States' human rights obligations are engaged by the use and implementation of traditional knowledge in adaptation actions

341. The Cook Islands submits that another reason why States' obligations to support, assist and finance the use and implementation of traditional knowledge in adaption actions must be fulfilled in accordance with States' human rights obligations is because States' human rights obligations, both internal and extraterritorial, are engaged and implicated by the use and implementation of traditional knowledge in adaptation actions.

342. The Cook Islands submits that these human rights obligations include, but are in no way limited to, the obligations of States to protect the right of self-determination under the ICCPR and the ICESCR, the right to enjoy a minority culture under the ICCPR and the rights of the child to culture under the UNCRC.

343. Regarding the right of self-determination, as noted above, the right of self-determination is linked to States' obligations around traditional knowledge in the BBNJ Agreement explicitly (see **Chapter V, Part B, Section 4, Subsection (a), Paragraph 315, above**).

344. The Cook Islands submits that the right of self-determination is also engaged with and implicated by States' obligations around traditional knowledge for adaptation action under the Paris Agreement and the CBD. This is on the grounds that the Paris Agreement and the CBD broadly cover the governance of territories and resources regarding climate change and biological diversity respectively with regard to human rights, and the right of self-determination encompasses the human right of self-determination regarding territories and resources. This scope of the right of self-determination is made clear in Common Article 1(2) of the ICCPR and ICESCR which states:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.³²⁴

345. This interdependent relationship between the right of self-determination and the right to dispose and not be deprived of peoples' own territories and resources was also affirmed by the Court in *Western Sahara*, where the Court recognized that the principle of self-determination follows that people have a legal tie to their territory and resources.³²⁵ Importantly, the Court noted in *Western Sahara* that these legal ties exist even in the absence of formal sovereignty.³²⁶ This relates to the Court's more recent finding in the *Wall* Advisory Opinion that the right of self-determination is held by "peoples" whether or not they live under colonial rule or kinds of foreign occupation.³²⁷ These findings are supported by modern views on the right of self-determination which explain that it is an ongoing, continuing and perpetual right that allows peoples to freely determine their internal and external status in the pursuit of their own political, economic, social and cultural development.³²⁸
346. It is also critical to note that Article 47 of the ICCPR and Article 25 of the ICESCR both provide for the "right of all peoples enjoy and utilize fully and freely their natural wealth and resources" as follows:

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.³²⁹

347. Therefore, in light of the findings by the Court and the treaty provisions above, the Cook Islands submit that States' obligations around traditional knowledge are intertwined and engaged by the right of self-determination. As such, the States must fulfil their obligations under the Paris Agreement, the CBD and the

³²⁴ ICCPR, Article 1(2); ICESCR, Article 1(2).

³²⁵ *Western Sahara* (Advisory Opinion) (1975) paras 149-152 accessible at: <https://www.icj-cij.org/sites/default/files/casereLATED/61/061-19751016-ADV-01-00-EN.pdf>

³²⁶ *Western Sahara* (Advisory Opinion) (1975) paras 149-152 accessible at: <https://www.icj-cij.org/sites/default/files/casereLATED/61/061-19751016-ADV-01-00-EN.pdf>

³²⁷ *Wall* Advisory Opinion, paras 118, 122, accessible at: <https://www.icj-cij.org/public/files/casereLATED/131/131-20040709-ADV-01-00-EN.pdf> (confirming that the Palestinian people had the right to self-determination); GA res 1514 (XV), UN GAOR, UN Doc A/RES/1514(XV) (14 December 1960), para. 2..

³²⁸ Final Act of the Conference on Security and Co-operation in Europe, concluded 1 August 1975, reprinted in 14 Int'l L. Materials 1292 Principle VIII, para 2, accessible at: <https://www.osce.org/files/f/documents/5/c/39501.pdf>. See also: Natalie Jones, *Self-Determination and the Right of Peoples to Participate in International Law-Making*, 2021, p. 13.

³²⁹ ICCPR, Article 47; ICESCR, Article 25.

BBNJ Agreement in accordance with the right of self-determination under the ICCPR and the ICESCR.

348. In practice, the Cook Islands submits that acting in accordance with the right of self-determination requires States to ensure that Indigenous peoples and local communities with traditional knowledge provide their free, prior and informed consent to if, when, how and to what extent their traditional knowledges are considered, used, accessed and included in States' policies, plans, strategies and laws around adaptation action. States' must also ensure that Indigenous peoples and local communities are able to determine if, when, how and to what extent their traditional knowledge is actually used in the execution, carrying out and implementation of these policies, plans, strategies and laws according to their own Indigenous or traditional laws and protocols.
349. In regards to financing specifically, the Cook Islands submits that States must ensure that the use and implementation of traditional knowledge is financed by States, especially developed country Parties. Importantly, this financing must not only be provided according to the equity minded requirements in the texts of the Paris Agreement,³³⁰ the CBD³³¹ and the BBNJ Agreement.³³² Rather, it is submitted that fulfilling these obligations in accordance with the right of self-determination requires States to ensure that Indigenous peoples and local communities themselves are be able to help determine such financing, and the requirements processes around it, not just the "developing States" they might belong to.
350. Regarding the right to enjoy a minority culture under Article 27 of the ICCPR, the Cook Islands submits that this right is deeply interconnected with, and substantively shape, all of States' obligations around traditional knowledge under the Paris Agreement, the CBD and the BBNJ Agreement.
351. This is on the grounds that an individuals or peoples' traditional knowledges derive from their culture, meaning that when individuals or peoples use and implement their traditional knowledge in adaptation actions or in any other context, they are exercising their right to enjoy a minority culture under Article 27 of the ICCPR. As noted above, the Committee affirmed in *Billy* that States must protect the right to enjoy a minority culture in the context of adaptation

³³⁰ Paris Agreement, Article 9(9) (Stating: "[T]he operating entities of the Financial Mechanism of the Convention, shall aim to ensure efficient access to financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans").

³³¹ CBD, Article 20 (2) (Stating: "The implementation of these commitments shall take into account the need for adequacy, predictability and timely flow of funds and the importance of burden-sharing among the contributing Parties included in the list.")

³³² BBNJ, Article 52(3) (Stating: "A mechanism for the provision of adequate, accessible, new and additional and predictable financial resources under this Agreement is hereby established").

action under Article 27 of the ICCPR (See **Chapter V, Part A, Section 5, Subsection (c), Sub-subsection (iii), Paragraphs 224-226, above**). Accordingly, the Cook Islands submits that States' obligations around traditional knowledge, including the one proposed here, must be fulfilled in accordance with Article 27.³³³

352. In practice, the Cook Islands submits that acting in accordance with the right to a minority culture requires States to avoid undermining, discouraging, weakening and preventing the use and implementation of traditional knowledge in adaptation actions as this would affect and possibly violate with the right to a minority culture under Article 27. Therefore, States', particularly developed States, must take care to ensure that they do not place a low or less amount of value and importance on traditional knowledge when planning and implementing adaptation action.
353. Furthermore, as the Cook Islands submits above in regards to Proposed Obligation A, the Committee's affirmation of the intergenerational aspect of States' Article 27 obligations in *Billy* also implicates the obligation of States to protect the rights of the child to culture under Article 30 of the UNCRC (See **Chapter V, Part A, Section 5, Subsection (c), Sub-subsection (iii), Paragraphs 227-228, above**). Therefore, the Cook Islands submits that States' obligations to support, assist and finance the use and implementation of traditional knowledge in adaptation actions under the Paris Agreement, the CBD and the BBNJ Agreement must be fulfilled in accordance with the rights of children under Article 30 of the UNCRC as well.
354. In practice, the Cook Islands submits that acting in accordance with Article 27 of the ICCPR and Article 30 of the UNCRC requires States to support, assist and finance the use and implementation of traditional knowledge in adaptation actions in ways that allow for children and future generations to also receive, learn, hold and practice such traditional knowledge in adaptation actions.

³³³ *Billy v. Australia*, para. 8.13.

VI. CONCLUSION

355. For the reasons given above, the Cook Islands respectfully submits that the following elements should be part of the Court's answer to Question (a) raised by the UNGA in its request for an advisory opinion contained in UNGA Resolution 77/276:
- A. States have an obligation to take all necessary measures to mitigate their GHG emissions to protect and preserve the marine environments of other States in accordance with their extraterritorial human rights obligations; and
 - B. States have an obligation to support, assist and finance the implementation of traditional knowledge in adaptation actions in accordance with their human rights obligations.

Sandrina Thondoo
Representative of the Cook Islands

Date: 20 March 2024

CERTIFICATION

I certify that the annexes are true copies of the documents reproduced therein.

Sandrina Thondoo
Representative of the Cook Islands

Date: 20 March 2024

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Annex No. 2: Secretariat of the Pacific Regional Environment Programme, *Expert Report for Cook Islands from the Secretariat of the Pacific Regional Environment Programme*, 18 March 2024.

Annex No. 3: Yvonne Te Ruki Rangi a Tangaroa Underhill-Sem and Christina Newport, *Knowledge of climate-induced mobility in the Cook Islands - Expert Report by Professor Yvonne Te Ruki Rangi a Tangaroa Underhill-Sem and Dr Christina Newport, both of University of Auckland, Auckland, New Zealand*, 10 March 2024.

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