

INTERNATIONAL COURT OF JUSTICE

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

Written statement submitted by the
Republic of Vanuatu

21 March 2024

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TABLE OF ABBREVIATIONS

%	Percentage
°C	Degrees Centigrade
ACHR	American Convention on Human Rights
ACtHPR	African Court of Human and Peoples' Rights
AD	After Death
Advisory Committee	UN Human Rights Council Advisory Committee
AIR/A.I.R.	All India Reporter
AOSIS	Alliance of Small Island States
ARSIWA	ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts
Art./Art(s)	Article/articles
ASEAN	Association of Southeast Asian Nations
BASIC	Brazil, South Africa, India and China
CAN	Climate Action Network
CAT	Climate Action Tracker
CBD	Convention on Biological Diversity
CBDRRC	Common but differentiated responsibilities and respective capabilities
CCPR	Committee on Civil and Political Rights
CCT	Cirrus cloud thinning
CDR	Carbon Dioxide Removal
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESR	Centre for Economic and Social Rights
CESCR	UN Committee on Economic, Social and Cultural Rights
CFCs	Chlorofluorocarbons
Ch.	Chapter
CH ₄	Methane
CIA	Central Intelligence Agency (of the USA)
CMA	Conference of the Parties serving as the meeting of the Parties to the Paris Agreement
CO ₂	Carbon Dioxide
CoP/COP	Conference of Parties
COSIS	Commission of Small Island States on Climate Change and International Law
CRC	Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSIRO	Commonwealth Scientific and Industrial Research Organisation
CUP	Cambridge University Press
DACCS	direct air carbon dioxide capture and storage
ECOSOC	UN Economic and Social Council
ECtHR	European Court of Human Rights
ECtHR GC	European Court of Human Rights (Grand Chamber)
EEZ	Exclusive Economic Zone
EIT	Economies in Transition
ENSO	El Niño Southern Oscillation
EU	European Union

EU27	27 States of the European Union, excluding the United Kingdom
FFI	Fossil Fuel and Industry
G20	Group of 20
GDP	Gross Domestic Product
GHG(s)	Greenhouse gas(es)
H ₂ O	Water vapour
HFCs	Hydrofluorocarbons
IACtHR	Inter-American Court of Human Rights
ICAO	International Civil Aviation Organization
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ/I.C.J.	International Court of Justice
ICOMOS	International Council on Monuments and Sites
ICSID	International Centre for Settlement of Investment Disputes
ICSM CHC	International Co-Sponsored Meeting on Culture, Heritage, and Climate Change
IDI	Institut de Droit International
ILA	International Law Association
ILC	International Law Commission
ILO/I.L.O.	International Labour Organization
IMO	International Maritime Organization
IPCC	Intergovernmental Panel on Climate Change
ITLOS	International Tribunal for the Law of the Sea
LCIA	London Court of International Arbitration
LDC(s)	Least Developed Country(ies)
LMDC	Like-Minded Developing Countries
LULUC	land use and land use changes
m	Metre
MALFFB	Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity
MARPOL Convention	The International Convention for the Prevention of Pollution from Ships
MCB	Marine cloud brightening
MHWs	marine heatwave(s)
N ₂ O	nitrous oxide
NASA	National Aeronautics and Space Administration
NDCs	Nationally Determined Contribution(s)
NDMO	National Disaster Management Office
NHNP	New Hebrides National Party
NOAA	US National Oceanic and Atmospheric Administration
NSF	National Science Foundation
O ₃	Ozone
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
OUP	Oxford University Press
p./pp.	Page/pages
P.C.I.J.	Permanent Court of International Justice
PA	Paris Agreement
para./paras.	Paragraph(s)
PCA	Permanent Court of Arbitration
PFCs	Perfluorocarbons
PGNC	Papua New Guinea National Court of Justice.
QLC	Land Court of Queensland
Rep./Rep	Reporter/Reports

Res.	Resolution
Rev.	Revision
RIAA	Reports of International Arbitral Awards
s./ss.	Section/sections
SAI	Stratospheric aerosol injection
SCMR	Supreme Court Monthly Review (Pakistan)
SCR	Supreme Court Reporter
SF ₆	sulphur hexafluoride
SIDS	Small Island Developing States
SPC	The Pacific Community
SPCZ	South Pacific Convergence Zone
SPM	Summary for Policymakers
SPREP	Secretariat of the Pacific Regional Environment Programme
SRFC	Sub-Regional Fisheries Commission
SRM	Solar Radiation Modification
SST(s)	Sea Surface Temperature(s)
STC	Supreme Court of Justice (Columbia)
Supp.	Supplement
TC	Tropical Cyclone
U.N.T.S./UNTS	United Nations Treaty Series
UDHR	Universal Declaration on Human Rights
UN/U.N.	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environmental Programme
UNESCO/ U.N.E.S.C.O.	United Nations Educational, Scientific, and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
USD	United States Dollar
USGS	United States Geological Survey
v./v	Versus
VCLT	Vienna Convention on the Law of Treaties
Viz.	Videlicet
VMGD	Vanuatu Meteorology and Geohazards Department
Vol/vol.	Volume
VT	Vanuatu Vatu
WHO	World Health Organization
WMO	World Meteorological Organization
WT	World Trade
WTO	World Trade Organization

SUMMARY OF THE WRITTEN STATEMENT

1. At the heart of the request submitted by the UN General Assembly to the Court in Resolution 77/276 is a simple but fundamental question: **whether a certain conduct of States – the “Relevant Conduct” – which has caused both significant harm to the environment, particularly to and through the climate system, and indeed catastrophic harm in the form of climate change and its adverse effects, is consistent, as a matter of principle, with international law. The Republic of Vanuatu submits that the Relevant Conduct is, in principle, inconsistent with several rules of treaty and customary international law, including the obligations arising from the instruments and rules mentioned in the chapeau paragraph of the operative part of Resolution 77/276. That carries the legal consequences contemplated in the general international law of State responsibility as well as in specific treaties, with respect to the two categories of victims of climate injustice identified in sub-paragraphs (i) and (ii) of Question (b).**
2. The Court has jurisdiction to give the requested advisory opinion, there are no compelling reasons for the Court to decline to give its advisory opinion, and there are no grounds justifying the reformulation or restrictive interpretation of the questions put to the Court by the UN General Assembly in its request adopted by consensus (Chapter I).
3. Regarding the scientific aspects relevant to the questions put to the Court (Chapter II), the Republic of Vanuatu submits that they are settled for all relevant purposes. The causes of climate change are the cumulative anthropogenic emissions of greenhouse gases from certain activities, mainly the burning of fossil fuels and land uses over time. The impacts have already materialized and will worsen over time, unless immediate and bold action is taken. They include more frequent and intense extreme events as well as widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability. Importantly, this is both a scientific and a State consensus, and there is absolutely no need for the Court to embark on anything even remotely resembling a scientific trial. The conclusions regarding the causes and impacts of climate change have been formulated in the reports of the Intergovernmental Panel on Climate Change (IPCC), which are in the relevant part (the Summaries for Policymakers) approved line by line by States. Of particular importance is, in the language of the IPCC, the “*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*”.¹ Indeed, as the IPCC recognizes, “[v]ulnerable communities who have historically contributed the least to current climate change are disproportionately affected”.² This is the core of climate injustice and, remarkably, this is settled science. The impact has been particularly devastating on small

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

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

island developing States, such as the Republic of Vanuatu, which face nothing short of an existential threat in as little as decades.

4. At the heart of the two questions put to the Court by the General Assembly is the Relevant Conduct (Chapter III). Characterizing this conduct is necessary to guide the identification of the relevant obligations to be clarified by the Court in response to Question (a) as a step to answer Question (b) regarding “*legal consequences under these obligations*”. The characterization of the Relevant Conduct is provided by Resolution 77/276, first in broad terms in Question (a), then in more specific terms in preambular paragraph 5 *in fine*, and finally in even more specific terms in the first part of Question (b). In essence, it consists of acts and omissions of individual States – and of a specific group thereof – that have resulted over time in a level of anthropogenic GHG emissions from activities within their jurisdiction or control, which have interfered with the climate system and other parts of the environment to an extent which amounts to at least significant harm to the latter, whether or not the anthropogenic GHG emissions of a given State over time are the only or the main cause of climate change, and whether or not they are the only or the main cause of the specific harm suffered by another State, people or individual. There is ample evidence regarding which specific States have displayed the Relevant Conduct and which group of States, taken together, have caused not only significant harm to the climate system and other parts of the environment but catastrophic harm in the form of climate change and its adverse consequences. There is also ample evidence that at least from the 1960s, States with high cumulative emissions of greenhouse gases (GHGs) were aware that the release of greenhouse gases into the Earth’s atmosphere had the potential to alter the climate system, and that such interference, if unmitigated, could have catastrophic effects for humans and the environment. The legality in principle of the Relevant Conduct can in any event be assessed in and of itself, without reference to one or more specific States or group thereof.
5. Given the vast spatial and temporal scope of the Relevant Conduct, the UN General Assembly has turned to the Court to advise on its legality under the entire corpus of international law (Chapter IV). Only the Court has the general competence to do so. The text of Resolution 77/276 emphasizes in several preambular paragraphs and in the chapeau paragraph of the operative part that the General Assembly seeks legal guidance “*having particular regard*”, without limitation, to a range of rules from treaties and general international law. Within this wide corpus of international law, Question (a) requests the Court to clarify the obligations governing the Relevant Conduct defined in broad terms as “*anthropogenic emissions of greenhouse gases*”. The obligations to be identified and clarified are those of “*States*” and only “*under international law*”. These obligations are those that concern the protection of the “*environment*”, including the “*climate system*” as one of its “*parts*”, from the Relevant Conduct, for the benefit of “*States*” and of “*present and future generations*”.
6. In response to Question (a), the Republic of Vanuatu submits that:
 - (a) The following obligations arising from general international law specifically govern the acts and omissions of States underpinning the Relevant Conduct: the duty of due diligence; the obligations arising from the rights recognized in the

Universal Declaration of Human Rights; the principle of prevention of significant harm to the environment; the duty to protect and preserve the marine environment; the obligations arising from the right to self-determination; the obligations arising under the right to a clean, healthy and sustainable environment as a necessary derivation of the rights catalogued in the Universal Declaration of Human Rights; the duty to co-operate and the obligations arising from the principle of good faith. **These obligations are binding on all States and the Relevant Conduct is in breach of them.**

(b) In addition, the following obligations arising from treaties in force also govern the Relevant Conduct of States which are parties to one or more of them: obligations arising from the Charter of the United Nations and the subsequent interpretive practice under it, including the rights recognized in the Universal Declaration of Human Rights, the right of peoples to self-determination, the duty to co-operate and the obligations arising from the principle of good faith; the obligations arising from the rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; the obligations arising from the right to clean, healthy and sustainable environment as it relates to other rights and existing international law; the obligations arising from the United Nations Framework Convention on Climate Change and the Paris Agreement; the obligations arising from the United Nations Convention on the Law of the Sea; and the obligations arising from the Convention on the Rights of the Child. **These obligations are binding on States parties to the relevant treaties and the Relevant Conduct is in breach of them.**

(c) Furthermore, international human rights law and the principle of intergenerational equity create binding obligations for States towards future generations. **These obligations are binding on all States and the Relevant Conduct is in breach of them.**

7. Question (b) of the operative part of Resolution 77/276 asks the Court to determine the legal consequences arising for States having displayed the Relevant Conduct with respect to two categories of victims (Chapter V), namely States which, due to their geographical circumstances and level of development, are injured or specially affected by or particularly vulnerable to the adverse effects of climate change, and peoples and individuals of the present and future generations affected by such adverse effects. The acts and omissions constituting the Relevant Conduct are attributable to the State under the customary international rules of attribution, particularly – without limitation – the provision of governmental subsidies to fossil fuels production and/or use, the adoption of laws, policies, programmes and decisions regarding energy policy, and – very importantly – the omission to act to limit GHG emissions to a level below the threshold of significance of the Relevant Conduct. The breach results from the display of the Relevant Conduct, whether this is analyzed at the level of specific States, of a specific group of States or of the Relevant Conduct in and of itself. This conduct is in breach of the obligations identified in response to Question (a) of the operative part. The breach arises from a “*composite act*” in the meaning of the rule codified in Article 15(1) of the

ILC Draft Articles on State Responsibility for Internationally Wrongful Acts (ARSIWA), namely “*a series of actions or omissions defined in aggregate as wrongful*”. Such a series has unfolded over time, and it amounts to partial and/or total non-conformity with the requirements of each obligation. With respect to certain rules of a peremptory or *erga omnes* nature, the series of acts and omissions qualify as a breach of a serious character. The breach triggers legal consequences with respect to the two categories of victims.

8. The legal consequences with respect to “*States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change*” are governed by the relevant rules of general international law codified in the ARSIWA, including Articles 30 (Cessation and non-repetition), 31 (Reparation), 33 (Scope of the international obligations set out in this part), 34 (Forms of reparation), 35 (Restitution), 36 (Compensation), 37 (Satisfaction) and 41 (Particular consequences of a serious breach of certain obligations). This general regime is residual, as recalled by Article 55 of ARSIWA. It applies to the determination of legal consequences for breaches involving harm to the environment, with its specificities, including the existence of several concurrent causes and the nature of the injury. The two basic legal consequences of the breach arising for States having displayed the Relevant Conduct are the obligations of cessation and reparation. The obligation of cessation of the Relevant Conduct requires deep cuts in GHG emissions in accordance with the scientific consensus regarding what needs to be done and by when. Notably, reliance on geoengineering and speculative technologies is not cessation; and indeed, it is associated with further risks to the climate system and the environment and further breaches of international law. The obligation of reparation entails, first and foremost, restitution when this is possible (including support for adaptive capacity, non-monetary redress for the human mobility, including displacement and migration, caused by the adverse effects of climate change, recognition of sovereignty, statehood, territory and maritime boundaries despite sea-level rise). Reparation also entails compensation when restitution is not possible (including for both economic and non-economic loss and damage, and for damage caused to the environment in and of itself). In addition, particular consequences attach to serious breaches of certain obligations owed *erga omnes* or to the international community as a whole, such as the obligation to refrain from largescale violations of human rights and the obligations arising from the right to self-determination.
9. The legal consequences with respect to “*Peoples and individuals of the present and future generations affected by the adverse effects of climate change*” are described in both general international law and in special treaty rules. There are three important legal consequences that arise from the violation of human rights obligations by States having displayed the Relevant Conduct, namely the obligation to provide an effective remedy in order to afford redress for the human rights violations, the obligation to provide structural remedies, and the additional obligation arising from serious breaches of obligations owed *erga omnes* or to the international community as a whole. In relation, specifically, to violations of human rights resulting from loss and damage, the legal consequences include cessation, the provision of redress, and the provision of structural remedies, including measures beyond victim-specific remedies such as changes in the State’s laws

and practices. In addition, the breach of the right to self-determination also gives rise to additional legal consequences. The Court can provide advice to the General Assembly regarding the modalities required to ensure the continued enjoyment of the right to self-determination by peoples which, due to loss and damage, will be unable to continue to fully exercise their right to self-determination in their own territory. All States have to cooperate to achieve this precise result, and they are also required to recognize the continued enjoyment by the affected peoples of their right to self-determination in the way it has been exercised, including independence and Statehood in the limits of their own territory and maritime spaces, and not to render aid or assistance in maintaining or expanding new fossil fuel production and use.

CHAPTER I

INTRODUCTION

1.1. Process leading to the request for an advisory opinion

10. In mid-2022, the Republic of Vanuatu through its Permanent Mission to the UN in New York began assembling a Core Group of States to iterate and further develop a draft resolution requesting an advisory opinion to the International Court of Justice (hereafter “ICJ” or “the Court”) on the issue of climate change.
11. The Core Group of States led by Vanuatu included Angola, Antigua & Barbuda, Bangladesh, Costa Rica, Germany, Liechtenstein, the Federated States of Micronesia, Morocco, Mozambique, New Zealand, Portugal, Romania, Samoa, Sierra Leone, Singapore, Uganda, and Vietnam.
12. The Core Group began internal consultations on the draft resolution in September 2022 and, after several months, on 30 November 2022, it circulated a draft resolution to the wider UN membership for informal consultations before a presentation of the text on 9 December 2022. After 3 informal rounds of negotiations at the UN from December 2022 through to February 2023, the draft resolution was finalised and uploaded to the UN e-delegate portal on 20 February 2023 for co-sponsorship. By 1 March 2023, when the L-document was issued, the text had 105 co-sponsors. By the time it was submitted to a vote, the text had 132 co-sponsors.³
13. On 29 March 2023, the UN General Assembly adopted by consensus Resolution 77/276 “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change” (Resolution 77/276). Shortly thereafter, Resolution 77/276 was transmitted to the Registrar of the ICJ by letter of 12 April 2023 (received on 17 April 2023). On 17 April 2023, the Registry gave notice of the filing of the request to all States entitled to appear before the Court.

³ 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.

14. Resolution 77/276 consists of a preamble, setting out several aspects deemed important by States during the drafting process of the text, and an operative part, with the questions put to the Court:

“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?”

15. On 19 April 2023 the Court issued a press release communicating the initiation of the procedure.⁴ The next day, 20 April 2023, the President of the Court issued an Order (Order of 20 April 2023) setting the time-limits for submission of written statements and comments.⁵ The operative part of this Order reads as follows (emphasis added):

“1. *Decides* that the United Nations and its Member States are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion and may do so within the time-limits fixed in this Order;

2. *Fixes* 20 October 2023 as the time-limit within which written statements on the questions may be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute;

3. *Fixes* 22 January 2024 as the time-limit within which States and organizations having presented written statements may submit written comments on the written statements made by other States or organizations, in accordance with Article 66, paragraph 4, of the Statute; and

Reserves the subsequent procedure for further decision”

16. By letter of 24 July 2023, the Republic of Vanuatu, through its Permanent Representative to the UN, requested, together with 14 co-signatory States, an extension “of three months

⁴ The General Assembly of the United Nations requests an advisory opinion from the Court on the obligations of States in respect of climate change, 19 April 2023, Press release No. 2023/20.

⁵ *Obligations of States in respect of Climate Change, Advisory Opinion*, Order of 20 April 2023, General List No. 187.

for the time-limits for the two rounds of submissions of written statements” fixed by the Order of the President of 20 April 2023.

17. On 4 August 2023, the President of the Court issued an Order (Order of 4 August 2023) extending the time-limits for the submission of written statements and written comments on written statements as follows:

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

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

*Reserves the subsequent procedure for further decision.”*⁶

18. Following additional requests for extension of the deadlines, by Order of 15 December 2023 (Order of 15 December 2023) the President of the Court further extended the deadlines as follows:

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

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

*Reserves the subsequent procedure for further decision.”*⁷

19. The Republic of Vanuatu has the honour to submit the present Written Statement pursuant to the time-limit set in the Order of 15 December 2023.

1.2. Summary of Vanuatu’s overall submission

20. At the heart of the request is a simple but fundamental question: **whether a certain conduct of States which has caused both significant harm to the environment, particularly to and through the climate system, and indeed catastrophic harm in the form of climate change and its adverse effects is consistent, as a matter of principle, with international law.** As demonstrated in this Written Statement, the conduct is clearly characterized in the text of Resolution 77/276 in three increasingly specific ways. First, it is characterized in Question (a) in broad terms as “*anthropogenic emissions of greenhouse gases*”, and this for the purpose of identifying the relevant obligations of States from the corpus of international law to which the General Assembly requests the Court to “*hav[e] particular regard*”, without limitation. Question (a) is thus a preparatory

⁶ *Obligations of States in respect of Climate Change, Advisory Opinion*, Order of 4 August 2023, General List No. 187.

⁷ *Obligations of States in respect of Climate Change, Advisory Opinion*, Order of 15 December 2023, General List No. 187.

step in the process of addressing the heart of the question put to the Court, in Question (b). Second, preambular paragraph 5 provides a further clarification referring to “*the conduct of States over time in relation to activities that contribute to climate change and its adverse effects*”. It is the conduct of “*States over time*”, i.e. their cumulative emissions of greenhouse gases, “*in relation to activities*”, i.e. the emissions of States themselves but also of non-State actors under their jurisdiction, that “*contribute*” to climate change and its adverse effects, whether they are the sole or the main cause or not. This paragraph thus removes several ambiguities regarding the conduct at stake. Third, in Question (b), the Court is asked about the “*legal consequences*” of such conduct, which is further specified to ensure that no ambiguity remains. As this Written Statement demonstrates, the Court has ample evidence to assess the legal consequences of the conduct displayed by certain specific States, by a specific group of States or of the conduct in general. Such conduct is defined as “*acts and omissions*” whereby “*States*” (whether considered individually, as a group, or as a State conduct in general) “*have caused significant harm to the climate system and other parts of the environment*”. This formulation makes abundantly clear that the conduct at stake consists of acts and omissions which have led to “*significant harm*” to the environment, and the climate system as one part thereof, a threshold which is distinct from causing catastrophic harm in the form of climate change and its adverse effects. **The Republic of Vanuatu submits that this conduct is, in principle, inconsistent with several rules of treaty and customary international law, including those mentioned in the chapeau paragraph of the operative part of Resolution 77/276. That this conduct carries the legal consequences contemplated in the general international law of State responsibility as well as in specific treaties, with respect to the two categories of victims of climate injustice identified in subparagraphs (i) and (ii) of Question (b).**

1.3. The Court has jurisdiction to render the requested advisory opinion and there are no compelling reasons for it not to do so

1.3.1. Overview

21. The Republic of Vanuatu submits that this Court may give the requested opinion (see [1.3.2]) and it is proper to do so (see [1.3.3]).
22. The Court has jurisdiction under Article 65(1) of the Statute of the ICJ to give any advisory opinion requested by an authorized body on any legal question. The General Assembly is generally authorized by Article 96(1) of the Charter of the United Nations (UN Charter) to request an advisory opinion, if it so decides, and the subject matter of Resolution 77/276 falls within its competence, evidenced by a long-standing interest in climate change through its consistent record of resolutions from 1988 to the present day. The request has clearly been made on legal questions, regarding the obligations of States and their legal consequences, notwithstanding the factual situation contemplated by the questions or any alleged political motivation for the request. In any event, the UN General Assembly adopted Resolution 77/276 by consensus – without a vote – which demonstrates that all States consider that it is empowered to do so.

23. Hence, there are no compelling reasons for the Court to decline to render its advisory opinion. To give the opinion would, without doubt, be a proper exercise of the Court's advisory jurisdiction as the principal judicial organ of the UN and would not require the Court to decide a legal dispute or investigate facts in a manner that circumvents the principle of consent in a contentious case between States. Specifically, the Court is presented with sufficient information and evidence on the causes and adverse effects of climate change to give the requested opinion. Due to the procedures of the Intergovernmental Panel on Climate Change (IPCC), such evidence reflects both a scientific and a State consensus on the causes and adverse effects of climate change. Any reformulation or restrictive interpretation of the questions put to this Court would undermine the clear terms carefully by the General Assembly and agreed by all States by consensus.

1.3.2. *The Court has jurisdiction to render the advisory opinion requested by the UN General Assembly*

24. A principal function of this Court's advisory jurisdiction is to give its opinion on the request of the UN General Assembly for authoritative legal guidance, resulting in 18 out of the Court's 27 advisory opinions to date.⁸ The Republic of Vanuatu submits that this Court has jurisdiction to render the requested opinion on two requisite bases. First, the UN General Assembly is expressly authorized to make such a request. There is no doubt that the subject matter of the specific request falls within the competence of the UN General Assembly, which regularly addresses a range of matters in respect of climate change. Second, the Court has been asked to advise only on legal questions (regarding the '*obligations of States*' and their '*legal consequences*'). Any factual or political element to these questions does not affect the Court's jurisdiction. The issue of whether this Court should exercise its discretionary power to give the requested opinion only arises once jurisdiction has been established,⁹ and it is subsequently addressed at [1.3.3] below.

⁸ See (1) *Admission of a State to the United Nations (Charter, art. 4)*, Advisory Opinion, I.C.J. Reports 1948, p. 57; (2) *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, I.C.J. Reports 1949, p. 174; (3) *Interpretation of Peace Treaties*, Advisory Opinion, I.C.J. Reports 1950, p. 65; (4) *Interpretation of Peace Treaties (Second Phase)*, Advisory Opinion, I.C.J. Reports 1950, p. 221; (5) *International Status of South-West Africa*, Advisory Opinion, I.C.J. Reports 1950, p. 128; (6) *Competence of Assembly Regarding Admission to the United Nations (Advisory Opinion)*, I.C.J. Reports 1950, p.4; (7) *Reservations to the Convention on Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 15; (8) *Effect of Awards of Compensation Made by the U.N. Administrative Tribunal*, Advisory Opinion, I.C.J. Reports 1954, p. 47; (9) *South-West Africa—Voting Procedure*, Advisory Opinion, I.C.J. Reports 1955, p. 67; (10) *Admissibility of Hearings of Petitioners by the Committee on South West Africa*, Advisory Opinion, I.C.J. Reports 1956, p. 23; (11) *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, I.C.J. Reports 1962, p. 151; (12) *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16; (13) *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 12; (14) *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, Advisory Opinion, I.C.J. Reports 1988, p. 12; (15) *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226; (16) *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136; (17) *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403; (18) *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95.

⁹ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, I.C.J. Reports 1996, p. 66, para. 14.

A. The UN General Assembly is competent to request the advisory opinion

25. This Court’s jurisdiction to render an advisory opinion on any legal question is premised on the request of an authorized body, foremost the UN General Assembly. Article 65(1) of the Statute of the ICJ 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.*” Article 96(1) of the UN Charter relevantly states: “*The General Assembly [...] may request the International Court of Justice to give an advisory opinion on any legal question*”. Together, these clauses presume the competence of the UN General Assembly to request an advisory opinion, if it so decides. This Court has previously affirmed that the General Assembly has “*the right to decide for itself on the usefulness of an opinion in the light of its own needs*”, such that the Court should not enquire whether “*an advisory opinion is needed by the Assembly for the performance of its functions.*”¹⁰ As opposed to the consensual basis of jurisdiction in contentious cases, therefore, the Court’s jurisdiction in advisory proceedings is based on whether the requested opinion is one that the authorized body “*considers to be desirable in order to obtain enlightenment as to the course of action it should take*” and is accordingly given by the Court to the authorized body to support the activities of the UN as its principal judicial organ.¹¹
26. The UN General Assembly’s determination (by consensus) that an advisory opinion of the Court on the obligations of States in respect of climate change would enlighten its course of action is well reflected, *inter alia*, in the opening lines of Resolution 77/276: “*Recognizing that climate change is an unprecedented challenge of civilizational proportions and that the well-being of present and future generations of humankind depends on **our immediate and urgent response to it***” (emphasis added). All members of the UN General Assembly deemed it desirable to ask this Court for authoritative guidance to clarify the obligations of States and their legal consequences where they have caused significant harm to the climate system and other parts of the environment, which must inform an immediate and urgent response to climate change.
27. Some participants in advisory proceedings have previously objected to the Court’s jurisdiction on the ground that the subject matter of a request went beyond the competence of the UN General Assembly. This Court has never accepted that submission. It does not matter, for the purpose of Article 96(1) of the UN Charter, whether the General Assembly can take a binding decision on the question.¹² Nor does it matter whether another body is seized of an overlapping situation, so long as the request was validly adopted.¹³ In any event, the Republic of Vanuatu submits that the subject matter of the request clearly falls within the competence of the UN General Assembly, recalled most

¹⁰ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 16.

¹¹ *Interpretation of Peace Treaties, Advisory Opinion*, I.C.J. Reports 1950, p. 65, p. 71; *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, para. 31; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 47.

¹² *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 11-12.

¹³ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 403, para. 24; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, paras. 18-35.

recently in Resolution 78/153 of 19 December 2023 regarding the “Protection of the global climate for present and future generations of humankind”.¹⁴

28. The UN Charter provides that the General Assembly has general competence, *inter alia*, to “discuss any questions or any matters within the scope of the present Charter” (Article 10), including “the general principles of co-operation in the maintenance of international peace and security” (Article 11(1)); and “shall initiate studies and make recommendations” for the purposes of: “promoting international co-operation” in the political, economic, social, cultural, educational, and health fields; “encouraging the progressive development of international law”; and “assisting in the realization of human rights and fundamental freedoms for all” (Article 13). In broadly construing this competence, the Court has previously emphasized the General Assembly’s “long-standing interest” in the subject matter of a request (viz. nuclear disarmament),¹⁵ or its “long and consistent record” in seeking to address the question (viz. decolonization).¹⁶
29. Here, too, the General Assembly has evidenced a long-standing interest in the “Protection of global climate for present and future generations of [hu]mankind” through its consistent record of 33 resolutions by that name, beginning with Resolution 43/53 of 6 December 1988. The preambular paragraphs of Resolution 77/276 further illustrate how the UN General Assembly regularly addresses climate change, corresponding to a range of treaties, instruments, and rules that the General Assembly specifically “recalls” or “emphasizes” as important in addressing the legal questions put to this Court (see preambular paragraphs 2 to 6 of Resolution 77/276). By analogy to the UN General Assembly’s interest in the conditions of participation in the Genocide Convention, addressed in the *Reservations* opinion, the obligations of States relating to climate change and their legal consequences also constitute “a permanent interest of direct concern” to the UN, which “has not disappeared” with the entry into force of the UNFCCC and other climate change treaties.¹⁷ This point not only affirms the competence of the General Assembly to request the advisory opinion but also the propriety of this Court exercising its jurisdiction to answer the relevant questions (see [1.2.3] below).
30. In summary, the request of the UN General Assembly for an advisory opinion was adopted by consensus to enlighten its course of action in the immediate and urgent response of member States to climate change, in which the General Assembly has a long-standing interest as evidenced by a consistent record of resolutions on the protection of the global climate for present and future generations of humankind. These factors establish beyond doubt the competence of the UN General Assembly as an authorized body under Article 65(1) of the Statute of the ICJ.

¹⁴ UN General Assembly Resolution 78/153: “Protection of the global climate for present and future generations of humankind”, 19 December 2023, A/RES/78/153 ([link](#)).

¹⁵ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 12.

¹⁶ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, para. 87.

¹⁷ *Reservations to the Convention on Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 15, pp. 19-20.

B. The request for an advisory opinion has clearly been made on legal questions

31. As a precondition of this Court’s advisory jurisdiction, the UN General Assembly’s request must be made “*on any legal question*”. The Republic of Vanuatu submits that the questions submitted under Resolution 77/276 are clearly legal questions, pertaining to: “*the obligations of States under international law*” and “*the legal consequences under these obligations*”. It is well established that the Court’s jurisdiction is not affected by any factual element in an otherwise legal question or by any political motive behind the question posed. The legal character of a question is decisive. And, in this case, beyond doubt.
32. The “*legal character of a question*” depends on whether the Court has been “*invite[d] to discharge an essentially judicial task*”, which involves “*an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law*”.¹⁸ This may involve, for example, a request for the Court to “*rule on the compatibility*” of a particular conduct or situation “*with the relevant principles and rules of international law*” by identifying, interpreting, and applying such principles and rules to the conduct and “*thus offering a reply to the question posed based on law.*”¹⁹
33. Here, the questions posed by the UN General Assembly are clearly legal in character, asking the Court to discharge an essentially judicial task by assessing “*the obligations of States under international law*” regarding a specific conduct and the “*legal consequences for States*” arising for States which have displayed such conduct (“*where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment.*”). It is instructive that no issue as to the legal character of these questions was raised by any member State when the UN General Assembly adopted its request for an advisory opinion by consensus.
34. This Court has held that a “*mixed question of law and fact*” is nevertheless a legal question within the meaning of Article 96(1) of the UN Charter and Article 65(1) of the ICJ Statute, as a relevant factual situation may inform the legal significance of rights and obligations.²⁰ Indeed, the Court must be “*acquainted with, take into account and, if necessary, make findings as to the relevant factual issues*” in order to “*pronounce on legal questions*”, no less in exercising its advisory jurisdiction.²¹ The Court also has sufficient facts to answer the questions, addressed in detail in [Chapters II and III] of this Written Statement.
35. Any political motives said to have inspired a request are irrelevant to the Court’s jurisdiction.²² To the extent that the response of specific States to climate change is

¹⁸ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 13.

¹⁹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 13.

²⁰ *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, paras. 17-19.

²¹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, I.C.J. Reports 1971, p. 16, para. 40.

²² *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 13; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 41; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 403, para. 27.

influenced by political considerations, this Court has previously acknowledged that obtaining an advisory opinion may be “*particularly necessary*” to clarify “*the legal principles applicable with respect to the matter under debate*”.²³

36. In any event, unlike politically divisive requests for advisory opinions, Resolution 77/276 is remarkably the only request of the UN General Assembly to have been adopted by consensus and was co-sponsored by an unprecedented 132 States.²⁴ Although a simple majority would have sufficed, the consensual adoption of Resolution 22/276 suggests that all member States considered that this request for an opinion was not only desirable but properly put on legal questions within the competence of the UN General Assembly. And, thus, within this Court’s advisory jurisdiction.

1.3.3. *There are no compelling reasons for the Court to decline to render its advisory opinion or otherwise reformulate or restrictively interpret the questions*

37. Article 65(1) of the Statute of the ICJ provides that the Court “*may give*” an opinion within its advisory jurisdiction. Once this Court is satisfied that it has jurisdiction to answer the UN General Assembly’s request, therefore, it must positively elect to exercise that jurisdiction.²⁵ Yet this Court has never refused to answer a request within its advisory jurisdiction. And for good reason. The Court has reaffirmed that its reply to a request for an opinion “*represents its participation in the activities of the UN and, in principle, should not be refused*”.²⁶ As a result, only “*compelling reasons would justify refusal of such a request*”.²⁷

²³ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion*, I.C.J. Reports 1980, p. 73, para. 33.

²⁴ 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.

²⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, 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. 29; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, para. 63.

²⁶ 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; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, para. 65.

²⁷ 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; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, 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*, I.C.J. Reports 2019, p. 95, para. 65.

38. The Republic of Vanuatu submits that no compelling reason is raised by the present request that would justify the refusal of an advisory opinion. To give the opinion would be, without doubt, a proper exercise the Court’s advisory jurisdiction as the principal judicial organ of the UN. For completeness, three specific grounds on which other participants might object to this Court exercising its advisory jurisdiction are addressed. First, no impediment arises from pending requests for advisory opinions on climate change before the International Tribunal for the Law of the Sea (ITLOS) or the Inter-American Court of Human Rights (IACtHR). Second, the Court is presented with sufficient information and evidence on the causes and adverse effects of climate change to give the requested opinion. Third, there are no grounds for the Court to reformulate the questions or interpret them restrictively before giving its opinion. None of these objections provides a sound reason, let alone a compelling one, for this Court to refuse to give the advisory opinion or otherwise restrict the legal questions within its jurisdiction.

A. To give the requested opinion would properly exercise the Court’s advisory jurisdiction as the principal judicial organ of the United Nations

39. Article 92 of the UN Charter provides that this Court is the “*principal judicial organ*” of the United Nations. As a judicial organ, the Court participates in the activities of the UN in two main ways, namely, by settling contentious disputes and by giving advisory opinions. In contentious cases, each UN member State “*undertakes to comply with the decision*” of the Court “*in any case to which it is party*” (Article 94(1)). Such undertakings, of course, reflect the obligation of all UN members to fulfil in good faith their free choice in consenting to the jurisdiction of the Court as a peaceful means of dispute settlement. The obligation of members to “*settle their disputes by peaceful means*” (Article 2(3)) is itself a corollary of their cardinal obligation to refrain from “*the threat or use of force*” (Article 2(4)). In this light, the Court participates in the activities of the UN by providing members with a freely chosen means of settling their disputes peacefully.

40. A distinct way in which this Court participates as the principal judicial organ of the UN is by providing authoritative guidance on legal questions when requested by the General Assembly, the Security Council, or another authorized body under Article 96 of the UN Charter. Never may a State be so authorized. Hence, the Court’s advisory jurisdiction does not directly participate in the peaceful settlement of disputes between States, being merely “*advisory, not binding*”, and “*intended for the guidance*” of the UN.²⁸ That is why “*the consent of States is not a condition precedent*” to the propriety of this Court’s advisory jurisdiction.²⁹ However, the Court’s decision to give an advisory opinion must nevertheless “*ensure respect for the fundamental principle of consent to jurisdiction*” in contentious cases.³⁰

²⁸ *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion*, I.C.J. Reports 1989, p. 177, para. 31.

²⁹ *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion*, I.C.J. Reports 1989, p. 177, para. 31.

³⁰ *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*, I.C.J. Reports 2019, p. 95, para. 85.

41. This Court’s concern to maintain an essential distinction between contentious and advisory cases is evident in its previous decisions, affirming the rare refusal of an advisory opinion by this Court’s predecessor in the *Eastern Carelia* case.³¹ Such refusal was based on two related grounds, neither of which applies in the present case.
42. First, to have answered the request would have been “*substantially equivalent*” to deciding a live dispute between two States, one of which did not consent to the Court’s contentious jurisdiction (and, indeed, was not even a member of the League of Nations).³² This Court has since affirmed that lack of consent by an interested State to the judicial settlement of an international dispute may be relevant “*for the appreciation of the propriety of giving an opinion*” in cases where the question posed by an authorized body also concerns the parallel dispute.³³
43. Second, according to this Court, the *Eastern Carelia* case raised “*a question of fact which could not be elucidated without hearing both parties*”.³⁴ More precisely, in *Western Sahara*, this Court affirmed that “*sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character*”.³⁵ At the same time, this Court has long emphasized that its essentially judicial task in answering the request for an advisory opinion may require it to “*make findings as to the relevant factual issues*”.³⁶ Whether an alleged lack of sufficient information or evidence is relevant in appreciating the propriety of giving an advisory opinion, or whether this Court may simply make findings as to relevant factual issues, must be assessed in light of the Court’s twofold functions as the principal judicial organ of the UN. In *Eastern Carelia*, this Court’s predecessor emphasized that “*an investigation into the facts underlying the case*” would have circumvented the consent of the disputing parties and thus “*depart from the essential rules guiding [its] activity as a Court*”.³⁷ Conversely, no impropriety would arise from this Court giving its authoritative guidance on any question of law or factual situation in circumstances where the exercise of the Court’s advisory jurisdiction would in no way circumvent the principle of consent.

³¹ *Status of Eastern Carelia*, P.C.I.J., Series B, No. 5.

³² *Interpretation of Peace Treaties, Advisory Opinion*, I.C.J. Reports 1950, p. 65, p. 72.

³³ *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, para. 32; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion*, I.C.J. Reports 1989, p. 177, para. 32.

³⁴ *Interpretation of Peace Treaties, Advisory Opinion*, I.C.J. Reports 1950, p. 65, p. 71; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 56.

³⁵ *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, para. 46; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 56; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, para. 71.

³⁶ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, I.C.J. Reports 1971, p. 16, p. 27; *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, para. 17.

³⁷ *Status of Eastern Carelia*, P.C.I.J., Series B, No. 5, p. 29; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion*, I.C.J. Reports 1962, p. 151, p. 155; *Case concerning the Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment of 2 December 1963*, I.C. J. Reports 1963, p. 15, p. 30.

44. This Court has never refused to render an advisory opinion in the exercise of its discretion to do so. That is why this Court's previous decisions on its discretion under Article 65(1) of the Statute of the ICJ have mostly addressed what is *not* a compelling reason to refuse a request, including the motives of the States sponsoring or supporting the request for an advisory opinion;³⁸ the origins, political history, or distribution of votes underlying a request;³⁹ the alleged lack of clean hands of the sponsoring State;⁴⁰ the lack of any indication by the authorized organ of the purpose for which the opinion is sought or its usefulness;⁴¹ the fact that a question is abstract or does not relate to a concrete dispute;⁴² the fact that the opinion may possibly have adverse effects on a political process,⁴³ such as a peace negotiation;⁴⁴ or 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.⁴⁵
45. The Republic of Vanuatu submits that, in the present proceedings, there is no compelling reason why the Court should refrain from discharging its advisory function as the principal judicial organ of the UN. For the avoidance of doubt, the Republic of Vanuatu examines three additional issues to demonstrate that they do not undermine this conclusion in any way.

B. Requests for advisory opinions before other international tribunals do not prevent this Court's exercise of its advisory jurisdiction

46. As a corollary of its general submission, the Republic of Vanuatu submits that the pending requests for advisory opinions before the ITLOS and the IACtHR in no way prevent this Court's proper exercise of its advisory jurisdiction. A refusal to answer the requested question for this reason would be tantamount to an unprecedented finding of *lis alibi pendens*, thus contradicting this Court's recent finding that "*the principle of res judicata does not preclude it from rendering an advisory opinion*".⁴⁶ In any event, there are clear differences among the questions asked of this Court by the UN General Assembly and those asked by other entities to other international tribunals. The entities that have requested advisory opinions from the ITLOS and IACtHR are also markedly different from the General Assembly as a plenary organ of the UN. So are their bases for requesting advisory opinions. On the one hand, the Commission of Small Island States

³⁸ *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.

³⁹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 16.

⁴⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, paras. 63–64.

⁴¹ *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.

⁴² *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 15.

⁴³ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 17.

⁴⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, paras. 51–54.

⁴⁵ *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.

⁴⁶ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, para. 81.

on Climate Change and International Law (COSIS) is a separate international organization with eight members and expressly empowered to request advisory opinions from ITLOS.⁴⁷ On the other, the Republic of Chile and the Republic of Colombia “*may consult*” the IACtHR regarding the interpretation of the American Convention on Human Rights (ACHR) as members of the Organization of American States (OAS).⁴⁸

47. An effective finding of *lis alibi pendens* in the present case is untenable for three main reasons. First, this Court has never applied the principle, thus its status in international law remain doubtful.⁴⁹ Second, when applied in municipal legal systems, the principle of *lis alibi pendens* serves to prevent the parties being bound by contradictory findings, which is never a risk in the case of concurrent requests for advisory opinions which merely provide authoritative guidance rather than binding judgment. Third, the principle’s application would require two identical actions by the same parties before courts of identical character.⁵⁰ None of these grounds is satisfied: very different questions have been asked by different entities of other tribunals, and this Court’s general competence as the principal judicial organ of the UN is much broader than the jurisdiction of the ITLOS or the IACtHR as specialized tribunals.
48. Some participants might submit that this Court should not give an advisory opinion specifically on those obligations of States and their legal consequences arising from the constitutive instruments of the ITLOS and the IACtHR, respectively, the United Nations Convention on the Law of the Sea (UNCLOS)⁵¹ and the ACHR. Indeed, the questions before this Court present a limited overlap with those before both the ITLOS, concerning the obligations of States parties to the UNCLOS regarding the marine environment,⁵² and the IACtHR, which address the manifold duties of States under the ACHR as well as general international law.⁵³ But this overlap is irrelevant in this Court’s discretion regarding whether to exercise its advisory jurisdiction. Any refusal by the Court to give authoritative guidance on the ground that the ITLOS or the IACtHR is seized of questions addressing the same subject matter or applicable law, even their constitutive instruments, would effectively deprive the UN General Assembly from obtaining urgent and important guidance sought through a universally supported request. It would also be inconsistent with this Court’s finding in the *Chagos Archipelago* opinion that the principle of *res*

⁴⁷ Agreement for the establishment of the Commission of Small Island States on Climate Change and International Law (adopted and entered into force 31 October 2021) 3447 U.N.T.S. No. 56940, arts. 1(2) and 2(2) ([link](#)).

⁴⁸ American Convention on Human Rights: “Pact of San José, Costa Rica” (adopted 22 November 1969, entered into force 18 July 1978) 1144 U.N.T.S. 123, art. 64(1) ([link](#)).

⁴⁹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018*, I.C.J. Reports 2018, p. 406, para. 39; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 14 June 2019*, I.C.J. Reports 2019, p. 361, para. 25.

⁵⁰ *Certain German Interests in Polish Upper Silesia, Preliminary Objections*, Judgment No. 6, 1925, P.C.I.J., Series A, No. 6, p. 20.

⁵¹ United Nations Convention on the Law of the Sea, (adopted 10 December 1982, 16 November 1994) 1833 UNTS 396 (UNCLOS) ([link](#)).

⁵² *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 ([link](#)).

⁵³ *Solicitud de Opinión Consultiva presentada por Colombia y Chile ante la Corte Interamericana de Derechos Humanos*, 9 de enero de 2023, pending ([link](#)).

judicata does not apply to advisory proceedings.⁵⁴ Rather, the Court must simply “consider any relevant judicial or arbitral decision” in answering a request of the UN General Assembly.⁵⁵ In any event, the issues already determined by an arbitral tribunal constituted under Annex VII of the UNCLOS were “not the same as those that are before the Court” in the *Chagos Archipelago* advisory proceeding.⁵⁶ This reasoning is even stronger in the present case because the three parallel proceedings before this Court, the ITLOS, and the IACtHR are all of an advisory character, with different entities asking different questions, such that there is no risk of contradiction between the Court’s authoritative guidance and the binding decision of another tribunal.

49. It is axiomatic that the ICJ is the only international court of general competence, which is uniquely positioned to provide the UN General Assembly with authoritative guidance on the obligations of States and their legal consequences where they have caused significant harm to climate system and other parts of the environment under the corpus of international law as a whole. This Court’s participation in the activities of the UN as its principal judicial organ is underlined by the fact that the Republic of Vanuatu, the other members of COSIS, and the two co-sponsors of the pending request before the IACtHR have all joined in the adoption by consensus of the UN General Assembly’s request for an advisory opinion by Resolution 77/276, several of those States also being co-sponsors of the resolution. Even if one of these States had opposed the General Assembly’s request, it is worth recalling that “no State, whether a member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take.”⁵⁷ The same holds true for international organizations.⁵⁸ In any event, this Court has properly authorized the participation of COSIS in this advisory proceeding as an international organization “likely to be able to furnish information” on the relevant questions, pursuant to Article 66(2) of the Statute of the ICJ. All entities involved in the parallel proceedings have thus effectively endorsed the request for an advisory opinion before this Court.
50. In essence, the Republic of Vanuatu submits that any refusal to give an advisory opinion due to partial overlap of subject matter or applicable law among the questions before this Court and those pending before the ITLOS and the IACtHR would be inconsistent with the Court’s previous decisions and overlook the unique position of the ICJ as an international court of general competence. That is why COSIS and the States that made parallel requests for advisory opinions have also supported the General Assembly’s

⁵⁴ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, paras. 80-81.

⁵⁵ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p.95, para. 81.

⁵⁶ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, para. 81.

⁵⁷ *Interpretation of Peace Treaties, Advisory Opinion*, I.C.J. Reports 1950, p. 65, para. 71; *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, para. 75; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 47.

⁵⁸ *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion*, I.C.J. Reports 1989, p. 177, para. 31.

request for authoritative guidance on the obligations of States and their legal consequences under the entire corpus of international law.

C. The Court is presented with manifestly sufficient information and evidence on the causes and adverse effects of climate change to give the advisory opinion

51. Some participants might point to the factual complexity of the causes and effects of climate change as a reason for this Court not to exercise its advisory jurisdiction. However, the Republic of Vanuatu submits that this Court is presented with manifestly sufficient information and evidence on the causes and adverse effects of climate change to give the requested advisory opinion, due to a decades-long process of determining an international scientific consensus under the auspices of the IPCC regarding significant harm to the climate system and other parts of the environment caused by anthropogenic emissions of greenhouse gases.
52. To exercise its advisory jurisdiction, the long settled practice of this Court has required “*sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character*”.⁵⁹ Whether “*the evidence available to [the Court] is sufficient to give an advisory opinion must be decided in each particular instance*.”⁶⁰ In identifying the obligations of States and the legal consequences of certain acts and omissions, the questions before this Court would thus require sufficient evidence and information regarding the cumulative anthropogenic greenhouse gases over time of specific States, a specific group of States and/or in general that have caused significant harm to the climate system and other parts of the environment and their adverse effects on different legal subjects. Whether this Court has sufficient information and evidence to answer those questions with propriety is connected to its twofold functions as the principal judicial organ of the UN, specifically whether the Court’s investigation into the facts would improperly circumvent the principle of State consent in contentious cases. Conversely, the Court may properly exercise its jurisdiction where it has been provided with “*very extensive documentary evidence of the relevant facts*”.⁶¹ This is clearly the case, as discussed in detail in [Chapters II and III] of this Written Submission, and the evidence arising from IPCC reports is the expression of both a scientific and a State consensus.
53. The factual dimension of advisory opinions has not been an obstacle in the previous practice of the Court. In the advisory opinion on *Construction of a Wall*, for example, there was “*no lack of information such as to constitute a compelling reason for the Court to decline to give the requested opinion*”.⁶² Specifically, the Court had at its disposal:

⁵⁹ *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, para. 46; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 56.

⁶⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 56.

⁶¹ *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, para. 47; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 56.

⁶² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 58.

“[...] the report of the Secretary-General, as well as a voluminous dossier submitted by him to the Court, comprising not only detailed information on the route of the wall but also on its humanitarian and socio-economic impact on the Palestinian population. The dossier includes several reports based on onsite visits by special rapporteurs and competent organs of the United Nations. The Secretary-General has further submitted to the Court a written statement updating his report, which supplemented the information contained therein. Moreover, numerous other participants have submitted to the Court written statements which contain information relevant to a response to the question put by the General Assembly. The Court notes in particular that Israel’s Written Statement, although limited to issues of jurisdiction and judicial propriety, contained observations on other matters, including Israel’s concerns in terms of security, and was accompanied by corresponding annexes; many other documents issued by the Israeli Government on those matters are in the public domain.”⁶³

The Court recognized that “*others may evaluate and interpret these facts in a subjective or political manner*”, but this was “*no argument for a court of law to abdicate its judicial task*” when it was otherwise presented with sufficient evidence and information comprising authoritative reports of UN special rapporteurs and competent organs.⁶⁴ This Court accordingly set a very high threshold for the alleged lack of evidence and information to provide a compelling reason for the Court not to exercise its advisory jurisdiction fully.

54. In any event, it is difficult to imagine a more voluminous dossier than the six Assessment Reports of the IPCC, published between 1990 and 2023 on the latest climate science, plus a series of Special Reports addressing specific causes and adverse effects of climate change, as well as other reports emanating from UN programmes and agencies, included in the dossier communicated by the UN Office of Legal Affairs. The latter dossier includes a wealth of empirical materials, including – but not limited to – reports from the IPCC reports, the United Nations Environment Programme (UNEP), the World Meteorological Organization (WMO) and human rights treaty bodies and special procedures of the Human Rights Council. Not only is this information manifestly sufficient for the Court to exercise its advisory jurisdiction in the present case, but the evidence offered by the IPCC was gathered over several decades at the express request of the UN General Assembly and every line of their Summaries for Policymakers reflects both a scientific and a State consensus.
55. In Resolution 43/53 of 6 December 1988, the first of 33 resolutions of the UN General Assembly on “*Protection of global climate for present and future generations of [hu]mankind*”, the General Assembly recognized the landmark creation of the IPCC. Specifically, the General Assembly:

“5. *Endorse[d]* the action of the World Meteorological Organization and the United Nations Environment Programme in jointly establishing an Intergovernmental Panel on Climate Change to provide internationally co-

⁶³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 57.

⁶⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 58.

ordinated scientific assessments of the magnitude, timing and potential environmental and socio-economic impact of climate change and realistic response strategies, and expresses appreciation for the work already initiated by the Panel; [...]

7. *Call[ed] upon* all relevant organizations and programmes of the United Nations system to support the work of the Intergovernmental Panel on Climate Change; [...]

10. *Request[ed]* the Secretary-General of the World Meteorological Organization and the Executive Director of the United Nations Environment Programme, through the Intergovernmental Panel on Climate Change, immediately to initiate action leading, as soon as possible, to a comprehensive review and recommendations with respect to:

- (a) The state of knowledge of the science of climate and climatic change;
- (b) Programmes and studies on the social and economic impact of climate change, including global warming;
- (c) Possible response strategies to delay, limit or mitigate the impact of adverse climate change;
- (d) The identification and possible strengthening of relevant existing international legal instruments having a bearing on climate;
- (e) Elements for inclusion in a possible future international convention on climate”

56. Some 35 years later, in Resolution 77/276 requesting the present advisory opinion, the UN General Assembly:

“Not[ed] with utmost concern the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouses gases are unequivocally the dominant cause of the global warming observed since the mid-20th century, that human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, [...]”

57. Read together, Resolutions 43/53 and 77/276 underscore the unprecedented work of the IPCC over the last three decades in transforming a diplomatic consensus of the UN General Assembly as to the importance of *“internationally co-ordinated scientific assessments”* of the causes and adverse effects of climate change into the present *“scientific consensus”* that *“anthropogenic emissions of greenhouses gases are unequivocally the dominant cause”* of global warming and its *“widespread adverse impacts and related losses and damages to nature and people”*. As already emphasized, of particular note is the Summary for Policymakers included in each IPCC report, every line of which is approved by the consensus of all 195 member States of the IPCC.⁶⁵ Further, the IPCC’s Sixth Assessment Report was welcomed, and some of its findings noted with *“alarm and serious concern”* by the 195 Parties to the Paris Agreement at the 2023 UAE conference of Parties to these two instruments.⁶⁶

⁶⁵ Principles Governing IPCC Work, Appendix A: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports, section 4.4 ([link](#)).

⁶⁶ Decision *_/CMA.5*, Outcome of the first global stocktake, 13 December 2023, paras. 14 and 15 ([link](#)).

58. In sum, the Republic of Vanuatu submits that this Court is presented with manifestly sufficient information and evidence on the causes and adverse effects of climate change to give the requested opinion, not least the scientific consensus evidenced by successive reports of the IPCC, such that there is no compelling reason for the Court not to exercise its advisory jurisdiction.

D. There are no legal grounds for the Court to reformulate the questions put to it or to interpret them restrictively

59. Some participants in previous advisory proceedings have objected to this Court exercising its jurisdiction on the ground that a question lacks clarity and must be reformulated or interpreted restrictively before it can be answered. The Republic of Vanuatu submits that no reformulation is warranted because the questions are adequately formulated, are not unclear or vague, reflect the legal questions really in issue and are based on law. Nor is there any basis for this Court to interpret the questions restrictively.

60. This Court has affirmed that the “*abstract*” nature of a question is to be expected in an advisory proceeding, which by definition does not purport to settle a specific dispute between States.⁶⁷ Only “*in exceptional circumstances*” may the Court reformulate a question, namely to ensure that its opinion is “*based on law*”.⁶⁸ Any perceived lack of clarity does not deprive the questions of their legal character, but rather reflects the UN General Assembly’s expectation that this Court would provide much-needed guidance by clarifying the obligations of States and their legal consequences. The desire for legal clarity is indeed a constant refrain in the declarations of member States on their adoption of Resolution 77/276 by consensus.

61. Even if a particular question posed by the UN General Assembly were to assume a contested point of law, this would not “*prejudge*” the answer given by the Court in its essentially judicial task “*to state the law applicable to the factual situation referred to it by the General Assembly*”.⁶⁹ This Court has accordingly dismissed the suggestion that it should adopt a restrictive interpretation.

62. In any event, as Norway noted in its declaration on the adoption of Resolution 77/276:

“the questions posed to the Court do not prejudice the nature of such obligations or their consequences, but are openly paraphrased. Furthermore, we note that the questions do not assume that breaches of any relevant obligations have already occurred or are occurring now, but look rather to clarify the existence and content of obligations and the legal consequences if breaches occur.”⁷⁰

⁶⁷ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 15.

⁶⁸ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, paras. 61, 135-136.

⁶⁹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, paras. 136-137.

⁷⁰ United Nations General Assembly, Sixty-fourth plenary meeting, 77th sess (29 March 2023) UN Doc A/77/PV.64, p. 26 ([link](#)).

63. Similar observations as to the lack of prejudgement in the two questions were made in declarations by the European Union,⁷¹ the United Kingdom,⁷² Iceland,⁷³ and the United States of America.⁷⁴
64. Yet the constant focus of the declarations of UN member States in their adoption of Resolution 77/276 was on an individual and collective desire to obtain the necessary clarifications of two vital questions of international law:
- (a) Vanuatu: “We believe the clarity it will bring can greatly benefit our efforts to address the climate crisis and further bolster global and multilateral cooperation and State conduct in addressing climate change.”⁷⁵
 - (b) Federated States of Micronesia: “[T]he need for legal clarity on obligations to address climate change arising from multiple multilateral instruments and intergovernmental processes in addition to the United Nations Framework Convention on Climate Change”.⁷⁶
 - (c) European Union: “Although legally non-binding, the requested advisory opinion of the International Court of Justice has the potential to make a significant contribution to the clarification of the current state of international law.”⁷⁷
 - (d) Costa Rica: “The adoption of the resolution therefore is a giant step forward when it comes to clarifying the legal obligations of States in addressing climate change.”⁷⁸
 - (e) Trinidad and Tobago: “[A] major step in gaining greater understanding and clarity on how international law can promote climate justice, especially for those on the front line of this existential threat, many of whom are already disproportionately shouldering this heavy burden.”⁷⁹
 - (f) Liechtenstein: “We are confident that the International Court of Justice will provide us with clarity regarding the complex questions of international law pertaining to climate change through its advisory function.”⁸⁰
 - (g) New Zealand: “[A]n advisory opinion can play a helpful role by bringing clarity and coherence to international climate law.”⁸¹
 - (h) Singapore: “The request for an advisory opinion seeks to clarify the law, having regard to all relevant sources”.⁸²

⁷¹ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 8 ([link](#)).

⁷² Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 20 ([link](#)).

⁷³ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 24 ([link](#)).

⁷⁴ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 28 ([link](#)).

⁷⁵ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 2 ([link](#)).

⁷⁶ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 6 ([link](#)).

⁷⁷ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 7 ([link](#)).

⁷⁸ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 10 ([link](#)).

⁷⁹ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 11 ([link](#)).

⁸⁰ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 13 ([link](#)).

⁸¹ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 14 ([link](#)).

⁸² Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 15 ([link](#)).

- (i) Viet Nam: “It will clarify our obligations under existing international law regarding climate change.”⁸³
- (j) Germany: “We trust that seeking an advisory opinion is a constructive route to addressing the climate crisis and shaping States’ conduct as it pertains to dealing with climate change. That trust is based on the firm belief in the crucial contribution that the Court, when asked to give its advisory opinion, can make to clarify the extent and status of relevant obligations under international law with regard to all States.”⁸⁴
- (k) Uganda: “An advisory opinion could give clarity and greatly benefit our efforts to address the climate crisis. Furthermore, the legal weight and moral authority of such an advisory opinion could further bolster State conduct as it pertains to dealing with climate change.”⁸⁵
- (l) Latvia: “We are confident that the requested International Court of Justice advisory opinion will bring greater legal clarity on the climate crisis.”⁸⁶
- (m) Romania: “While debates on connected topics are ongoing in the International Law Commission and the Legal Committee of the Assembly, today we have added a missing link by entrusting the International Court of Justice with clarifying existing obligations in connection with climate change.”⁸⁷
- (n) Morocco: “As the principal judicial organ of the United Nations, the International Court of Justice is called on to contribute to clarifying the rights and obligations of States under international law with regard to the adverse effects of climate change.”⁸⁸
- (o) Portugal: “By contributing to the clarification and development of international law, the Court’s advisory jurisdiction is a tool that, coupled with other instruments developed by the international community to that end, can encourage further action to tackle climate change and bring justice to its victims.”⁸⁹
- (p) Chile: “requesting an advisory opinion on climate change from the International Court of Justice is timely and useful, as it will make way for important clarifications on the obligations of the States on that subject, which will ultimately have the significant effect of enabling the promotion of greater cooperation among States in order to respond more decisively to the climate emergency.”⁹⁰
- (q) Norway: “We believe that improved legal clarity is important to strengthening our shared ability to comply with those obligations in the future.”⁹¹

⁸³ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 16 ([link](#)).

⁸⁴ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 17-18 ([link](#)).

⁸⁵ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 18 ([link](#)).

⁸⁶ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 19 ([link](#)).

⁸⁷ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 19 ([link](#)).

⁸⁸ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 23 ([link](#)).

⁸⁹ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 24 ([link](#)).

⁹⁰ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 25 ([link](#)).

⁹¹ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 26 ([link](#)).

- (r) Samoa: “Seeking an advisory opinion to clarify the rights and obligations of States under international law pertaining to climate change is morally the right thing to do.”⁹²
- (s) Austria: “Advisory opinions of the International Court of Justice can be useful in clarifying legal obligations, and since the process leading to today’s adoption was inclusive and transparent, enabling all interested parties to participate, we expect that a subsequent advisory opinion will have a positive impact by clarifying the legal obligations of all States in respect to climate change, which in turn will help us all meet those obligations.”⁹³
- (t) Papua New Guinea: “Its decisions and opinions, including its advisory opinions, have important implications for the international community, as they develop and clarify international law and strengthen the international legal system.”⁹⁴
- (u) El Salvador: “We believe that clarifying the scope of States’ obligations with regard to guaranteeing the protection of the climate system under international law, both conventional and customary, will facilitate the interpretation of how compliance with those commitments can systematically support the protection of the human rights of peoples, taking into account the various specificities of their regions.”⁹⁵

65. The questions posed by the UN General Assembly on the obligations of States and their legal consequences arising from a specific conduct were carefully negotiated and drafted, co-sponsored by an unprecedented number of States and adopted by consensus to achieve the necessary clarification of international law. Any reformulation or restrictive interpretation of the legal questions before this Court would amount to reversing that long and detailed process, and it would potentially deprive the General Assembly of the authoritative guidance it is seeking from the Court on both the obligations and the legal consequences of the conduct responsible for climate change.

1.4. Concluding submissions

66. For the foregoing reasons, the Republic of Vanuatu submits that (i) the Court has jurisdiction to give the requested advisory opinion, (ii) there are no compelling reasons for the Court to decline to give its advisory opinion, and (iii) there are no grounds justifying the reformulation or restrictive interpretation of the questions put to the Court by the UN General Assembly in its request adopted by consensus.

⁹² Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 29 ([link](#)).

⁹³ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 29 ([link](#)).

⁹⁴ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 30 ([link](#)).

⁹⁵ Sixty-fourth plenary meeting (29 March 2023) UN Doc A/77/PV.64, p. 32 ([link](#)).

CHAPTER II

CLIMATE CHANGE IS AN “UNPRECEDENTED CHALLENGE OF CIVILIZATIONAL PROPORTIONS”

2.1. Summary of Vanuatu’s submission

67. The Republic of Vanuatu submits that the scientific aspects, namely the causes of climate change and their impacts, are settled for all relevant purposes. The causes of climate change are the cumulative anthropogenic emissions of greenhouse gases from certain activities, mainly the burning of fossil fuels and land uses over time. The impacts have already materialized and will worsen over time, unless immediate and bold action is taken. They include more frequent and intense extreme events as well as widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability. Importantly, this is both a scientific and a State consensus, and there is absolutely no need for the Court to embark on anything even remotely resembling a scientific trial. As explained in this chapter, the conclusions regarding the causes and impacts of climate change have been formulated in the reports of Intergovernmental Panel on Climate Change (IPCC), which are in the relevant part (the Summaries for Policymakers) approved line by line by States themselves. Of particular importance is, in the terms of the IPCC, the “*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*”.⁹⁶ Indeed, as the IPCC recognizes, “[v]ulnerable communities who have historically contributed the least to current climate change are disproportionately affected”.⁹⁷ This is the core of climate injustice and, remarkably, this is settled science. The impact has been particularly devastating on small island developing States, such as the Republic of Vanuatu, which face nothing short of an existential threat in as little as decades. This chapter provides a detailed snapshot of the observed and projected impacts on Vanuatu and its people. This fuller explanation is offered for the Court to better appraise what it means, in the everyday life of a population at the forefront of climate impacts, to be subject to climate injustice.

2.2. The sources of the scientific consensus on climate change

68. Resolution 77/276 summarizes in its preambular paragraph 9 two core aspects of the scientific consensus on the **causes** and **impacts** of climate change. The wording is taken

⁹⁶ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.1 ([link](#)).

⁹⁷ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2 ([link](#)).

almost verbatim from the conclusions of the Intergovernmental Panel on Climate Change (IPCC), as mentioned in the footnotes added in the following quote:

“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 greenhouses gases are unequivocally the dominant cause** of the global warming observed since the mid-20th century,⁹⁸ that human-induced climate change, including more frequent and intense extreme events, **has caused** widespread adverse impacts and related **losses and damages to nature and people[.]**”⁹⁹ (emphasis added)

Adding to the authoritative character of these conclusions, preambular paragraph 9, as the entire Resolution 77/276, was adopted by consensus by all UN Member States.

69. The principal source of the scientific consensus on climate change are the reports of the IPCC. These Reports reflect the authoritative and incontrovertible state of scientific knowledge on climate change. The IPCC was established in 1988 by the World Meteorological Organization and the United Nations Environment Programme, and endorsed by the UN General Assembly.¹⁰⁰ In the last three and a half decades, it has run six assessment cycles and delivered six Assessment Reports, as well as a range of Special Reports, such as the milestone Special Report on Global Warming of 1.5°C,¹⁰¹ in response to requests from the UNFCCC. IPCC Reports are widely considered to be the most robust, comprehensive, and impactful scientific reports on climate change that exist. For their pioneering work on climate science, the IPCC has been awarded both the 2007 Nobel Peace Prize and the 2022 Gulbenkian Prize for Humanity.¹⁰²
70. IPCC Reports are produced by a representative and balanced group of experts from around the world, across developed and developing countries, and from a range of disciplines. Each of the three working group reports of the IPCC’s Sixth Assessment Report were produced by approximately 250 authors from over 60 countries.¹⁰³ These

⁹⁸ Intergovernmental Panel on Climate Change, *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 (2014), statement 1.2 ([link](#)); Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1 ([link](#)).

⁹⁹ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1 ([link](#)).

¹⁰⁰ ‘Protection of global climate for present and future generations of mankind’, UNGA Resolution 43/53, 6 December 1988, A/RES/43/53 ([link](#)).

¹⁰¹ See Intergovernmental Panel on Climate Change, *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 (2018) ([link](#)).

¹⁰² About | History of the IPCC, available at: <https://www.ipcc.ch/about/history/>.

¹⁰³ IPCC, Sixth Assessment Report, Working Group 1: The Physical Science Basis | Authors, available at: <https://www.ipcc.ch/report/ar6/wg1/about/authors/>, 234 experts from 64 countries; Working Group 2: Impacts, Adaptation and Vulnerability | Authors, available at: <https://www.ipcc.ch/report/ar6/wg2/about/authors/>, 270 experts from 67 countries; Working Group 3: Mitigation of Climate Change | Authors, available at: <https://www.ipcc.ch/report/ar6/wg3/about/authors/>, 278 experts from 65 countries.

Reports represent the “*best available scientific knowledge*” that informs and guides Parties to the UNFCCC and the Paris Agreement.¹⁰⁴

71. Moreover, the sections called “Summary for Policymakers” in each of the IPCC’s Reports are adopted by consensus after a painstaking governmental approval process that entails detailed line-by-line discussion and agreement.¹⁰⁵ According to the IPCC Procedures, “Approval” of these Summaries for Policymakers “*means that the material has been subjected to detailed line-by-line discussion and agreement*”.¹⁰⁶ Specifically, the process of approval of Summaries for Policymakers is described as follows in Section 4.4. of the IPCC Procedures:

“The Summaries for Policymakers should be subject to simultaneous review by both experts and governments, a government round of written comments of the revised draft before the approval Session and to a final line by line approval by a Session of the Working Group [...]

Approval of the Summary for Policymakers at the Session of the Working Group, signifies that it is consistent with the factual material contained in the full scientific, technical and socio-economic Assessment or Special Report accepted by the Working Group [...]

Because the Working Group approval process is open to all governments, Working Group approval of a Summary for Policymakers means that the Panel cannot change it.”¹⁰⁷

The Summaries for Policymakers thus represent not just consensus among experts but also among States.

72. The Court does not, therefore, need to embark on a scientific assessment of the evidence. **The science is settled in all relevant respects.** The evidence presented in the IPCC Reports is incontrovertible, and the findings in the Summaries for Policymakers are undisputed. These Reports represent both **scientific consensus as well as State consensus on the science of climate change.**

2.3. The scientific consensus on the causes of climate change

73. There is a clear, incontrovertible, and unbroken record of scientific consensus on the fact that emissions of greenhouse gases (GHG), mainly from the burning of fossil fuels and land uses, are the cause of climate change. At least from the 1960s, the United States and other States with high cumulative emissions of GHG were aware of this as well as of its

¹⁰⁴ ‘The Paris Agreement’, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, preambular recital 4 ([link](#)).

¹⁰⁵ Intergovernmental Panel on Climate Change, Appendix A to the Principles Governing IPCC Work: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports (adopted 15th sess, San José, 15-18 April 1999; amended 37th sess, Batumi, 14-18 October 2013), section 4.4 ([link](#)).

¹⁰⁶ Intergovernmental Panel on Climate Change, Appendix A to the Principles Governing IPCC Work: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports (adopted 15th sess, San José, 15-18 April 1999; amended 37th sess, Batumi, 14-18 October 2013), section 2 ([link](#)).

¹⁰⁷ Intergovernmental Panel on Climate Change, Appendix A to the Principles Governing IPCC Work: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports (adopted 15th sess, San José, 15-18 April 1999; amended 37th sess, Batumi, 14-18 October 2013), section 4.4 ([link](#)).

potentially catastrophic effects if emissions were left unmitigated (**Expert Opinion of Professor Naomi Oreskes**).¹⁰⁸ Following the establishment of the IPCC in 1988, the many sources forming providing the scientific basis of such understanding started to be summarized. The essence of what it is known today is that that climate change has been caused by the GHG emissions of a small number of States, it is occurring now, it has devastating impacts for people and the planet (**Expert Report of Professor Corinne Le Quéré**).¹⁰⁹

74. The IPCC's First Assessment Report in 1990 that provided the context for the launch of the negotiations for the UN Framework Convention on Climate Change, recorded **certainty** on the following:

“Emissions resulting from human activities are substantially increasing the atmospheric concentrations of the greenhouse gases: carbon dioxide, methane, chlorofluorocarbons (CFCs) and nitrous oxide. These increases will enhance the greenhouse effect, resulting on average in an additional warming of the Earth's surface.”¹¹⁰

On the basis of this finding, the IPCC **predicted in 1990**:

“An average rate of increase of global mean temperature during the next century of about 0.3°C per decade ...; this is a **more rapid increase than seen over the past 10,000 years**. This will result in a likely **increase in the global mean temperature of about 1°C above the present value by 2025** (about 2°C above that in the pre-industrial period), and 3°C above today's

¹⁰⁸ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**).

¹⁰⁹ Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (**Exhibit B**), paras. 25 and 26.: “**Cumulative CO₂ emissions, the main cause of human-induced climate change, has clear origin in historical use of fossil fuels and land by countries.** The largest contributors to cumulative emissions of CO₂ during 1851-2022 were the USA (20.5%), whose emissions peaked around 2005; the EU27 (11.7%), with emissions decreasing since the early 1980s; China (11.7%), with most of its emissions occurring since 2000; Russia (7.0%); and Brazil (4.6%) (see Figure 3). All 42 industrial countries of the Annex I in aggregate account for 52% of cumulative CO₂ emissions, while all 47 Least Developed Countries (LDCs) in aggregate contributed 4.5%. As a result of the long-term trends in emissions by countries, the patterns have shifted in recent decades. The largest contributors to cumulative emissions of CO₂ during 1990-2022 were China (19.4%), the USA (15.5%), the EU27 (9.3%), Brazil (5.1%), and Russia (4.8%). Globally, land use contributed 31% and fossil fuel use 69% to cumulative CO₂ emissions during 1851-2022. Land use emissions were the dominant source of global CO₂ emissions globally until the 1950s.” (para. 17, emphasis original). These emissions are self-reported by the States themselves. The resulting global warming caused by each State due to their cumulative GHG emissions is as follows: “**The top 10 contributors to global warming from historical emissions of GHG during 1851-2022 are the USA (responsible for 17.0% of the global warming in 2022 due to their historical GHG emissions; 0.28°C), China (12.5%; 0.21°C), the EU27 (10.3%; 0.17°C, including Germany 2.9%, France 1.3%, Poland 1.0% and Italy 0.9%), Russia (6.3%; 0.11°C), Brazil (4.9%; 0.081°C), India (4.7%; 0.078°C), Indonesia (3.7%; 0.061°C), the United Kingdom (2.4%; 0.040°C), Canada (2.1%; 0.035°C), and Japan (2.1%; 0.035°C).** The GHG emissions from these contributors, together with those from Australia (1.5%; 0.025°C), Mexico (1.4%; 0.023°C), Ukraine (1.4%; 0.022°C), Nigeria (1.2%; 0.019°C), Argentina (1.2%; 0.019°C), and Iran (1.1%; 0.019°C), amount to three quarters of the global warming due to GHG emissions during 1851-2022 [...] **The same countries figure among the largest contributors to global warming from emissions of GHG during the shorter 1990-2022, with China the largest contributor in that period**”, Attribution of observed global warming to countries.

¹¹⁰ Intergovernmental Panel on Climate Change, *Climate Change: The 1990 and 1992 IPCC Assessments* (1992), p. 52, statement 1.0.1 ([link](#)).

value before the end of the next century (about 4°C above pre-industrial)” (emphasis added).¹¹¹

75. The IPCC’s sixth and latest Assessment Report, 2021-2023, states in **unequivocal** terms that human activities have caused climate change. The global surface temperatures are already at 1.1°C above 1850-1900, and they are on track to increase. The IPCC finds that the scale of these human-induced changes to the climate system are **unprecedented** over many centuries to thousands of years.
76. The level of temperature increase – 1.1°C – was reached sooner and at a higher level than the IPCC predicted in 1990. A consistent theme running through the reports of the IPCC is that the predictions and findings representing scientific consensus, alarming as they are, are nevertheless, conservative, with each successive Report finding that the previous predictions have been exceeded. Thus, while the Court need not engage in trialing the science, as IPCC Reports represent scientific and State consensus, it is important to emphasize that the warming levels and impacts experienced are likely to be worse than predicted.

2.3.1. *Human activities have unequivocally caused climate change*

77. Human activities are the cause of observed climate change. The Summary for Policymakers of the IPCC’s 2023 Synthesis Report (6th Assessment Report (AR6)), finds that:

“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” (emphasis added).¹¹²

78. Human influence has warmed the atmosphere, ocean, and land. It has driven global retreat of glaciers, decrease in Arctic Sea ice, warming of the upper ocean, global acidification of surface open ocean, sea level rise, and both land and marine heatwaves. The Summary for Policymakers of the IPCC’s 2021 Working Group 1 Report (AR6) concludes that:

“It is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred’ (emphasis added).¹¹³ ‘Each of the

¹¹¹ Intergovernmental Panel on Climate Change, *Climate Change: The 1990 and 1992 IPCC Assessments* (1992), p. 52, statement 1.0.3 ([link](#)).

¹¹² Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.1 ([link](#)).

¹¹³ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1 ([link](#)).

last four decades has been successively warmer than any decade that preceded it since 1850”.¹¹⁴

“Human influence is very likely the main driver of the global retreat of glaciers since the 1990s and the decrease in Arctic sea ice area between 1979–1988 and 2010–2019 (decreases of about 40% in September and about 10% in March)” (emphasis added)¹¹⁵

“It is virtually certain that the global upper ocean (0–700 m) has warmed since the 1970s and extremely likely that human influence is the main driver. It is virtually certain that human-caused CO₂ emissions are the main driver of current global acidification of the surface open ocean” (emphasis added)¹¹⁶

“Global mean sea level increased by 0.20 [0.15 to 0.25] m between 1901 and 2018. Human influence was very likely the main driver of these increases since at least 1971” (emphasis added)¹¹⁷

“It is virtually certain that hot extremes (including heatwaves) have become more frequent and more intense across most land regions since the 1950s... with high confidence that human-induced climate change is the main driver of these changes.” (emphasis added)¹¹⁸

“Marine heatwaves have approximately doubled in frequency since the 1980s (high confidence), and human influence has very likely contributed to most of them since at least 2006.”¹¹⁹

79. Figure 1 is extracted from the IPCC’s 2023 Synthesis Report.¹²⁰ It depicts the sharp increase in greenhouse gases (GHGs) emissions from human activities (Panel a), the corresponding increases in concentrations of GHGs (Panel b) and changes to global mean surface temperature (Panel c), as well sources the observed warming in human activities (Panel d).

¹¹⁴ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1.2 ([link](#)).

¹¹⁵ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1.5 ([link](#)).

¹¹⁶ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1.6 ([link](#)).

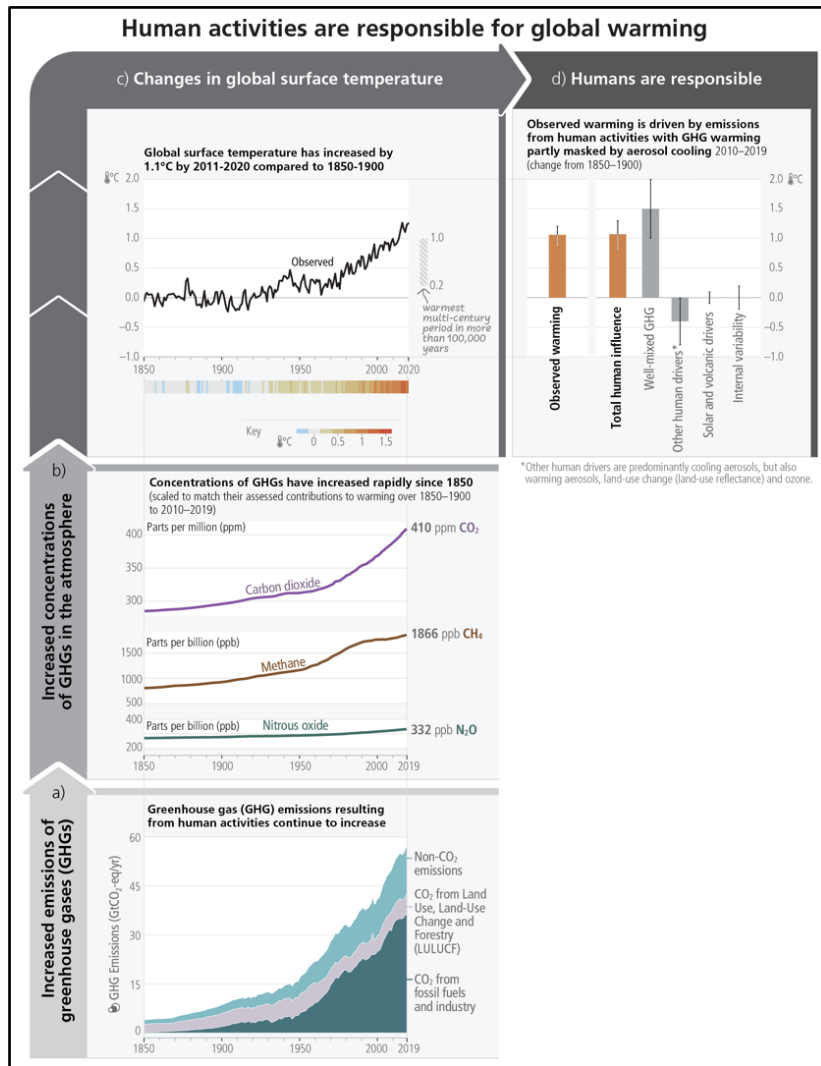
¹¹⁷ IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, August 2021, statement A.1.7 Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1.7 ([link](#)).

¹¹⁸ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.3.1 ([link](#)).

¹¹⁹ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.3.1 ([link](#)).

¹²⁰ IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, March 2023, Longer Report, p. 7, Figure 2.1 ([link](#)).

Figure 1: Anthropogenic GHG emissions as the cause of climate change



2.3.2. The scale of recent changes to the climate system is unprecedented

80. The scale of these recent human-induced changes to the climate system is unprecedented. The Summaries for Policymakers of the IPCC’s 2021 Working Group 1 Report and of the 2023 Synthesis Report (AR6) find that:

“The scale of recent changes across the climate system as a whole – and the present state of many aspects of the climate system – are unprecedented over many centuries to many thousands of years.”¹²¹

“Global surface temperature has increased faster since 1970 than in any other 50-year period over at least the last 2000 years.”¹²²

¹²¹ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.2 ([link](#)).

¹²² Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.1.1 ([link](#)).

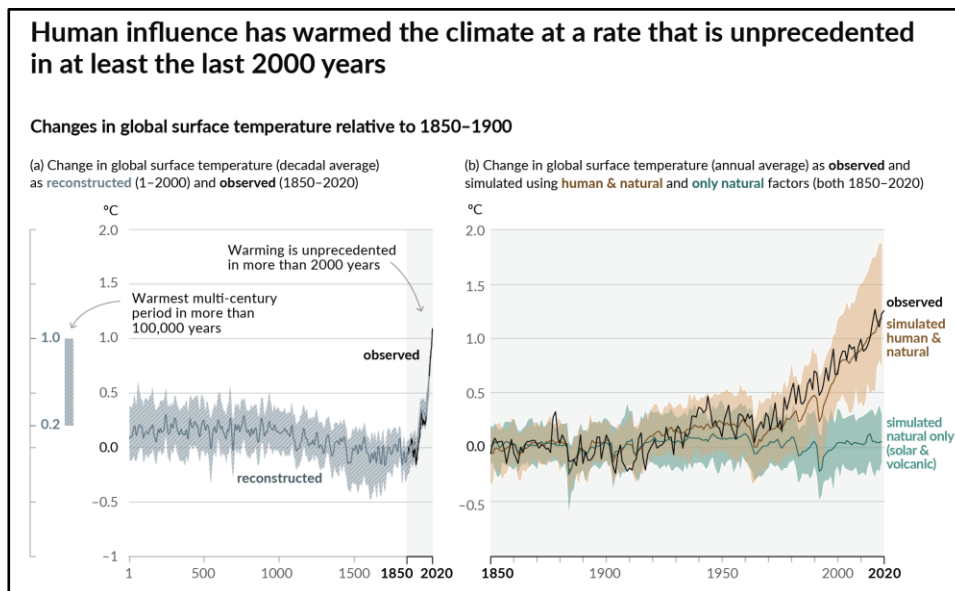
“In 2019, atmospheric CO₂ concentrations were higher than at any time in at least 2 million years.”¹²³

“In 2011–2020, annual average Arctic sea ice area reached its lowest level since at least 1850”.¹²⁴

“Global mean sea level has risen faster since 1900 than over any preceding century in at least the last 3000 years.”¹²⁵

81. Figure 2 extracted from the Summary for Policymakers of IPCC’s 2021 Working Group 1 Report (AR6) demonstrates the **unprecedented scale of change in the climate system**. Panel (a) shows the steep increase in global average temperatures between 1850-2020 set against temperature variations over the last 2000 years and Panel (b) zooms in on temperature increases between 1850-2020.

Figure 2: Human influence causing unprecedented scale of change in climate¹²⁶



82. There is recent evidence to suggest that the surface temperature is warming faster than ever before, and faster than the IPCC predicted. Year on year warming records are being broken. The US National Oceanic and Atmospheric Administration (NOAA), among others, concluded that 2023 had been the warmest year on record, by far.¹²⁷ The Copernicus Climate Change Service of the European Union found that global warming

¹²³ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2.1 ([link](#)).

¹²⁴ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2.3 ([link](#)).

¹²⁵ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2.4 ([link](#)).

¹²⁶ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), Figure SPM.1 ([link](#)).

¹²⁷ ‘2023 was the world’s warmest year on record, by far’ (NOAA, 12 January 2024) ([link](#)).

had reached an estimated 1.25°C in October 2023, and if current warming trends continue, the world would breach the 1.5°C warming threshold in 2034.¹²⁸ This is the agreed temperature limit adopted by States in the 2015 Paris Agreement,¹²⁹ and reinforced in the 2021 Glasgow Climate Pact.¹³⁰

2.4. The impact of climate change

2.4.1. *These unprecedented changes to the climate system are causing widespread adverse impacts and related losses and damages to nature and people*

83. The Summary for Policymakers of IPCC’s 2023 Synthesis Report (AR6) concludes that:

“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)” (emphasis added).¹³¹

84. In the Summary for Policymakers of IPCC’s 2022 Working Group 2 Report (AR6), the IPCC concluded that climate change, driven by human activity, has caused widespread adverse, in some cases irreversible, impacts, loss and damage to nature and people. In the IPCC’s words:

“**Human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people**, beyond natural climate variability. ... **The rise in weather and climate extremes has led to some irreversible impacts as natural and human systems are pushed beyond their ability to adapt**” (emphasis added).¹³²

85. The IPCC in its 2022 Report proceeds to list specific **impacts on nature**:

“Climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater and coastal and open ocean marine ecosystems (high confidence). **The extent and magnitude of climate change impacts are larger than estimated in previous assessments** (high confidence). Widespread deterioration of ecosystem structure and function, resilience and natural adaptive capacity, as well as shifts in seasonal timing

¹²⁸ ‘Monthly Climate Bulletin: 2023 on track to become the warmest year after record October’ (*Copernicus*, 10 November 2023) ([link](#)).

¹²⁹ ‘The Paris Agreement’, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 2(1)(a) ([link](#)).

¹³⁰ ‘Glasgow Climate Pact’, Decision 1/CMA.3, 13 November 2021, FCCC/PA/CMA/2021/10/Add.1, 2, para. 21 ([link](#)).

¹³¹ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2 ([link](#)).

¹³² Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1 ([link](#)).

have occurred due to climate change (high confidence), with adverse socioeconomic consequences (high confidence)” (emphasis added).¹³³

86. The IPCC in its 2022 Report also identifies specific **impacts on humans**, thus illustrating the direct connection between climate impacts and the protection of **human rights**:

“Climate change including increases in frequency and intensity of extremes have **reduced food and water security**, hindering efforts to meet Sustainable Development Goals (high confidence)” (emphasis added).¹³⁴

“Climate change has **adversely affected physical health** of people globally (very high confidence) **and mental health** of people in the assessed regions (very high confidence)” (emphasis added).¹³⁵

“Climate change is contributing to **humanitarian crises** where climate hazards interact with high vulnerability (high confidence)”¹³⁶

“Climate and weather extremes are increasingly driving **displacement** in all regions (high confidence)”¹³⁷

2.4.2. *These impacts are unevenly distributed with the most vulnerable suffering the worst impacts*

87. A fundamental inequity at the heart of the existential climate crisis facing the planet today is that **those who have contributed the least to climate change are also the most affected**, as the scientific consensus amply demonstrates. The Summary for Policymakers of IPCC’s 2023 Synthesis Report and the 2022 Report find that:

“Vulnerable communities who have historically contributed the least to current climate change are **disproportionately** affected (high confidence)” (emphasis added)¹³⁸

¹³³ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.2 ([link](#)).

¹³⁴ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.3 ([link](#)).

¹³⁵ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.4 ([link](#)).

¹³⁶ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.7 ([link](#)).

¹³⁷ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.7 ([link](#)).

¹³⁸ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2 ([link](#)).

“Across sectors and regions the most vulnerable people and systems are observed to be **disproportionately** affected.” (emphasis added)¹³⁹

“Increasing weather and climate extreme events have exposed millions of people to acute food insecurity and reduced water security, with the **largest impacts** observed in many locations and/or communities in Africa, Asia, Central and South America, Small Islands and the Arctic.” (emphasis added)¹⁴⁰

“Climate and weather extremes are increasingly driving displacement in all regions...with Small Island States **disproportionately** affected.” (emphasis added)¹⁴¹

“Flood and drought-related acute food insecurity and malnutrition have increased in Africa (high confidence) and Central and South America”¹⁴²

88. A further devastating inequity lies in the fact that those that are poor, development-constrained, in the midst of violent conflict, or face governance challenges and lack access to basic services and resources are far more vulnerable to climate hazards.¹⁴³ The IPCC finds, tellingly, that between 2010 and 2020, “*human mortality from floods, droughts and storms was 15 times higher in highly vulnerable regions.*”¹⁴⁴ Moreover, such vulnerability is exacerbated by “*inequity and marginalization linked to gender, ethnicity, low income or combinations thereof, especially for many Indigenous Peoples and local communities.*”¹⁴⁵

2.4.3. *Small island States are particularly vulnerable and have suffered devastating and potentially existential impacts*

89. Even by this standard of acute and disproportional impacts, the impacts for small island States are catastrophic. Small islands States, mostly remote, surrounded by rapidly rising seas, with comparatively small land areas, and limited global connectivity, are

¹³⁹ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1 ([link](#)).

¹⁴⁰ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.3 ([link](#)).

¹⁴¹ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.7 ([link](#)).

¹⁴² Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.7 ([link](#)).

¹⁴³ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.2.4 ([link](#)).

¹⁴⁴ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.2.4 ([link](#)).

¹⁴⁵ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.2.4 ([link](#)).

particularly vulnerable and suffer from amplified climate risks.¹⁴⁶ These risks include, “*tropical cyclones, storm surges, droughts, changing precipitation patterns, sea level rise, coral bleaching and invasive species, all of which are already detectable across both natural and human systems.*”¹⁴⁷

90. Increasingly intense tropical cyclones, in particular, have devastated small island States, threatening human life and destroying buildings and infrastructure. The IPCC’s 2022 Working Group 2 Report, in Chapter 15, records that 22 of 29 Caribbean islands were affected by at least one Category 4 of 5 (the two most severe categories in the Saffir-Simpson scale) Tropical Cyclone in 2017, with just one tropical cyclone destroying all of Dominica’s infrastructure and incurring losses amounting to over 225% of its annual GDP.¹⁴⁸ Similarly, Tropical Cyclone Pam devastated Vanuatu in 2015 causing losses and damages to the agricultural sector amounting to 64.1% of its annual GDP.¹⁴⁹
91. Much worse is to come. The IPCC, in its Summary for Policymakers to the 2022 Working Group 2 Report, concludes that: “*Sea level rise poses an **existential threat** for some Small Islands and some low-lying coasts*”¹⁵⁰ (emphasis added). Entire island nations, their culture, traditions, identities, will likely be swallowed up by the rising seas in the decades to come unless States make deep and immediate reductions in their GHG emissions and abide by the legal consequences of their responsibility in causing significant harm to the climate system and other parts of the environment.

2.5. The climate emergency in the 2020-2030 critical decade

92. We are now in a state of climate emergency.¹⁵¹ Even with deep and immediate reductions in emissions of GHG, some climate impacts for nature and people are irreversible. But the worst impacts of climate change can yet be avoided with concerted international action in this critical decade up to 2030.

¹⁴⁶ Intergovernmental Panel on Climate Change, “Chapter 15: Small Islands” in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), section 15.3 ([link](#)).

¹⁴⁷ Intergovernmental Panel on Climate Change, “Chapter 15: Small Islands” in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), Executive Summary ([link](#)).

¹⁴⁸ Intergovernmental Panel on Climate Change, “Chapter 15: Small Islands” in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), Executive Summary ([link](#)).

¹⁴⁹ Intergovernmental Panel on Climate Change, “Chapter 15: Small Islands” in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), Executive Summary ([link](#)).

¹⁵⁰ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.4.5 ([link](#)).

¹⁵¹ 18 national governments and the European Union have declared a climate emergency. See Cedamia, Global Climate Emergency Declaration Fact Sheet ([link](#)).

93. The Summary for Policymakers of IPCC’s 2021 Working Group 1 Report concluded that: “Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO₂ and other greenhouse gas emissions occur in the coming decades.”¹⁵²
94. The scientific consensus suggests that if global warming exceeds 1.5°C, even temporarily (this temporary exceedance of the 1.5°C target is known as “overshoot”), the risks are amplified manifold,¹⁵³ and for every additional increment of global warming during this overshoot period, the risk of severe impacts increases making it increasingly challenging to return to lower levels of warming.¹⁵⁴ The scientific consensus further suggests that “the lower the emissions in 2030, the lower the challenge in limiting global warming to 1.5°C after 2030 with no or limited overshoot.” It is imperative, therefore, that decisive and bold action be taken urgently, and in this critical decade up to 2030.¹⁵⁵
95. The scientific consensus also tells us exactly what needs to be done and by when. The IPCC concluded in its Special Report 2018 that to be on a pathway “with no or limited overshoot of 1.5°C” global net anthropogenic CO₂ emissions would need to decline by about 45% from 2010 levels by 2030 and reach net zero around 2050.¹⁵⁶ The IPCC’s Summary for Policymakers of its 2022 Working Group 3 Report added that in a no or limited overshoot pathway GHG emissions are reduced by 43 (34–60) per cent by 2030 relative to the 2019 level.¹⁵⁷ Making such deep GHG reductions, the IPCC found in its 2018 Special Report, would require “rapid and far-reaching transitions in energy, land, urban and infrastructure (including transport and buildings), and industrial systems”.

¹⁵² Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement B.1 ([link](#)).

¹⁵³ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.6 (“If global warming transiently exceeds 1.5°C in the coming decades or later (overshoot), then many human and natural systems will face additional severe risks, compared to remaining below 1.5°C.”), see also statement B.6.1 (the IPCC also noted that there would be “irreversible impacts on certain ecosystems with low resilience such as polar, mountain, and coastal ecosystems, impacted by ice-sheet, glacier melt, or by accelerating and higher committed sea level rise.”) ([link](#)).

¹⁵⁴ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.6.2 ([link](#)).

¹⁵⁵ Intergovernmental Panel on Climate Change, *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 (2018), statement D.1.3 (“The challenges from delayed actions to reduce greenhouse gas emissions include the risk of cost escalation, lock-in in carbon-emitting infrastructure, stranded assets, and reduced flexibility in future response options in the medium to long term”) ([link](#)).

¹⁵⁶ Intergovernmental Panel on Climate Change, *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 (2018), statement C.1 ([link](#)).

¹⁵⁷ Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, statement C.1.1 ([link](#)).

These systems transitions “*are unprecedented in terms of scale*” and “*imply deep emissions reductions in all sectors.*”¹⁵⁸

96. The IPCC has identified many options across sectors that offer substantial potential for GHG mitigation by 2030 in the energy, land use, buildings, transport and industry sectors.¹⁵⁹
97. Notwithstanding this overwhelming scientific consensus on the causes, impacts and solutions, as well as clear signposting by the IPCC for States on what needs to be done, how, where and by when, State conduct, reflected in States’ Nationally Determined Contributions (NDCs) submitted under the Paris Agreement until 2021, and the consequent projected global GHG emissions, make it likely that “*global warming will exceed 1.5°C and also make it harder after 2030 to limit warming to below 2°C.*”¹⁶⁰
98. The UNFCCC’s 2022 Nationally Determined Contributions (NDCs) Synthesis Report found that “*the total global GHG emission level in 2030 taking into account implementation of all latest NDCs is estimated to be 10.6 (3.6–17.5) per cent above the 2010 level and 0.3 percent below the 2019 level.*”¹⁶¹ **Clearly, 0.3% below 2019 levels is far removed from the 45% below 2019 levels that GHG emissions need to be at for a no or limited overshoot pathway to 1.5°C.**¹⁶² The Report also estimated that “*peak temperature in the twenty-first century (projected mostly for 2100 when temperature continues to rise) is in the range of 2.1–2.9°C depending on the underlying assumptions.*”¹⁶³
99. One of the key findings in the 2023 Report of the Technical Dialogue of the Global Stocktake under the Paris Agreement is that: global GHG emissions are not in line with modelled global mitigation pathways consistent with the temperature goal of the Paris Agreement, and there is a rapidly narrowing window to raise ambition and implement existing commitments in order to limit warming to 1.5 °C above pre-industrial levels.¹⁶⁴

¹⁵⁸ Intergovernmental Panel on Climate Change, *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 (2018), statement C.2 ([link](#)).

¹⁵⁹ Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Figure SPM.7 ([link](#)).

¹⁶⁰ Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, statement B.6 ([link](#)).

¹⁶¹ ‘Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat’, 26 October 2022, FCCC/PA/CMA/2022/4, 7, para. 13 ([link](#)).

¹⁶² Intergovernmental Panel on Climate Change, *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 (2018), statement C.1 ([link](#)).

¹⁶³ ‘Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat’, 26 October 2022, FCCC/PA/CMA/2022/4, 7, para. 17 ([link](#)).

¹⁶⁴ ‘Technical dialogue of the first global stocktake: Synthesis report by the co-facilitators on the technical dialogue’, 8 September 2023, FCCC/SB/2023/9, 13, para. 9 ([link](#)).

100. If we miss this “*rapidly narrowing window of opportunity*” and temperatures reach well over 2°C, the trajectory current NDCs put us on, and if we stay there longer, there is a heightened risk of abrupt changes and “*tipping points*” that trigger even more serious and irreversible impacts.¹⁶⁵
101. There is scientific consensus on the causes, impacts, and solutions, and political consensus that States 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.¹⁶⁶

2.6. The situation of Vanuatu

2.6.1. Vanuatu today

102. The Republic of Vanuatu is an island country located in the South Pacific Ocean. It comprises a group of 83 islands with a chain of 13 principal islands and many smaller islands, which collectively amount to over 12,000 square kilometres.¹⁶⁷ Vanuatu is situated about 1,770 km east of Australia, northeast of New Caledonia, east of New Guinea, southeast of Solomon Islands, and west of Fiji. The largest island of Vanuatu is Espiritu Santo. The capital is Port-Vila, situated on Éfaté island.¹⁶⁸
103. The population of Vanuatu is estimated to be around 320,000.¹⁶⁹ Around 80% of the population reside in rural areas.¹⁷⁰ Over 60% of the population lives within 1 km of the coast.¹⁷¹
104. Vanuatu is an independent, democratic republic, with a non-executive president as head of State. The unicameral parliament, elected by universal adult suffrage every four years and with an element of proportional representation, comprises 52 members.
105. Vanuatu became the 155th member of the United Nations in September 1981.

2.6.2. History

106. Vanuatu’s history dates back to 4,000 years ago. Archaeological evidence indicates that, by 1,300 BC, islands in northern Vanuatu had been settled by people of the Lapita culture

¹⁶⁵ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2021), p. 618 ([link](#)).

¹⁶⁶ ‘Glasgow Climate Pact’, Decision 1/CMA.3, 13 November 2021, FCCC/PA/CMA/2021/10/Add.1, 2, para. 5 ([link](#)).

¹⁶⁷ ‘World Factbook, Vanuatu’ (*CIA*, updated 14 February 2023) ([link](#)).

¹⁶⁸ Sophie Foster & Ron Adams, ‘History of Vanuatu’ (*Encyclopaedia Britannica*, last updated 5 January 2023) ([link](#)).

¹⁶⁹ ‘DataBank: World Development Indicators’ (*World Bank*, 2021) ([link](#)).

¹⁷⁰ Alex Chapman, William Davies, Ciaran Downey, & MacKenzie Dove, *Climate Risk Country Profile: Vanuatu* (World Bank Group 2021) ([link](#)).

¹⁷¹ Intergovernmental Panel on Climate Change, “Chapter 15: Small Islands” in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), p. 2064 ([link](#)).

from Melanesian islands to the west. Since then, there have been successive waves of migrants, including people of Polynesian origin on the southern islands of Aniwa and Futuna.

107. Initial contact with Europeans was made in the 17th Century when European explorers arrived in Vanuatu. In 1606, the Portuguese explorer Pedro Fernandes de Queirós, sailing for the Spanish Crown, landed briefly on Gaua. Continuing further south, Queirós arrived at the largest island, naming it “La Austrialia del Espíritu Santo” (“The Southern Land of the Holy Spirit”). In 1768, French explorer Louis Antoine de Bougainville sailed by the islands, which he called “les Grandes Cyclades” (“the Great Cyclades”). In 1774 the islands were explored by British explorer Captain James Cook, who named them “the New Hebrides”, a name which lasted until independence in 1980. From 1839 onwards a growing number of Europeans, mostly Roman Catholic and Protestant missionaries, arrived on the islands in an attempt to convert the islanders to Christianity.¹⁷²
108. Long-term colonial encounters including the establishment of permanent European settlements occurred from the mid-19th century when British and French settlers established missions and trading posts around the islands. With growing and overlapping interests in the islands, France and the United Kingdom agreed to administer the islands jointly and created the Anglo-French Condominium in 1906. Vanuatu remained under colonial rule from 1906 to 1980. Following France’s defeat to Germany during World War II, the UK asserted greater control over the islands and the Condominium was re-established after World War II.¹⁷³
109. During the 1970s, the Europeans’ revived interest in developing the land led to calls for independence. The first political party, the New Hebrides National Party (NHNP), was established in 1971.¹⁷⁴ Led by civil servants, teachers and Protestant clergy, the NHNP was strongly against the alienation of land by foreigners and stated its concern for the preservation of the traditional way of life.¹⁷⁵
110. The first free and open elections were held in November 1979, after the various political parties and the Condominium powers within the country agreed to a constitution for the Republic. Prime Minister Walter Lini was elected, and Vanuatu achieved independence on July 30, 1980. The Condominium of the New Hebrides became the Republic of Vanuatu.

¹⁷² Jeremy MacClancy, *To Kill a Bird with Two Stones – A Short History of Vanuatu* (Vanuatu Cultural Centre Publications, January 1981) ([link](#)). James Flexner, Matthew Spriggs, Stuart Bedford & Marcelin Abong, ‘Beginning Historical Archaeology in Vanuatu: Recent Projects on the Archaeology of Spanish, French, and Anglophone Colonialism’ in Sandra Montón-Subías, María Cruz Berrocal, Apen Ruiz Martínez (eds), *Archaeologies of Early Modern Spanish Colonialism* (Springer, 2016) ([link](#)).

¹⁷³ CIA – World Factbook, Vanuatu, updated 14 February 2023 ([link](#)).

¹⁷⁴ In 1971, the Anglican Minister Father Walter Lini formed the Anglophone backed Vanua'aku Party.

¹⁷⁵ Jeremy MacClancy, *To Kill a Bird with Two Stones – A Short History of Vanuatu* (Vanuatu Cultural Centre Publications, January 1981) ([link](#)). James Flexner, Matthew Spriggs, Stuart Bedford & Marcelin Abong, ‘Beginning Historical Archaeology in Vanuatu: Recent Projects on the Archaeology of Spanish, French, and Anglophone Colonialism’ in Sandra Montón-Subías, María Cruz Berrocal, Apen Ruiz Martínez (eds), *Archaeologies of Early Modern Spanish Colonialism* (Springer, 2016) ([link](#)).

2.6.3. Climate, environment, topography and natural landscape

111. Vanuatu's climate varies from wet tropical in the north to subtropical in the south, with much drier rain-shadow areas in between. It has a warmer and wetter season from November to April, and a slightly cooler and drier season from May to October.
- (a) Rainfall in the country is influenced by the South Pacific Convergence Zone (SPCZ);¹⁷⁶ the northern islands receive on average over 4000mm of annual rainfall, while the southern parts of the archipelago receive average annual rainfalls of 1500mm. Low pressure systems embedded in this band of heavy rainfall often become tropical cyclones during the cyclone season.¹⁷⁷
 - (b) The El Niño Southern Oscillation (ENSO) is the main driver of climate variability in the tropical Pacific due to its influence on ocean temperatures and strong interactions with the atmosphere. For Vanuatu, the El Niño phase of ENSO is typically associated with decreased rainfall, fewer tropical cyclones, more drought, cooler sea surface temperatures (SSTs) and lower sea levels. During the La Niña phase, the opposite tends to occur over Vanuatu.¹⁷⁸
 - (c) Vanuatu also lies on the so-called “Ring of Fire”, a seismically active area of the Pacific that accounts for 75 per cent of the world's volcanoes and more than 90 per cent of its earthquakes.¹⁷⁹
112. Vanuatu is one of the most geographically diverse nations in the Pacific region. It is characterized by a relief, ranging from rugged mountains and high plateaus to rolling hills and low plateaus, with coastal terraces and offshore coral reefs. Active volcanoes, including Séré'ama on Vanua Lava, Manaro on Aoba, Garet on Santa Maria, the twin volcanic vents of Benbow and Marum on Ambrym, and Yasur on Tanna are found on several of its islands.
113. There is a distance of approximately 1,300 km from the northernmost island to the southernmost islands. The country's coastline extends for 2,528 km long with a total land area of 12,336 square kilometres, set within a 200-mile exclusive economic zone (EEZ) of approximately 680,000 square kilometres.¹⁸⁰

¹⁷⁶ The SPCZ is a diagonal band of intense rainfall and deep atmospheric convection extending from the equator to the subtropical South Pacific: Josephine R. Brown, Matthieu Lengaigne, Benjamin R. Lintner, Matthew J. Widlansky, Karin van der Wiel, Cyril Duteil, Braddock K. Linsley, Adrian J. Matthews & James Renwick, 'South Pacific Convergence Zone dynamics, variability and impacts in a changing climate' (2020) 1 *Nature Reviews Earth & Environment* 530 ([link](#)).

¹⁷⁷ See Republic of Vanuatu, *Third National Communication to the United Nations Framework Convention on Climate Change* (December 2020) Ministry of Climate Change, Executive Summary, 9-10 ([link](#)); see also Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu's Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 1 ([link](#)).

¹⁷⁸ Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu's Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 1 ([link](#)).

¹⁷⁹ Internal Displacement Monitoring Centre, *Disaster Displacement: Vanuatu country briefing* (2019), p. 7 ([link](#)).

¹⁸⁰ Republic of Vanuatu, *Third National Communication to the United Nations Framework Convention on Climate Change*, Ministry of Climate Change (December 2020) ([link](#)).

114. Seventy-four percent (74%) of land in Vanuatu is covered with natural vegetation. Forest types include tropical lowland evergreen rain forest, broad-leaved deciduous forest, closed conifer forest, montane rain forest, cloud forest and coastal forest. There are about 1,000 vascular plant species in Vanuatu of which around 150 are endemic. There is high diversity of orchids with 158 species and palms with 21 species, including 14 endemic species. There are 121 bird species, 28 species of reptiles and 12 species of Chiropterae (Flying Foxes and Bats). Invertebrate diversity is not fully described but includes the coconut crab (*Birgus latro*) the largest land crab, which is an important food resource in Vanuatu.¹⁸¹
115. Large rivers are present on Vanuatu's larger islands, but the most common freshwater habitats are steep gradient mountain streams. Unique and rare habitats include freshwater lakes on several islands (including crater lakes on inactive volcanic islands) and subterranean streams in karst areas. Most islands of Vanuatu contain a dense network of seas, lakes and rivers. The larger islands are well watered by rapid mountain rivers and creeks. Other freshwater systems include low gradient lowland streams, deep pits called blue holes, some lakes and swamps/ marshes on plains. Vanuatu has a range of marine habitats and species, from inshore coral reefs to deepwater seamounts and canyons.¹⁸²
116. Vanuatu's exposure to natural hazards, extensive low-lying coastal zone, development context and precarious natural resource base make it one of the most vulnerable and disaster-prone countries in the Pacific region, and one of most vulnerable countries to climate change in the world. Vanuatu regularly experiences heat waves, droughts, floods, tropical cyclones and storms.¹⁸³

2.6.4. *Ni-Vanuatu people and communities, culture and Kastom*

117. As noted above, the total population of Vanuatu is estimated to be around 320,000.¹⁸⁴ About 95% of the population is indigenous known as "ni-Vanuatu". The ni-Vanuatu are Melanesians. The other segment of the population includes people of different origins, including as Australia, New Zealand, Europe, Asia and other Pacific Islands.
118. Vanuatu has a notably youthful demographic, with up to 50% of the population under the age of 40. The population make up is such that it is close to a 1:1 male to female ratio although projections indicate a somewhat levelling of ratios by 2050.¹⁸⁵
119. With 138 distinct languages for its relatively small population, Vanuatu is thought to be the most linguistically diverse country (per capita) in the world. Vanuatu's national

¹⁸¹ Republic of Vanuatu, *Third National Communication to the United Nations Framework Convention on Climate Change*, Ministry of Climate Change (December 2020), p. 10 ([link](#)).

¹⁸² Republic of Vanuatu, *Third National Communication to the United Nations Framework Convention on Climate Change*, Ministry of Climate Change (December 2020), p. 28 ([link](#)).

¹⁸³ 'Climate Knowledge Portal, Vanuatu' (*World Bank*, accessed 22 February 2023) ([link](#)).

¹⁸⁴ 'Climate Knowledge Portal, Vanuatu' (*World Bank*, accessed 22 February 2023) ([link](#)).

¹⁸⁵ Republic of Vanuatu, *Third National Communication to the United Nations Framework Convention on Climate Change*, Ministry of Climate Change (December 2020), p. 31 ([link](#)).

language, Bislama, is a form of Pidgin-English. Besides Bislama, the country's two official languages of government are English and French.¹⁸⁶

120. Culture and *kastom* are central to the Ni-Vanuatu way; it underpins Vanuatu's social cohesion, stability, and resilience, along with its cultural and natural heritage, which cannot be treated separately from each other.¹⁸⁷ Some villages are *Kastom* villages, which retain traditional ways of living and do not adopt other religious beliefs or western models of society.¹⁸⁸ As stated in the **Expert Report of Ms Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu**, this rich cultural heritage is expressed “*through an extensive body of traditional ecological knowledge, developed over thousands of years*”.¹⁸⁹ They continue:

“This knowledge is organised into discrete bodies or systems, is place-specific, and includes traditional indicators drawn from close observation of environmental change – in plants, animals, astronomy and meteorology (e.g. wind direction and strength, cloud patterns) — to forecast and manage weather and climate. Traditional knowledge pervades all aspects of life and cultural practice more generally, and is transmitted verbally, visually and sensorily. There is a broad-based faith in the power of customary or *kastom* knowledge to assist in managing climate change impacts.”¹⁹⁰

2.6.5. *Economy and livelihoods*

121. The economy of Vanuatu is based predominantly on the service sector (67% of the GDP), followed by agriculture (22%) and industry (11%).¹⁹¹ Since independence, Vanuatu's tourism and offshore financial services have emerged as the largest earners of foreign income.
122. Subsistence agriculture has traditionally been the economic base of Vanuatu, and makes up more than 75% of all agriculture in the country.¹⁹² This type of farming centres around root crops such as taro, yam, cassava and sweet potato.¹⁹³ Kava, in particular, is a major cash crop for Vanuatu.¹⁹⁴

¹⁸⁶ Republic of Vanuatu, *Third National Communication to the United Nations Framework Convention on Climate Change*, Ministry of Climate Change (December 2020) ([link](#)).

¹⁸⁷ Anna Naupa and Dr Chris Ballard, *Expert Report on Climate Change and Cultural Loss in Vanuatu* (**Exhibit A**), p. 1. See also Statement of Alpi Nangia dated 12 January 2024 (**Exhibit F**), paras. 7-16.

¹⁸⁸ For example, numerous villages in Tanna are *kastom* villages: see Statement of Alpi Nangia dated 12 January 2024 (**Exhibit F**), para. 7.

¹⁸⁹ Anna Naupa and Dr Chris Ballard, *Expert Report on Climate Change and Cultural Loss in Vanuatu*, (**Exhibit A**), para. 17.

¹⁹⁰ Anna Naupa and Dr Chris Ballard, *Expert Report on Climate Change and Cultural Loss in Vanuatu*, (**Exhibit A**), para. 17.

¹⁹¹ Alex Chapman, William Davies, Ciaran Downey, & MacKenzie Dove, *Climate Risk Country Profile: Vanuatu* (World Bank Group 2021), p. 2 ([link](#)).

¹⁹² Republic of Vanuatu, *Third National Communication to the United Nations Framework Convention on Climate Change*, Ministry of Climate Change (December 2020) ([link](#)).

¹⁹³ Republic of Vanuatu, *Third National Communication to the United Nations Framework Convention on Climate Change*, Ministry of Climate Change (December 2020) ([link](#)).

¹⁹⁴ Mary Taylor, Andrew McGregor & Brian Dawson, *Vulnerability of Pacific Island agriculture and forestry to climate change* (SPC, 2016), p. 299 ([link](#)).

123. Furthermore, Vanuatu relies on agriculture for food security, employment and livelihoods.
- (a) In terms of food security, root crops — such as yams, island taro, Fiji taro, cassava or manioc, and kumala (sweet potato) — are grown mainly for local consumption.¹⁹⁵ These crops are a staple food for people in Vanuatu and are grown using traditional methods.
 - (b) In terms of employment, majority of ni-Vanuatu are subsistence agriculturalists, living in small rural villages where activities revolve around the land. The constitution guarantees that land cannot be alienated from its “indigenous custom owners,” or traditional owners, and their descendants.
 - (c) Vanuatu has very strong subsistence farming practises; it is among the last places in the world where the subsistence economy or “traditional economy” still outweighs the cash economy in terms of providing livelihoods for the population.¹⁹⁶ Overall, approximately 90% of all households, and 97% of rural households, engage in vegetable crop production.¹⁹⁷
 - (d) As for livelihoods, Vanuatu is traditionally known for its strong cultural heritage tradition activities and subsistence farming. People plan their lives around the seasonable calendar for the purposes of planting crops.¹⁹⁸ These crops have significant cultural value and cultural applications.¹⁹⁹ People have a strong spiritual and metaphysical relationship with certain crops (e.g., the Yam) and such crops are absolutely central to many cultures and kastoms in Vanuatu.²⁰⁰ Further, growers have developed a cultural understanding for growing root crops.²⁰¹ More than an economic resource, land is the physical embodiment of

¹⁹⁵ Commonwealth Scientific and Industrial Research Organisation (CSIRO) & Secretariat of the Pacific Regional Environment Programme (SPREP), ‘Climate change impacts on root crop production in Vanuatu: Infobyte prepared for the Vanuatu Meteorology and Geo-hazards Department as part of the Van-KIRAP project’ (2023) (**Exhibit V**), p. 1.

¹⁹⁶ Internal Displacement Monitoring Centre, *Sudden-Onset Hazards and the Risk of Future Displacement in Vanuatu* (2020), p. 4 ([link](#)), citing Ralph Regenvanu, *The traditional economy as source of resilience in Vanuatu* (2009) ([link](#)).

¹⁹⁷ Amy Savage, Hilary Bambrick & Danielle Gallegos, “Climate extremes constrain agency and long-term health: A qualitative case study in a Pacific Small Island Developing State” (2021) 31 *Weather and Climate Extremes*, p. 2 ([link](#)).

¹⁹⁸ Impact Statement of Robson Tigona, Lecturer in Environmental Sciences at Vanuatu National University, 14 March 2024 (**Exhibit O**), paras. 9-10, 32.

¹⁹⁹ See Statement of Werry Narua dated 12 January 2024 (**Exhibit G**), paras. 13-17.

²⁰⁰ See, e.g. Impact Statement of Dr. Vincent Lebot, root tuber crop breeder and researcher with the French Agricultural Research Centre for International Development (CIRAD), the Republic of Vanuatu, 14 March 2024 (**Exhibit U**), paras. 13-18; Statement of Alpi Nangia dated 12 January 2024 (**Exhibit F**), para. 26; Statement of Mangau Iokai dated 12 January 2024 (**Exhibit H**), para. 16-26 (on the centrality of Yam to his peoples’ Kastom), paras. 27-32 (on his spiritual relationship to the Yam), see further para. 47 (“*the Yam is inseparable from us. It is our identity*”); Statement of Werry Narua dated 12 January 2024 (**Exhibit G**), paras. 13-17.

²⁰¹ Commonwealth Scientific and Industrial Research Organisation (CSIRO) & Secretariat of the Pacific Regional Environment Programme (SPREP), ‘Climate change impacts on root crop production in Vanuatu: Infobyte prepared for the Vanuatu Meteorology and Geo-hazards Department as part of the Van-KIRAP project’ (2023) (**Exhibit V**), p. 1.

the metaphysical link with the past, and identification with a particular tract of land remains one of the fundamental concepts governing ni-Vanuatu culture.²⁰²

124. Vanuatu also has a large and growing tourism industry which is extremely important to the country's economy. Tourism in Vanuatu is nature-based and highly dependent on coastal as well as inland ecosystems.²⁰³ Many Ni-Vanuatu communities are also heavily reliant on tourism for their livelihoods.²⁰⁴

2.6.6. *Snapshot of climate change impacts on Vanuatu*

125. Climate change is *already* affecting Vanuatu and its people. This is despite Vanuatu only being responsible for less than 0.0004% of global cumulative emissions between 1962 to 2022.²⁰⁵ As concluded by Anna Naupa and Dr. Chris Ballard in their Expert Report:

Climate change and related harm to the environment has already had a direct impact on Vanuatu's cultures, culture bearers, cultural sites and resources, resulting in cultural loss and damage across Vanuatu's many islands. This loss and damage has occurred through both rapid-onset climate change events (cyclones, extreme rainfall events and flooding, drought) and slow-onset events (temperature rise, loss of biodiversity, ecosystem degradation, ocean acidification, sea level rise, and salinization).²⁰⁶

126. The impacts of climate change on Vanuatu will be referred to and discussed at various places throughout this Written Statement. For immediate purposes, the Republic of Vanuatu sets out some of the impacts of climate change in Vanuatu, from which legally-significant outcomes flow. This brief overview is not exhaustive, but it does capture some of the most relevant impacts experienced to date.

- (a) **Temperature increase** – the average temperature of the Vanuatu region has increased by around 0.7 °C since the pre-industrial period (1850–1900).²⁰⁷ The temperature has been rising at a faster rate in recent decades.²⁰⁸ Moreover, over the past decades the numbers of cold nights in Port Vila has been decreasing,

²⁰² Note that the constitution guarantees that land cannot be alienated from its “indigenous custom owners,” or traditional owners, and their descendants: Constitution of the Republic of Vanuatu, s 73 ([link](#)).

²⁰³ United Nations Capital Development Fund, *Economic Impacts of Natural Hazards on Vulnerable Populations in Vanuatu* (2020), p. 11 ([link](#)).

²⁰⁴ Margaret Alston, Sascha Fuller & Niikita Kwarney, ‘Women and climate change in Vanuatu, Pacific Islands Region’ (2023) Gender, Place & Culture ([link](#)).

²⁰⁵ Hannah Ritchie & Max Roser, ‘Vanuatu: CO2 Country Profile’ (*Our World in Data*) ([link](#)).

²⁰⁶ Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), p. 1.

²⁰⁷ Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu's Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), pp. 1, 9 ([link](#)).; see also Kirono, D.G.C., et al., *National and sub-national climate projections for Vanuatu*. 2023, CSIRO: Melbourne, Australia ([link](#)).

²⁰⁸ Commonwealth Scientific and Industrial Research Organisation (CSIRO) & Secretariat of the Pacific Regional Environment Programme (SPREP), *‘NextGen’ Projections for the Western Tropical Pacific: Current and Future Climate for Vanuatu* (2021), p. 3 ([link](#)).

while the number of hot days has been increasing.²⁰⁹ Over 1950–2020, there has been a clear warming of the hottest day of the year.²¹⁰ In the **Expert Report for the Government of Vanuatu**, prepared by the Pacific Community (SPC), SPC observed that:²¹¹

“Average annual and seasonal temperatures are increasing in Vanuatu. All temperature trends are statistically significant for the two sites SPC has measured, and November to April temperatures have increased faster than the May to October temperatures with maximum temperatures increasing faster than minimum temperatures, especially outside of Port Vila.”

(b) **Tropical Cyclones** – Vanuatu had an average of 31 tropical cyclones per decade within a 500 km buffer surrounding the country over the period of 1971–2021.²¹² Historical tropical cyclone trends suggest that tropical cyclones have decreased in frequency since 1971,²¹³ — but, significantly, have become more severe and intense.²¹⁴ Moreover, Vanuatu is starting to experience severe tropical cyclones outside the normal tropical cyclone season as well as outside those peak severe cyclone months.²¹⁵ Recent severe tropical cyclones (Category 4 and 5) in Vanuatu include:²¹⁶

²⁰⁹ Simon McGree, Grant Smith, Elise Chandler, Nicholas Harlod, Zulfikar Begg, Yuriy Kuleshov, Philip Malsale & Mathilde Ritman, *Climate Change in the Pacific 2022: Historical and recent variability, extremes and change* (SPC; Suva, Fiji; 2022) ([link](#)); see Commonwealth Scientific and Industrial Research Organisation (CSIRO) & Secretariat of the Pacific Regional Environment Programme (SPREP), ‘Extreme heat impacts on electricity demand in Efate: Infobyte prepared for the Vanuatu Meteorology and Geo-hazards Department as part of the Van-KIRAP project’ (2023) (**Exhibit W**).

²¹⁰ Kirono, D., et al., *National and sub-national climate projections for Vanuatu*. 2023. CSIRO: Melbourne, Australia ([link](#)); Simon McGree, Nicholas Herold, Lisa Alexander, Sergei Schreider, Yuriy Kuleshov, Elifaleti Ene, Selu Finaulahi, Kasis Inape, Boyd Mackenzie, Hans Malala, Arona Ngari, Bipendra Prakash and Lloyd Tahani, ‘Recent changes in mean and extreme temperature and precipitation in the Western Pacific Islands’ (2019) 32(16) *Journal of Climate* 4919-4941 ([link](#)). See CSIRO and SPREP (2023). Commonwealth Scientific and Industrial Research Organisation (CSIRO) & Secretariat of the Pacific Regional Environment Programme (SPREP), ‘Extreme heat impacts on electricity demand in Efate: Infobyte prepared for the Vanuatu Meteorology and Geo-hazards Department as part of the Van-KIRAP project’ (2023) (**Exhibit W**).

²¹¹ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 4 (citations omitted).

²¹² Leanne Webb, Krishneel Sharma, Savin Chand, Hamish Ramsay, Kevin Hennessy & Soubhik Biswas, ‘Tropical cyclone observations, trends and projections for Vanuatu’ (CSIRO, SPREP & VMGD, 2023), p. 1 ([link](#)).

²¹³ Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu’s Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 9 ([link](#)); Leanne Webb, Krishneel Sharma, Savin Chand, Hamish Ramsay, Kevin Hennessy & Soubhik Biswas, ‘Tropical cyclone observations, trends and projections for Vanuatu’ (CSIRO, SPREP & VMGD, 2023), p. 1 ([link](#)); Kirono, D.G.C., et al., *National and sub-national climate projections for Vanuatu*. 2023, CSIRO: Melbourne, Australia ([link](#)); Anil Deo, Savin S. Chand, Hamish Ramsay, Neil J. Holbrook, Simon McGree, Andrew Magee, Samuel Bell, Mulipola Titimaea, Alick Haruhiru, Philip Malsale, Silipa Mulitalo, Arieta Daphne, Bipen Prakash, Vaiola Vainikolo & Shirley Koshiba, ‘Tropical cyclone contribution to extreme rainfall over southwest Pacific Island nations’ (2021) 56 *Climate Dynamics* 3967-3993 ([link](#)).

²¹⁴ The average number of TCs passing within 500 km of Vanuatu has declined from ~36 TCs per decade to ~26 TCs per decade between the two periods 1971–1995 and 1996–2021; a ~28 % decline. The proportion of severe TCs (category 3-5) passing within 500 km has increased from 45 % to 57 % between the period 1971–1995 and 1996–2021. See Impact Statement of Robson Tigona, Lecturer in Environmental Sciences at Vanuatu National University, 14 March 2024 (**Exhibit O**), paras. 12-14.

²¹⁵ Impact Statement of Robson Tigona, Lecturer in Environmental Sciences at Vanuatu National University, 14 March 2024 (**Exhibit O**), para. 15.

²¹⁶ The Republic of Vanuatu notes that in addition to these Category 4 and 5 Tropical Cyclones, Vanuatu has also experienced numerous Category 1-3 Tropical Cyclones.

- (i) In 2015, Tropical Cyclone **Pam**—a category 5 tropical cyclone struck Vanuatu killing 11 people, destroying and/or damaging over 17,000 buildings, and displacing 65,000 people—hit the island in 2015. The economic loss and damage alone was estimated to be around VT 48.6 billion, which is equivalent to 64% of Vanuatu’s total GDP.²¹⁷
- (ii) In 2020, Tropical Cyclone **Harold** in 2020 passed directly over Vanuatu and south of Fiji at Category 5 intensity. It temporarily displaced over 18,000 people who took shelter in over 270 evacuation centres. Over 26,000 households or 129,000 people were impacted, which is approximately 43 % of the population. Over 218,000 agricultural plants were destroyed. The overall economic loss and damage was almost VT 24 billion.²¹⁸
- (iii) In March 2023, Vanuatu witnessed unprecedented back-to-back tropical cyclones (severe Tropical Cyclone **Kevin** and Tropical Cyclone **Judy**). Kevin and Judy caused widespread destruction across the provinces, affecting at least 80% of the country’s population with 26% of the arterial road network also being inaccessible and hampering disaster response.²¹⁹ Both Judy and Kevin were Category 4 cyclones that caused significant damage due to wind, heavy rains, flooding and storm surge. According to the National Disaster Management Office (NDMO), a total of 197,388 people (43,623 households) were affected by Judy and Kevin, representing approximately 66% of the total population. The economic loss and damage was approx. VT 51.2 billion.²²⁰
- (iv) Most recently, in October 2023, Vanuatu was hit by another category 5 cyclone, Tropical Cyclone **Lola**.²²¹ The extent of loss and damage caused by Lola is still being assessed.

In the past, Ni-Vanuatu people have been assisted by the cyclone season. Less severe cyclones occurred after the dry season and would bring much needed

²¹⁷ Alex Chapman, William Davies, Ciaran Downey, & MacKenzie Dove, *Climate Risk Country Profile: Vanuatu* (World Bank Group 2021) ([link](#)).

²¹⁸ Leanne Webb, Krishneel Sharma, Savin Chand, Hamish Ramsay, Kevin Hennessy & Soubhik Biswas, ‘Tropical cyclone observations, trends and projections for Vanuatu’ (CSIRO, SPREP & VMGD, 2023), p. 6 ([link](#)).

²¹⁹ Leanne Webb, Krishneel Sharma, Savin Chand, Hamish Ramsay, Kevin Hennessy & Soubhik Biswas, ‘Tropical cyclone observations, trends and projections for Vanuatu’ (CSIRO, SPREP & VMGD, 2023), p. 3 ([link](#)).

²²⁰ Government of Vanuatu, Post-Disaster Needs Assessment, TC Kevin and Judy, p. xvii ([link](#)).

²²¹ Impact Statement of Rothina Ilo Noka, Director for the Department of Women’s Affairs, the Republic of Vanuatu, 15 March 2024 (**Exhibit P**), para. 13.

rainfall for planting without bringing destruction.²²² Now, with more severe tropical cyclones, cyclone season brings loss and damage.

- (c) **Sea Level Rise** – As SPC observes in its Expert Report, over the last 30 years, the rate of sea level rise across the western tropical Pacific, and in many countries, is higher than the global average.²²³ The sea level rise observed over the western tropical Pacific is about 10-15cm for the 1993-2020 period. This sea level rise is having adverse consequences for Vanuatu, particularly the low-lying coastal areas of Vanuatu which are most vulnerable to flooding and erosion.²²⁴
- (d) **Coastal Inundation and localised flooding** – Sea level rise, in combination with tectonic subsidence, has led to extensive coastal erosion processes and increasingly frequent inundations in some islands.²²⁵ SPC observes in its Expert Report that, for the period of 1980-2020, “regions of 10-, 50-, and 100-year coastal inundation ... include roads that are inundated under current climate conditions”.²²⁶ There has also been localised flooding in Vanuatu, as a consequence of intense rainfall (as well as urban drainage issues).²²⁷
- (e) **Ocean warming** – Sea surface temperatures are increasing, contributing to marine heatwaves becoming warmer and lasting longer.²²⁸ There is a relationship between the temperature increase in Vanuatu and ocean warming; as explained by SPC in its Expert Report: “Seasonal temperature changes in Vanuatu are strongly connected to changes in the surrounding ocean temperature, so as one rises, it will influence the other.”²²⁹ The warming of sea surface temperatures is associated with an increase in marine heatwaves

²²² Impact Statement of Robson Tigona, Lecturer in Environmental Sciences at Vanuatu National University, 14 March 2024 (**Exhibit O**), para. 10.

²²³ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 6 (“Sea level observations from satellite altimetry over the last 30 years show a positive trend (increase) across the western tropical Pacific, and in many countries, the rate of sea-level rise is higher than the global average over that same period. Sea level in Vanuatu, measured by satellite altimeters since 1993,²²³ has risen between 3.5 millimetres (mm) and 5 mm per year across the EEZ, with a confidence interval of ± 0.4 mm in the south and up to ± 1.0 mm in the north. Most of the EEZ exhibits sea-level rise that is larger than the global average of 3.1 ± 0.4 mm per year.” (citations omitted)).

²²⁴ Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu’s Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 1 ([link](#)).

²²⁵ Republic of Vanuatu, *Third National Communication to the United Nations Framework Convention on Climate Change*, Ministry of Climate Change (December 2020), Executive Summary, p. 12 ([link](#)). See Statement of Nine Women (Linet Iawain, Yalitea Iakaho, Sera Nawahta, Nelly Pilia, Naus Iaho, Nancy Iacitan, Sera Naburam, Yoba Merarangi, Jenny Toata) dated 12 January 2024 (**Exhibit I**), para. 78.

²²⁶ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 9.

²²⁷ UN Human Settlements Programme & RMIT University, *Climate Change Vulnerability Assessment: Greater Port Vila* (2015), Executive Summary, p. 3 ([link](#)).

²²⁸ Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu’s Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 1 ([link](#)).

²²⁹ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 4.

(MHWs) across Vanuatu.²³⁰ Across Vanuatu historically there has been an increasing frequency of MHWs (1982–2021), mostly in the ‘Moderate’ to ‘Strong’ category.²³¹ The average annual duration of Pacific MHWs was 5–16 days in the 1980s to 2000s but increased to 8–20 or more days during the 2010s.²³² The changing sea surface temperature is also posing challenges for temperature-sensitive marine ecosystems including coral reefs, seagrass beds, and fish.²³³

- (f) **Rainfall** – there is evidence of extreme daily and sub-daily rainfall becoming more common since 1951, with large interannual variability.²³⁴ This is expected in part because the warmer atmosphere can hold more moisture and the intensity of the storms bringing rainfall may also contribute to trends in short-duration rainfall.²³⁵ This heavier rainfall (including by reason of more intense cyclones and storm surge) cause an increased number of landslides.²³⁶
- (g) **Drought** – Droughts are generally associated with the El Niño phenomenon, which affects precipitation patterns across the Pacific. Droughts are becoming more impactful as the temperature warms and enhances evapotranspiration, which dries the surface of soil and plants.²³⁷ Droughts have serious impacts on

²³⁰ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 10 (“Since 1993, the rate of ocean warming (and thus heat uptake) has more than doubled and is attributed to anthropogenic forcing, or human-caused changes in concentrations of greenhouse gases despite climate variations that naturally occur. Anthropogenic change has been detected in surface temperature with very high significance levels, a conclusion strengthened by the detection of anthropogenic change in the upper ocean with a high significance level. In Vanuatu, surface-level ocean warming is in line with the conclusion against upper ocean warming being due to natural internal processes (see Figure 4). Observed change is very large relative to climate-model simulated internal variability.”) See also Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu’s Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 10 ([link](#)).

²³¹ Commonwealth Scientific and Industrial Research Organisation (CSIRO), Secretariat of the Pacific Regional Environment Programme (SPREP) & Vanuatu Meteorology and Geo-hazards Department (VMGD), *Historical, current and future marine heatwave climatology for Vanuatu: A report to the Van-KIRAP project* (2023) (**Exhibit X**).

²³² Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu’s Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 10 ([link](#)).

²³³ Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu’s Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 10 ([link](#)).

²³⁴ John J. Marra, Geoff Gooley, Victoria Keener, Michael Kruk, Simon McGree, James T. Potemra & Olivia Warrick (eds), *Pacific Islands Climate Change Monitor: 2021* (The Pacific Islands-Regional Climate Centre (PIRCC) Network Report to the Pacific Islands Climate Service (PICS) Panel and Pacific Meteorological Council (PMC), 2022) ([link](#)); see Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu’s Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), pp. 1, 9 ([link](#)).

²³⁵ See Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu’s Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 9 ([link](#)); see also Isaac M. Held & Brian J. Soden, ‘Robust response of the hydrological cycle to global warming’ (2006) 19 *Journal of Climate* 5686-5699 ([link](#)).

²³⁶ See Statement of Nine Women (Linet Iawain, Yalitea Iakaho, Sera Nawahta, Nelly Pilia, Naus Iaho, Nancy Iacitan, Sera Naburam, Yoba Merarangi, Jenny Toata) dated 12 January 2024 (**Exhibit I**), paras. 77, 80; Statement of Mangau Iokai dated 12 January 2024 (**Exhibit H**), para. 74; Statement of Johnny Loh dated 12 January 2024 (**Exhibit K**), paras. 26-28; Statement of Jenny Toata dated 12 January 2024, (**Exhibit J**), para. 16; Statement of Alpi Nangia dated 12 January 2024 (**Exhibit F**), para. 19.

²³⁷ Viliamu Iese, Anthony S. Kiem, Azarel Mariner, Philip Malsale, Tile Tofaeono, Dewi G.C. Kirono, Vanessa Round, Craig Heady, Robson Tigona, Filipe Veisa, Kisolel Posanau, Faapisa Aiono, Alick Haruhiru, Arieta Daphne, Vaiola Vainikolo & Nikotemo Iona, ‘Historical and future drought impacts in the Pacific islands and atolls’ (2021) 166(1) *Climatic Change* 1-24 ([link](#)); see Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu’s Climate: Current*

subsistence agriculture and on water supplies, which in Vanuatu are heavily dependent on rainwater harvesting. Past droughts have caused significant impacts in Vanuatu affecting water security and agricultural production.²³⁸

- (h) **Coral Reefs** – Climate change is posing direct threats to Vanuatu’s life-sustaining coral reefs. The loss and damage to these coral reefs, both temporary and permanent, are already taking place on all islands, mainly due to climate-induced coral bleaching events and severe tropical storms.²³⁹ Data from the Millennium Coral Reef Mapping Project shows that Vanuatu’s corals are damaged and at risk.²⁴⁰ Tropical Cyclone Pam involved significant coral damage on northeast reefs of North Efate.²⁴¹

127. These impacts have greatly harmed existing environmental systems, governance and social structures; they are threatening infrastructure and livelihoods in low-lying areas, prompting some communities to relocate elsewhere.²⁴² Some agricultural crops are already showing signs of stress under current climatic conditions.²⁴³ Kava production areas are highly vulnerable to cyclones, drought, and other climatic impacts.²⁴⁴ The tourism industry is vulnerable to natural hazards and climate change. By virtue of living on the coast, many Ni-Vanuatu communities and people are highly exposed to slow- and sudden-onset risks, including cyclones, storm surges and sea level rise.²⁴⁵ This has led to the displacement and relocation of whole communities through State-led initiatives.²⁴⁶

and future variability and change. A report to the Van-KIRAP project (University of Hawaii, CSIRO and Climate Comms, 2023), p. 9 ([link](#)).

- ²³⁸ In Vanuatu, major droughts occurred in 1982–1983, 1997–1998, and 2015–2016, with their frequency and intensity differing over space and time. See Viliamu Iese, Anthony S. Kiem, Azarel Mariner, Philip Malsale, Tile Tofaeono, Dewi G.C. Kirono, Vanessa Round, Craig Heady, Robson Tigona, Filipe Veisa, Kisolet Posanau, Faapisa Aiono, Alick Haruhiru, Arieta Daphne, Vaiola Vainikolo & Nikotemo Iona, ‘Historical and future drought impacts in the Pacific islands and atolls’ (2021) 166(1) *Climatic Change* 1-24 ([link](#)).
- ²³⁹ Jeffrey Maynard, Scott Heron, Ruben van Hooionk & Dieter Tracey, *Past and projected future impacts of coral bleaching on the reefs of Vanuatu* (Report to the Secretariat of the Pacific Regional Environment Programme (SPREP), Apia, Samoa, 2018), p. 3 ([link](#)).
- ²⁴⁰ Serge Andréfouët, Frank E. Muller-Karger, Julian A. Robinson, Christine J. Kranenburg, Damaris Torres-Pulliza, Steven A. Spraggins & Brock Murch, ‘Global assessment of modern coral reef extent and diversity for regional science and management applications: a view from space’, *Proceedings of tenth International Coral Reef Symposium*, Okinawa, Japan. 28 June–2 July 2004. pp. 1732–1745 ([link](#)).
- ²⁴¹ Johanna Johnson, Jane Waterhouse & Michelle Devlin, *North Efate coral reef assessment: current status and recent disturbances* (RESCCUE, August 2016) ([link](#)).
- ²⁴² Republic of Vanuatu, *National Policy on Climate Change and Disaster-Induced Displacement* (2018), p. 11 ([link](#)); Internal Displacement Monitoring Centre, *Disaster Displacement: Vanuatu country briefing* (2019), p. 7 ([link](#)), citing Taito Nakalevu & Brian Phillips, *Post Relocation Survey Report, Tegua Community, Torba Province, Vanuatu* (August 2021) ([link](#)); United Nations Capital Development Fund, *Economic Impacts of Natural Hazards on Vulnerable Populations in Vanuatu* (2020) ([link](#)).
- ²⁴³ Internal Displacement Monitoring Centre, *Sudden-Onset Hazards and the Risk of Future Displacement in Vanuatu* (2020), p. 4 ([link](#)). See e.g., Statement of Alpi Nangia dated 12 January 2024 (**Exhibit F**), para. 17.
- ²⁴⁴ See Mary Taylor, Andrew McGregor & Brian Dawson, *Vulnerability of Pacific Island agriculture and forestry to climate change* (SPC, 2016), p. 314 ([link](#)).
- ²⁴⁵ Internal Displacement Monitoring Centre, *Disaster Displacement: Vanuatu country briefing* (2019), p. 7 ([link](#)), citing Neil L. Andrew, Phil Bright, Luis de la Rúa, Shwu Jiau Teoh & Mathew Vickers, ‘Coastal proximity of populations in 22 Pacific Island Countries and Territories’ (2019) 14(9) *PLoS ONE* e0223249 ([link](#)).
- ²⁴⁶ Six villages on four of Vanuatu’s islands have been relocated because rising sea levels have made water supplies too salty for drinking: see Republic of Vanuatu, *Climate Change Impact Case Study: Vanuatu and Migration* (2023), p. 1 ([link](#)), citing Somino Sengupta, ‘Can Nations be Sued for Weak Climate Action? We’ll Soon Get an Answer’ (*The New York Times*, 29 March 2023) ([link](#)).

Citizens on smaller islands are also moving to the capital, Port Vila, including for environmental reasons.²⁴⁷ As SPC says, in its Expert Report:²⁴⁸

“As the ocean encroaches upon the land, it is not merely the physical landscape that faces changes; it is the essence of how people live and thrive. As coastal areas become increasingly uninhabitable, communities face the heart-wrenching prospect of abandoning ancestral homes. This upheaval not only severs ties to land and heritage but also disrupts social structures, community cohesion, and cultural identity, and makes people deeply vulnerable.”

128. These impacts are bound to increase and intensify into the future. Sea-level rise is expected to continue to rise in Vanuatu in all emission scenarios.²⁴⁹ In the coming decades, droughts are projected to become longer and more intense, with a higher proportion of events in the extreme drought category, with little change in annual average rainfall projected.²⁵⁰ At the same time, annual average temperature is projected to increase. Ocean warming, acidification, and deoxygenation will continue to increase this century at rates dependent on future emissions of carbon dioxide and greenhouse gases.²⁵¹
129. We discuss these impacts further, in connection with relevant legal obligations, in the sections which follow.

2.7. Concluding submissions

130. For the foregoing reasons, the Republic of Vanuatu submits that the Court can rely on a scientific and State consensus on the causes and impact of climate change, expressed, inter alia, in the reports of the IPCC. Climate injustice, i.e. the disproportional impacts of climate change on those who have contributed the least, is part of this consensus. The specific situation of Vanuatu illustrates the meaning of climate injustice. As explained in Chapter I, this is the beating heart of the questions put to the Court by the General Assembly, acting by consensus.

²⁴⁷ See Republic of Vanuatu, *Climate Change Impact Case Study: Vanuatu and Migration* (2023), p. 1 ([link](#)), citing Morgan Henson, Brittany Horton., Andrew Robison & Aaron Wolfson, *Forced Climate Migration in Oceania* (2020) ([link](#)).

²⁴⁸ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 7.

²⁴⁹ International Climate Change Adaptation Initiative, Vanuatu Meteorology and Geo-hazard Department, Australian Bureau of Meteorology, and Commonwealth Scientific and Industrial Research Organisation (CSIRO) Pacific Climate Change Science Program, *Current and future climate of Vanuatu* (2011) ([link](#)).

²⁵⁰ Kirono, D., et al., National and sub-national climate projections for Vanuatu. 2023. CSIRO: Melbourne, Australia ([link](#)).

²⁵¹ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 10; Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, 2022 (also available at: https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf).

CHAPTER III
THE CONDUCT AT THE HEART OF THE QUESTIONS
PUT TO THE COURT

3.1. Summary of Vanuatu’s submission

131. At the heart of the two questions put to the Court by the General Assembly is a specific conduct. Characterizing this conduct is necessary to guide the identification of the relevant obligations to be clarified by the Court in response to Question (a) as a step to answer Question (b) regarding “*legal consequences under these obligations*”. The characterization of this “Relevant Conduct” is provided by Resolution 77/276 itself, first in broad terms in Question (a), then in more specific terms in preambular paragraph 5 in fine, and finally in even more specific terms in the first part of Question (b). In essence, it consists of acts and omissions of individual States – and of a specific group thereof – that have resulted over time in a level of anthropogenic GHG emissions from activities within their jurisdiction or control which have interfered with the climate system and other parts of the environment to an extent which amounts to at least significant harm to the latter, whether or not the anthropogenic GHG emissions of a given State over time are the only or the main cause of climate change, and whether or not they are the only or the main cause of the specific harm suffered by another State, people or individual. As demonstrated in Chapter II, there is scientific and State consensus on the causes and impacts of climate change. There is ample evidence regarding which specific States have displayed the Relevant Conduct and which group of States, taken together, have caused not only significant harm to the climate system and other parts of the environment but catastrophic harm in the form of climate change and its adverse consequences. There is also ample evidence that at least from the 1960s, States with high cumulative emissions of greenhouse gases (GHGs) were aware that the release of greenhouse gases into the Earth’s atmosphere had the potential to alter the climate system, and that such interference, if unmitigated, could have catastrophic effects for humans and the environment. The legality in principle of the Relevant Conduct can in any event be assessed in general, without reference to one or more specific States or group thereof.

3.2. The Relevant Conduct at the heart of the questions put to the Court

3.2.1. Overview

132. The questions formulated by the UN General Assembly in the operative part of Resolution 77/276 read as follows:

- “(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?”

133. The UN General Assembly requests the Court to answer this question by having particular regard, without limitation, to certain treaties and rules of general international law:

“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”

134. As it will be demonstrated in Chapter IV, the corpus of treaties and general international law identified in the chapeau paragraph of the operative part of Resolution 77/276 is not exhaustive. But even if only the treaties and rules of general international law mentioned in the chapeau are considered, the corpus of international law to be examined by the Court is substantial. For that reason, it is necessary to start by characterizing the conduct with respect to which the UN General Assembly is consulting the Court (hereafter the **Relevant Conduct**), as such conduct will guide the identification of the relevant obligations to be clarified by the Court in response to Question (a).

135. Characterizing the Relevant Conduct is important also for a second reason, namely that the identification and clarification of those obligations is specifically intended to prepare the answer to Question (b). This question asks the Court to determine the “legal consequences under **these obligations**” (emphasis added). Question (a) and the clarifications sought from the Court are therefore, in the structure of the operative part, only a first step in a two-step process, which clarifies the relevant obligations governing a conduct in order to assess that conduct in the light of such obligations and determines the resulting legal consequences.
136. As discussed next, the Relevant Conduct is clearly characterised by the Resolution 77/276 itself.

3.2.2. *The Relevant Conduct*

137. Resolution 77/276 focuses on the assessment of a certain conduct that has been ongoing for well over a century. This Relevant Conduct consists of **acts and omissions of individual States – and of a specific group thereof – that have resulted over time in a level of anthropogenic GHG emissions from activities within their jurisdiction or control which have interfered with the climate system and other parts of the environment to an extent which amounts to at least significant harm to the latter, whether or not the anthropogenic GHG emissions of a given State over time are the only or the main cause of climate change, and whether or not they are the only or the main cause of the specific harm suffered by another State, people or individual.**
138. The Relevant Conduct is specifically characterized by the Resolution 77/276 itself. The questions put to the Court focus on the legality, in principle, of the Relevant Conduct under international law, first by asking about the obligations of States governing such conduct and then by asking the Court to clarify the legal consequences of such conduct in the light of those obligations. Thus, the characterization of the Relevant Conduct is central to both inquiries.
139. In the operative part of Resolution 77/276, Question (a) characterizes the Relevant Conduct in general terms as “*anthropogenic emissions of greenhouse gases*”. In the IPCC Glossary, the term “*greenhouse gases*” is defined as follows:

“Gaseous constituents of the *atmosphere*, both natural and *anthropogenic*, that absorb and emit radiation at specific wavelengths within the spectrum of radiation emitted by the Earth’s surface, by the atmosphere itself, and by clouds. This property causes the *greenhouse effect*. Water vapour (H₂O), *carbon dioxide* (CO₂), *nitrous oxide* (N₂O), *methane* (CH₄) and *ozone* (O₃) are the primary GHGs in the Earth’s atmosphere. Human-made GHGs include *sulphur hexafluoride* (SF₆), *hydrofluorocarbons* (HFCs), *chlorofluorocarbons* (CFCs) and

perfluorocarbons (PFCs); several of these are also O₃-depleting (and are regulated under the *Montreal Protocol*)”²⁵²

The term “anthropogenic emissions” is in turn defined as follows:

“Emissions of greenhouse gases (GHGs), precursors of GHGs and aerosols caused by human activities. These activities include the burning of fossil fuels, deforestation, land use and land use changes (LULUC), livestock production, fertilisation, waste management, and industrial processes”²⁵³

The expression “anthropogenic emissions of greenhouse gases” thus refers, specifically, to emissions of certain gases from certain activities.

140. This concise characterization of the Relevant Conduct is confirmed by preambular paragraph 5 of Resolution 77/276, which refers to such conduct as follows:

“the conduct of States over time in relation to activities that contribute to climate change and its adverse effects” (in the French version: “le comportement des États dans le temps relativement aux activités contribuant aux changements climatiques et à leurs effets néfastes”).

This preambular paragraph further clarifies that what is at stake is “*the conduct of States over time in relation to*” the activities that make GHG emissions anthropogenic. Thus, the Relevant Conduct is **the conduct of a State “in relation to” those activities**, whether the latter are performed by the State itself or by non-State actors.

141. The chapeau of Question (b) in the operative part of Resolution 77/276 further confirms this understanding of the Relevant Conduct and adds some additional clarifications. The Relevant Conduct is characterized as follows:

“States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment” (in the French version: “les États qui, par leurs actions ou omissions, ont causé des dommages significatifs au système climatique et à d’autres composantes de l’environnement”).

142. Thus characterized, it is clear that the question focuses on conduct of “*States*”, which confirms the characterization of the Relevant Conduct in preambular paragraph 5. But the chapeau of Question (b) further clarifies three important aspects.

143. *First*, that the conduct of States in relation to the relevant activities can take the form of “*acts and omissions*”. Again, the acts and omissions can be the activities emitting GHGs themselves – if they are conducted by the State – or simply relate

²⁵² IPCC Glossary, italics original ([link](#)).

²⁵³ IPCC Glossary ([link](#)).

to such activities, which is the case when the activities are performed by non-State actors such as companies. Two important observations in this regard concern the provision of fossil fuel subsidies by government and the characterization of energy/climate policy.

144. With respect to fossil fuel subsidies, this is by definition an act of the State, as these are governmental subsidies. The term subsidy is not used in the technical term of any specific trade or other agreement, but in the economic meaning of the provision by a government of financial support – direct or indirect – for the production and/or consumption of fossil fuels (coal, oil and gas). According to a report from the International Monetary Fund of 2023,²⁵⁴ in 2022 such subsidies reached an all-time historical high of USD 7 trillion, the equivalent of nearly 7.2% of global Gross Domestic Product (GDP). **Significantly, according to this report, whereas the consensus on climate science strongly indicates a need to cut GHG emissions drastically and quickly, explicit fossil fuel subsidies (i.e. undercharging for the supply costs of fossil fuels) more than doubled between 2020-2022.** Nearly half of all the subsidies went to undercharging for oil products, with coal representing another 30% and gas 20%. When disaggregated by country, “China remains the biggest subsidizer of fuels, followed by the US, Russia, EU and India”.²⁵⁵ Such governmental subsidies are “acts” of these States and, as a matter of principle, as governmental subsidies, they are attributable to each of them (see Chapter V, Section 5.2.2).
145. As for energy/climate policy, from a legal perspective, it could be characterized as both an act and an omission to act in a certain manner. Specifically, the characterization of an act concerns the policies of States regarding the production and/or consumption of fossil fuels, as well as land use, land use change and forestry. In the four editions of the United Nations Environment Programme (UNEP)’s *Production Gap Reports*, **such policies are mapped, and they show, like subsidies, an alarming trend towards maintaining or even increasing fossil fuel production levels.** In the latest *UNEP Production Gap Report (2023)*, the UNEP concludes that:

“While 17 of the 20 countries profiled have pledged to achieve net-zero emissions, and many have launched initiatives to reduce emissions from fossil fuel production activities, **most continue to promote, subsidize, support, and plan on the expansion of fossil fuel production. None have committed to reduce coal, oil, and gas production in line with limiting warming to 1.5°C.**” (emphasis added)²⁵⁶

²⁵⁴ Simon Black, Antung A. Liu, Ian Parry & Nate Vernon, ‘IMF Fossil Fuel Subsidies Data: 2023 Update’ (August 2023) IMF Working Paper (Fiscal Affairs Department), Washington, DC, WP/23/169 ([link](#)).

²⁵⁵ Simon Black, Antung A. Liu, Ian Parry & Nate Vernon, ‘IMF Fossil Fuel Subsidies Data: 2023 Update’ (August 2023) IMF Working Paper (Fiscal Affairs Department), Washington, DC, WP/23/169, p. 4 ([link](#)).

²⁵⁶ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), p. 5 ([link](#)). The 20

“the increases estimated under the **government plans and projections pathways would lead to global production levels in 2030 that are 460%, 29%, and 82% higher for coal, oil, and gas, respectively, than the median 1.5°C-consistent pathways** ... The disconnect between governments’ fossil fuel production plans and their climate pledges is also apparent across all three fuels.” (emphasis added)²⁵⁷

This disconnect is particularly sharp, given the 2023 UAE consensus reached among the 195 Parties to the Paris Agreement calls on Parties to “transition away from fossil fuels in energy systems.”²⁵⁸ Policies for expansion of fossil fuel production are clearly “acts” of the State and, given their nature, they are in principle attributable to the State, whether the government is itself the producer of the fossil fuel or not (see Chapter V, Section 5.2.2).

146. At the same time, such energy/climate policies demonstrate, above all, an omission to act. More specifically, they reveal an omission to keep the GHG emissions of a State over time at a level which does not reach the threshold to qualify as the Relevant Conduct, despite the scientific consensus on the anthropogenic causes of climate change. From this perspective, even climate policies or commitments to adopt such policies (e.g. in the form of nationally-determined contributions, NDCs, under the Paris Agreement) are a form of inaction. Such inaction is, by definition, attributable to the State (see Chapter V, Section 5.2.2).
147. *Second*, and very importantly, the chapeau of Question (b) confirms and clarifies another aspect of the relevant human activities. In preambular paragraph 5, such activities, whether performed by the State itself or by non-State actors are those that “contribute to climate change and its adverse effects”. **But the text of the Resolution stops short of stating that such activities, or the State’s acts and omissions relating to them, must have caused “climate change” as such or its “adverse effects”.** “Climate change” and “the adverse effects of climate change” have distinct meanings.²⁵⁹ For the characterisation of the Relevant Conduct

countries studied are (in alphabetical order): Australia, Brazil, Canada, China, Colombia, Germany, India, Indonesia, Kazakhstan, Kuwait, Mexico, Nigeria, Qatar, Russian Federation, Saudi Arabia, South Africa, United Arab Emirates, United Kingdom and the United States.

²⁵⁷ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)).

²⁵⁸ Decision *_*/CMA.5, Outcome of the first global stocktake, 13 December 2023, para. 28 (d) ([link](#)).

²⁵⁹ The IPCC Glossary defines “climate change” as “A change in the state of the climate that can be identified (e.g., by using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer. Climate change may be due to natural internal processes or external forcings such as modulations of the solar cycles, volcanic eruptions and persistent anthropogenic changes in the composition of the atmosphere or in land use. Note that the United Nations Framework Convention on Climate Change (UNFCCC), in its art. 1, defines climate change as: ‘a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods’. The UNFCCC thus makes a distinction between climate change attributable to human activities altering the atmospheric composition and climate variability attributable to natural causes”, IPCC Glossary ([link](#)). The “adverse effects of climate change” are defined in art. 1(1) of the UNFCCC as follows “changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or

underpinning the questions put to the Court, it suffices that the activities have “*contributed*” to climate change and its adverse effects. Contributing to causing a problem is not the same as causing (being the only or the main cause of) that problem. Similarly, contributing to causing the adverse effects associated with a problem is not the same as causing (being the only or the main cause of) that adverse effect. This is an important matter of degree, which is **confirmed by the chapeau of Question (b) when it states that the relevant acts and omissions of a State only need to “have caused significant harm to the climate system and other parts of the environment”**, rather than being the only or the main cause of catastrophic harm in the form of climate change as such or of specific adverse effects.

148. The “**climate system**” is part of the wider environment. It is defined in the IPCC Glossary as follows:

“The global system consisting of five major components: the *atmosphere*, the *hydrosphere*, the *cryosphere*, the *lithosphere* and the *biosphere* and the interactions between them. The climate system changes in time under the influence of its own internal dynamics and because of *external forcings* such as volcanic eruptions, solar variations, orbital forcing, and *anthropogenic forcings* such as the changing composition of the atmosphere and *land-use change*”²⁶⁰

As this definition shows, the climate system is encompassed by the environment and encompasses in turn other legal objects such as the “marine environment”, part of the hydrosphere, or species, ecosystems and their biological diversity, part of the biosphere.

149. Interfering with the climate system to the point of causing “*significant harm*” to it defines the Relevant Conduct the UN General Assembly is concerned about. Specifically, the General Assembly is consulting the Court about **interference which reaches the level of “significance”, which is much more than merely negligible contributions but also much less than being the only or the main cause of catastrophic harm in the form of climate change or its adverse effects**. Indeed, neither in the chapeau of Question (b) nor in preambular paragraph 5 of Resolution 77/276 is it stated that the Relevant Conduct must have caused “*climate change*” as such (i.e. be the only or the main cause of climate change) or that it must have caused a specific “*adverse effect*” associated with climate change affecting a third State, a people or an individual. It suffices that the “*acts and omissions, have caused significant harm to the climate system and other parts of the environment*”, or, in the fully consistent terminology of paragraph 5, that it “*contribute[s] to climate change and its adverse effects*”. Irrespective of whether the acts and omissions from a single State can be said to have caused climate change as such or any specific adverse effect, if those acts and omissions “*have caused significant*

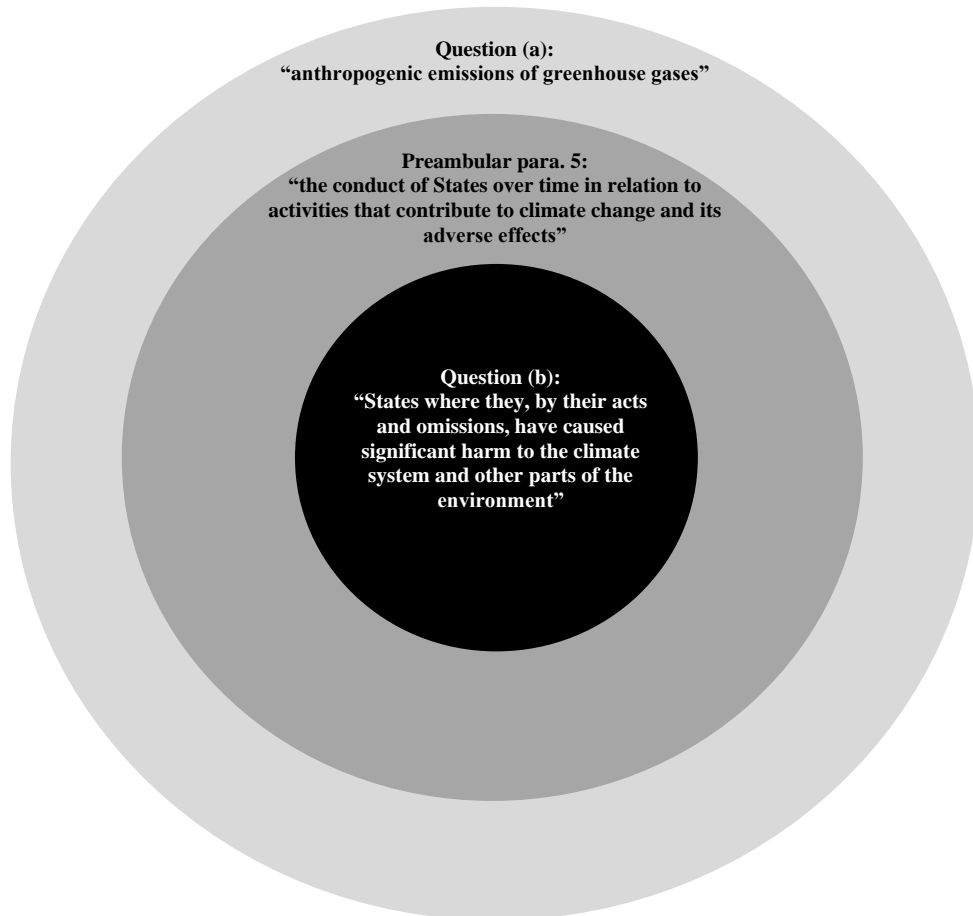
productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare”.

²⁶⁰ IPCC Glossary ([link](#)).

harm to the climate system and other parts of the environment”, they fall within the characterization of the Relevant Conduct to be assessed by the Court.

150. **Briefly stated, what is at stake is thus a significant contribution to the problem. Such is the Relevant Conduct that must guide the inquiries relating to Questions (a) and (b) of the operative part of Resolution 77/276.** The characterizations of the Relevant Conduct provided in Question (a), preambular paragraph 5 and Question (b) and their inter-relations are summarised in Figure 3. The broadest characterisation, aimed at encompassing a broader corpus of obligations, is that in Question (a). The Relevant Conduct as characterised in preambular paragraph 5 is a subset of the conduct covered by Question (a). In turn, the Relevant Conduct characterised in Question (b) is a subset of the conduct covered by preambular paragraph 5 and therefore also by Question (a):

Figure 3: The Relevant Conduct as characterised in Resolution 77/276



151. *Third*, the Relevant Conduct can be examined by the Court in relation to (i) a specific State (a large emitter of GHG and, hence, a significant contributor to the problem), (ii) a specific group of States (a group of large emitters of GHG, hence

of significant contributors to the problem) or (iii) as a general conduct, the conformity with international law of which would be assessed in principle.

152. As noted earlier in this Written Statement, the independent expert report of Professor Corine Le Quéré identifies the specific States whose contribution to the problem is significant, in the 1851-2022 and the 1990-2022 timescales, which are underscored in the following excerpts:

“Cumulative CO₂ emissions, the main cause of human-induced climate change, has clear origin in historical use of fossil fuels and land by countries. The largest contributors to cumulative emissions of CO₂ during 1851-2022 were the USA (20.5%), whose emissions peaked around 2005; the EU27 (11.7%), with emissions decreasing since the early 1980s; China (11.7%), with most of its emissions occurring since 2000; Russia (7.0%); and Brazil (4.6%) (see Figure 3). All 42 industrial countries of the Annex I in aggregate account for 52% of cumulative CO₂ emissions, while all 47 Least Developed Countries (LDCs) in aggregate contributed 4.5%. As a result of the long-term trends in emissions by countries, the patterns have shifted in recent decades. The largest contributors to cumulative emissions of CO₂ during 1990-2022 were China (19.4%), the USA (15.5%), the EU27 (9.3%), Brazil (5.1%), and Russia (4.8%). Globally, land use contributed 31% and fossil fuel use 69% to cumulative CO₂ emissions during 1851-2022. Land use emissions were the dominant source of global CO₂ emissions globally until the 1950s”²⁶¹

The resulting global warming caused by each State as a result of their cumulative GHG emissions is as follows:

“The top 10 contributors to global warming from historical emissions of GHG during 1851-2022 are the USA (responsible for 17.0% of the global warming in 2022 due to their historical GHG emissions; 0.28°C), China (12.5%; 0.21°C), the EU27 (10.3%; 0.17°C, including Germany 2.9%, France 1.3%, Poland 1.0% and Italy 0.9%), Russia (6.3%; 0.11°C), Brazil (4.9%; 0.081°C), India (4.7%; 0.078°C), Indonesia (3.7%; 0.061°C), the United Kingdom (2.4%; 0.040°C), Canada (2.1%; 0.035°C), and Japan (2.1%; 0.035°C). The GHG emissions from these contributors, together with those from Australia (1.5%; 0.025°C), Mexico (1.4%; 0.023°C), Ukraine (1.4%; 0.022°C), Nigeria (1.2%; 0.019°C), Argentina (1.2%; 0.019°C), and Iran (1.1%; 0.019°C), amount to three quarters of the global warming due to GHG emissions during 1851-2022 [...] The same countries figure among the largest contributors to global warming from emissions of GHG during the shorter 1990-2022, with China the largest contributor in that period”²⁶²

²⁶¹ Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (**Exhibit B**), para. 17 (emphasis original, underlining added).

²⁶² Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (**Exhibit B**), paras. 25 and 26 (emphasis original, underlining adding).

153. The GHG emissions of these individual States, taken together, have caused not only significant harm to the climate system and other parts of the environment but catastrophic harm, in the form of climate change and its adverse effects. There is therefore a solid evidentiary basis for the Court to analyze the Relevant Conduct not only in general but also at the level of individual States or of a specific group of States.
154. In previous advisory proceedings, the Court has been asked for authoritative guidance on questions that variously focused on the legality and consequences of the conduct of specific States, groups of States, and other entities, whether posed in terms of particular instruments²⁶³ or general international law,²⁶⁴ as well as the legality and consequences of a general conduct or situation, again under particular instruments²⁶⁵ or general international law.²⁶⁶
155. Conduct of a seemingly general character may be expressly or impliedly defined with greater degrees of specificity and thus inform the Court's answer to a request for authoritative guidance. Previously, the UN General Assembly has requested advice on the general legality of a conduct, without specifying the relevant legal relations. In its advisory opinion on *Legality of the Threat or Use of Nuclear Weapons*, for example, the Court was consulted about the permissibility "under

²⁶³ *Interpretation of Peace Treaties, Advisory Opinion*, I.C.J. Reports 1950, p. 65; *International Status of South-West Africa, Advisory Opinion*, I.C.J. Reports 1950, p. 128; *Competence of Assembly regarding Admission to the United Nations, Advisory Opinion*, I.C.J. Reports 1950, p. 4; *Effect of Awards of Compensation made by the U.N. Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1954, p. 47; *Judgments of the Administrative Tribunal of the I.L.O. upon Complaints Made against the U.N.E.S.C.O., Advisory Opinion*, I.C.J. Reports 1956, p. 77; *Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion*, I.C.J. Reports 1956, p. 23; *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, Advisory Opinion*, I.C.J. Reports 1960, p. 150; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion*, I.C.J. Reports 1962, p. 151; *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1973, p. 166; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion*, I.C.J. Reports 1980, p. 73; *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1982, p. 325; *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1987, p. 18; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion*, I.C.J. Reports 1988, p. 12; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion*, I.C.J. Reports 1989, p. 177; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion*, I.C.J. Reports 1999, p. 62; *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, Advisory Opinion*, I.C.J. Reports 2012, p. 10.

²⁶⁴ *Reparation for Injuries in the Service of the United Nations, Advisory Opinion*, I.C.J. Reports 1949, p. 174; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, I.C.J. Reports 1971, p. 16; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 403; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95.

²⁶⁵ *Admission of a State to the United Nations (Charter, art. 4), Advisory Opinion*, I.C.J. Reports 1948, p. 57; *Reservations to the Convention on Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 15.

²⁶⁶ *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12; *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion*, I.C.J. Reports 1996, p. 66; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226.

international law” of the “*threat or use of nuclear weapons*” with regard to “*any circumstance*”; the General Assembly did not specify any individual State, group of States, or other legal subjects whose conduct had to be addressed by the Court, nor any bearer of rights or duties under international law who may be affected by the threat or use of nuclear weapons.²⁶⁷ In giving its opinion, the Court drew on a distinction in treaty practice between “nuclear-weapon States” and “non-nuclear-weapon States”, whilst identifying other relevant subjects such as individual bearers of the human right to life.²⁶⁸

156. In the present proceedings, the UN General Assembly has specified in Resolution 77/276 the Relevant Conduct to be examined by the Court, namely that of States which “*have caused significant harm to the climate system and other parts of the environment*”, and the legal relationships to be clarified, namely those “*with respect to*” two specific categories: (i) “*States*”, in particular small island developing States, which, “*due to their geographical circumstances and level of development*” are “*injured*”, “*specially affected*” or “*particularly vulnerable*” to the impact of climate change; and (ii) “*Peoples and individuals*” from both present and future generations who are “*affected*” by such impacts. The distinction among States therefore arises from the significance of the contribution to the problem as well as from the exposure to its consequences, both matters for which there is a scientific consensus, recalled in preambular paragraph 9 of Resolution 77/276, “*expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change*”.
157. The Court could answer the question put to it by the UN General Assembly by examining the Relevant Conduct from one or more of the three aforementioned perspectives: in relation to the acts and omissions of (i) a specific State (a large emitter of GHG and, hence, a significant contributor to the problem), (ii) a specific group of States (a group of large emitters of GHG, hence of significant contributors to the problem and, taken together, those having caused climate change) or (iii) as a general conduct, whose conformity with international law is assessed in principle. This is because, as shown in [Chapter II] and in this chapter, there is ample evidence and a scientific consensus on: a) the cause of climate change, namely anthropogenic GHG emissions over time; b) the specific States whose individual GHG emissions have caused significant harm to the climate system and other parts of the environment and, taken together, also catastrophic harm in the form of climate change and its adverse effects; and c) the disproportionate adverse impact of climate change on States whose emissions are insignificant and, yet, are amongst the most directly and severely impacted.

²⁶⁷ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 1.

²⁶⁸ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 24-25, 60-63.

3.2.3. *States' acts and omissions have caused significant harm to the climate system and other parts of the environment*

158. To assess whether the acts and omissions of an individual State or a group of States have resulted over time in a level of anthropogenic GHG emissions from activities within their jurisdiction or control which have caused significant harm to the climate system and other parts of the environment, the Court does not need to embark on a scientific assessment. There is a scientific and State consensus on all relevant aspects. The essence of this consensus is summarized next, for ease of reference.

A. **Anthropogenic GHG emissions are the cause of climate change**

159. There is a scientifically incontrovertible link between GHG emissions over time and climate change. The UN General Assembly referred to a core aspect of this consensus in preambular paragraph 9 of Resolution 77/276, relying on the conclusions reached by the IPCC. The sources of the statements are added in footnotes:

*“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 greenhouses gases are unequivocally the dominant cause** of the global warming observed since the mid-20th century,²⁶⁹ that human-induced climate change, including more frequent and intense extreme events, **has caused widespread adverse impacts and related losses and damages to nature and people,**²⁷⁰” (emphasis added)*

160. These statements, extracted from the Summaries for Policymakers of IPCC reports, have been approved by consensus, on a line-by-line basis, by all 195 member States of the IPCC.²⁷¹ They are thus the expression not only of scientific consensus but also of State consensus on the science of climate change, including its cause and its impacts.

161. As explained in Chapter II, the relation of causality between GHG emissions from human activities and the observed climate change is established by a scientific consensus which has been politically endorsed. The Expert Opinion of Professor Naomi Oreskes shows that *“at least from the 1960s, the United States and other*

²⁶⁹ Intergovernmental Panel on Climate Change, *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 (2014), statement 1.2 ([link](#)); Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1 ([link](#)).

²⁷⁰ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1 ([link](#)).

²⁷¹ Intergovernmental Panel on Climate Change, Appendix A to the Principles Governing IPCC Work: Procedures for the preparation, review, acceptance, adoption, approval and publication of IPCC Reports (adopted 15th sess, San José, 15-18 April 1999; amended 37th sess, Batumi, 14-18 October 2013), section 4.4 ([link](#)).

States with high cumulative emissions of greenhouse gases (GHGs), including France and the UK, were aware that (i) the release of greenhouse gases into the Earth's atmosphere had the potential to alter the climate system, and (ii) that such interference, if unmitigated, could have catastrophic effects for humans and the environment".²⁷² The core conclusion has since been understood with ever increasing detail, most recently in the statement contained in the IPCC's 2023 Synthesis Report that:

"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" (emphasis added)²⁷³

B. Significant contribution of specific States and a group of States to global warming

162. Climate change is caused by cumulative emissions of GHG, i.e. by the cumulative amount of GHGs emitted as a result of the acts and omissions of certain States which are responsible for most emissions, in a period often measured since 1850 or also since 1990. The temporal dimension is fundamental. This is because the individual State conduct causing significant harm to the climate system and other parts of the environment and, taken together, the conduct of the group of major emitters causing catastrophic harm in the form of climate change and its adverse effects cannot be understood without reference to cumulative GHG emissions. This is captured in the expression "*over time*" used in preambular paragraph 5 and in the present perfect tense "*have caused*" used in the chapeau of Question (b) in the operative part of Resolution 77/276.
163. In the 2022 edition of the *Emissions Gap Report* of the United Nations Environment Programme (UNEP), included in Part III(B) of the dossier transmitted to the Court by the UN Secretariat, the contributions of the main emitters are stated both for the year 2020 and for the period from 1990 to 2020. According to this report, seven G20 members (China, US, EU27, India, Indonesia, Brazil and Russia) and international transport (shipping and aviation) contributed, by themselves, more than half of all GHG emissions in 2020. Although the lock-down caused by the

²⁷² Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 4.

²⁷³ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.1 ([link](#)).

COVID-19 pandemic led to a small decrease in emissions as compared to 2019, the emissions from these major emitters rebounded in 2021:

“Eight major emitters – seven G20 members and international transport – contributed more than 55 per cent of total global GHG emissions in 2020: China, the United States of America, the European Union (27), India, Indonesia, Brazil, the Russian Federation, and international transport (figure 2.2). The G20 as a whole contributed 75 per cent of the total. Collectively, the emissions of the top eight fell from 32.8 GtCO₂e in 2019 to 31.5 GtCO₂e in 2020 (a change of -3.8 per cent) [...] For most major emitters, including China, India, the Russian Federation, Brazil and Indonesia, GHG emissions (excluding LULUCF) rebounded in 2021, exceeding pre-pandemic 2019 levels”²⁷⁴

164. A 2023 study by Jones et al²⁷⁵ focusing on emissions of three major GHGs, namely carbon dioxide (CO₂), methane (CH₄) and nitrous oxide (N₂O), from fossil fuel sources and land sources, in the period between 1851 and 2021, shows the cumulative GHG emissions of certain major emitters and some groups of States. The major emitters individuated are the **United States of America, China, the Russian Federation, Brazil, India and Indonesia**. Some groups of countries are also individuated, including the European Union without the United Kingdom (EU27).
165. As noted earlier in this Chapter, the Expert Report of Professor Corinne Le Quéré, a world authority on climate change science, identifies the specific States whose individual contribution to the problem has been significant in the periods 1851-2022 and 1990-2022:

“**Cumulative CO₂ emissions, the main cause of human-induced climate change, has clear origin in historical use of fossil fuels and land by countries.** The largest contributors to cumulative emissions of CO₂ during 1851-2022 were the USA (20.5%), whose emissions peaked around 2005; the EU27 (11.7%), with emissions decreasing since the early 1980s; China (11.7%), with most of its emissions occurring since 2000; Russia (7.0%); and Brazil (4.6%) [...] The largest contributors to cumulative emissions of CO₂ during 1990-2022 were China (19.4%), the USA (15.5%), the EU27 (9.3%), Brazil (5.1%), and Russia (4.8%). Globally, land use contributed 31% and fossil fuel use 69% to cumulative CO₂ emissions during 1851-2022. Land use emissions were the dominant source of global CO₂ emissions globally until the 1950s.”²⁷⁶

²⁷⁴ United Nations Environment Programme, *Emissions Gap Report* (2022), p. 7 ([link](#)).

²⁷⁵ Matthew W. Jones, Glen P. Peters, Thomas Gasser, Robbie M. Andrew, Clemens Schwingshackl, Johannes Gütschow, Richard A. Houghton, Pierre Friedlingstein, Julia Pongratz & Corinne Le Quéré, ‘National contributions to climate change due to historical emissions of carbon dioxide, methane and nitrous oxide since 1852’ (2023) 10:155 ([link](#)).

²⁷⁶ Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (**Exhibit B**), para. 17 (emphasis original, underlining added).

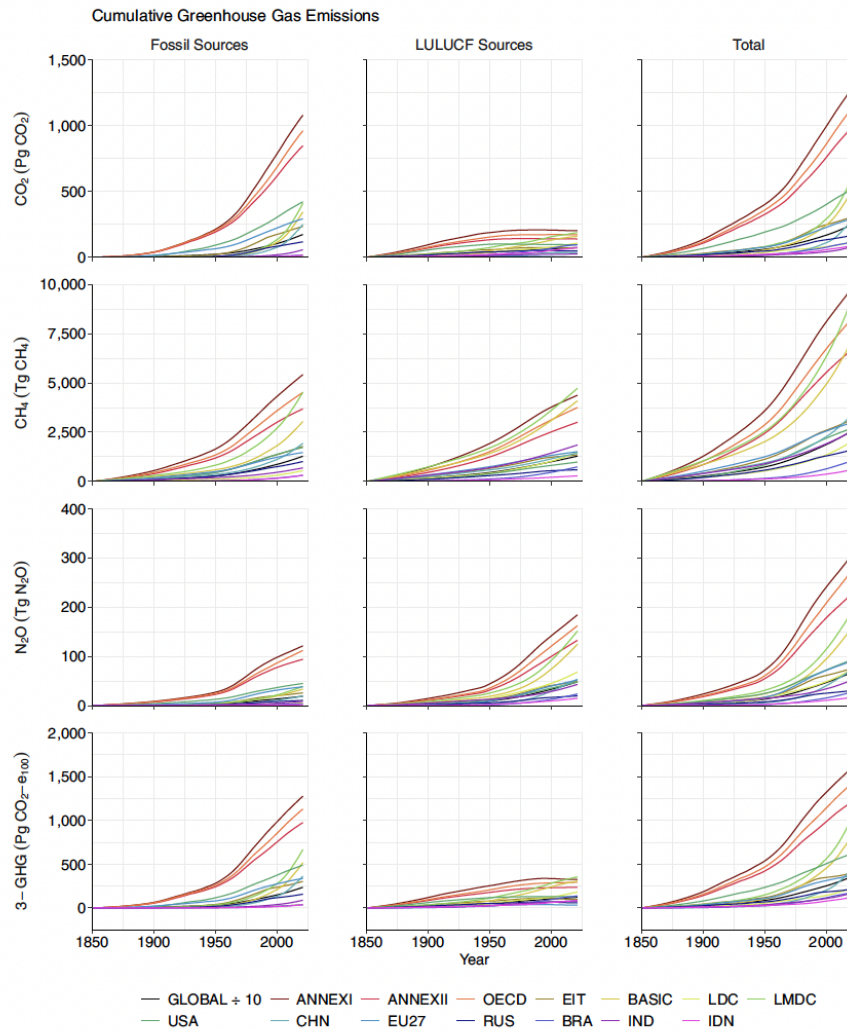


Fig. 4 Cumulative emissions of CO₂ (Pg CO₂), CH₄ (Tg CH₄) and N₂O (Tg N₂O) and their sum (3-GHG; Pg CO₂-e₁₀₀) during 1851–2021, shown globally and for selected regions. Emissions of CH₄ and N₂O are converted to units Pg CO₂-e₁₀₀ using the GWP* approach³⁶ and summed to a 3-GHG total (bottom row). The ISO3 codes of countries in the legend are: CHN, China; RUS, Russia; BRA, Brazil; IND, India; IDN, Indonesia. All data shown are provided in the Data Records³⁴.

166. The 2023 study by Jones et al. also estimates the share of global warming (the increase in global mean surface temperature (GMST)) caused by the GHG emissions of specific States and groups of States. The threshold of significance for a State to be included is a contribution of at least 3% of the observed change in temperature (% column). Some groups of States reach that threshold only when aggregating the much lower contributions of numerous States. The results are summarised in Figure 4:

Figure 4: Share of global warming caused by the GHG emissions of specific States and groups of States

Gas	Source	Country or Grouping	°C	%
CO ₂ CH ₄ N ₂ O	Total	GLOBAL	1.61	
		NONANNEX	0.86	53.5
		ANNEXI	0.72	44.8
		OECD	0.64	39.8
		ANNEXII	0.55	33.8
		LMDC	0.46	28.6
		BASIC	0.37	23.0
		USA	0.28	17.3
		China	0.20	12.3
		EIT	0.18	11.2
		EU27	0.17	10.4
		LDC	0.10	6.2
		Russia	0.10	6.1
		Brazil	0.08	4.9
		India	0.08	4.8
Indonesia	0.06	3.4		

167. The specific States whose individual contribution to global warming is above 3% of the observed change in temperature include **the USA, China, the Russian Federation, Brazil, India and Indonesia**. In addition, some the groups of States are represented in Figure 4. They include the 42 countries in Annex I of the UNFCCC (ANNEXI), the 23 Annex II parties (the most economically developed members of the Annex I) (ANNEXII), the 15 Economies in Transition (EIT; the lesser-developed members of Annex I) (EIT), States parties to the UNFCCC which are not in Annex I (NONANNEX), the 47 Least Developed Countries (LDCs), the group of 24 Like-Minded Developing Countries (LMDC), the 38 countries of the OECD, the 27 States of the European Union, excluding the United Kingdom (EU27) and the Brazil, South Africa, India and China (BASIC) group.
168. The Expert Report of Professor Corinne Le Quéré offers greater detail on which country is responsible for what share of global warming, both in terms of increase in the observed global average temperature and the percentage of such increase (using a less stringent threshold of significance of 1%), again for the periods 1851-2022 and 1990-2022:

“The top 10 contributors to global warming from historical emissions of GHG during 1851-2022 are the USA (responsible for 17.0% of the global warming in 2022 due to their historical GHG emissions; 0.28°C), China (12.5%; 0.21°C), the EU27 (10.3%; 0.17°C, including Germany 2.9%, France 1.3%, Poland 1.0% and Italy 0.9%), Russia (6.3%; 0.11°C), Brazil (4.9%; 0.081°C), India (4.7%; 0.078°C), Indonesia (3.7%; 0.061°C), the United Kingdom (2.4%; 0.040°C), Canada (2.1%; 0.035°C), and Japan (2.1%; 0.035°C). The GHG emissions from these contributors, together with those from Australia (1.5%; 0.025°C), Mexico (1.4%; 0.023°C), Ukraine (1.4%; 0.022°C), Nigeria (1.2%; 0.019°C), Argentina (1.2%;

0.019°C), and Iran (1.1%; 0.019°C), amount to three quarters of the global warming due to GHG emissions during 1851-2022 [...] **The same countries figure among the largest contributors to global warming from emissions of GHG during the shorter 1990-2022, with China the largest contributor in that period**²⁷⁷

169. The evidentiary basis is solid. The contributions to the problem are profoundly unequal, and those from States which have caused significant harm to the climate system and other parts of the environment can be clearly identified, individually and for specific country groups.
170. In its Sixth Assessment Report, the IPCC emphasised the massive inequality in terms of emissions from different countries and country groupings. In the Summary for Policymakers of volume 3 of its Sixth Assessment Report, the IPCC concluded that:

“GHG emissions trends over 1990–2019 vary widely across regions and over time, and across different stages of development [...] Least developed countries (LDCs) and Small Island Developing States (SIDS) have much lower per capita emissions (1.7 tCO₂-eq and 4.6 tCO₂-eq, respectively) than the global average (6.9 tCO₂-eq) [...] Historical contributions to cumulative net anthropogenic CO₂ emissions between 1850 and 2019 vary substantially across regions in terms of total magnitude [...] **LDCs contributed less than 0.4% of historical cumulative CO₂-FFI emissions between 1850 and 2019, while SIDS contributed 0.5%.**”²⁷⁸ (emphasis added)

One particularly blatant climate injustice is illustrated by the fact that, while the individual contributions of Least Developed Countries (LDCs) and Small Island Developing States (SIDS) are insignificant, they have suffered severely and disproportionately from the adverse effects of climate change.

C. Disproportionate adverse impact of climate change on States whose contribution to the problem is insignificant

171. As explained in detail in Chapter II, the Relevant Conduct has had devastating consequences on certain States, peoples and individuals. This is particularly clear in the case of Vanuatu. Preambular paragraph 9 of Resolution 77/276 summarizes the scientific and State consensus on the impacts of climate change 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 events, **has caused widespread adverse**

²⁷⁷ Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (**Exhibit B**), paras. 25 and 26 (emphasis original, underlining adding)

²⁷⁸ Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, statements B.3.1 and B.3.2 ([link](#)).

impacts and related losses and damages to nature and people”
(emphasis added)

It is therefore not in question that climate change “*has caused widespread adverse impacts and related losses and damages*”.

172. In the Summary for Policymakers of volume 2 of the Sixth Assessment Report, published in 2022, the IPCC concluded that:

“Human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability. Some development and adaptation efforts have reduced vulnerability. Across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected. The rise in weather and climate extremes has led to some irreversible impacts as natural and human systems are pushed beyond their ability to adapt” (emphasis added)²⁷⁹

173. In the Summary for Policymakers of the IPCC’s 2023 Synthesis Report of the Sixth Assessment Report, the conclusion is formulated as follows:

“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)**” (emphasis added)²⁸⁰

The 195 Parties to the Paris Agreement recognized endorsed this finding in the 2023 UAE Consensus, noting with “alarm and serious concern”:

“That human-caused climate change impacts are already being felt in every region across the globe, with **those who have contributed the least to climate change being most vulnerable to the impacts**, and, together with losses and damages, will increase with every increment of warming” (emphasis added).²⁸¹

174. In addition, preambular paragraph 9 of Resolution 77/276 makes clear that the two components of the scientific consensus that it restates (i.e. anthropogenic GHG emissions as the cause of climate change and the widespread adverse impacts and losses and damages already caused by climate change) are not the only ones which

²⁷⁹ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1 ([link](#)).

²⁸⁰ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2 ([link](#)).

²⁸¹ Decision _/CMA.5, Outcome of the first global stocktake, 13 December 2023, para. 15 ([link](#)).

the UN General Assembly “not[es] with utmost concern”. Indeed, before stating the preceding two components, the term “including” is used. There are many other components of the scientific consensus that are of utmost concern. Some of them are reproduced next, with their sources:

Global warming has already exceeded 1°C,²⁸² and the resulting scale of changes in the climate system are unprecedented over many centuries to many thousands of years²⁸³

Climate and weather extremes and their adverse impacts on people and nature will continue to increase with every additional increment of rising temperatures²⁸⁴

Global sea level has risen faster since 1900 than over any preceding century in at least the last 3000 years,²⁸⁵ driven by human influence,²⁸⁶ and it will continue to rise over the 21st century.²⁸⁷

The risks associated with such sea level rise are exacerbated for small islands, low-lying coastal areas and deltas,²⁸⁸ with resulting damage and adaptation costs of several percentage points of gross domestic product.²⁸⁹

Without urgent and significant increase in mitigation efforts beyond those in place today, warming by the end of the 21st century will lead

²⁸² Intergovernmental Panel on Climate Change, *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* (2018) Summary for Policymakers, statement A.1 ([link](#)); Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1 ([link](#)).

²⁸³ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.2 ([link](#)).

²⁸⁴ Intergovernmental Panel on Climate Change, *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 (2014), statement 2 ([link](#)); Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement B.2 ([link](#)); *Glasgow Climate Pact*, Decision 1/CMA.3, FCCC/ PA/CMA/2021/10/Add.1, para. 6 ([link](#)).

²⁸⁵ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.2.4 ([link](#)).

²⁸⁶ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1.7 ([link](#)).

²⁸⁷ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement B.5.3 ([link](#)).

²⁸⁸ Intergovernmental Panel on Climate Change, *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* (2018) Summary for Policymakers, statement B.2.3 ([link](#)).

²⁸⁹ Intergovernmental Panel on Climate Change, *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 (2014), p. 17 ([link](#)).

to severe, wide-spread and irreversible impacts globally,²⁹⁰ and it will slow down economic growth, make poverty reduction more difficult, further erode food security, and prolong existing and create new poverty traps.²⁹¹

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.²⁹²

175. These statements all reflect both a scientific and a government-endorsed consensus, and they specifically refer to the situation of “*low-lying developing countries and small island states [which] are expected to face very high impacts that, in some cases, could have associated damage and adaptation costs of several percentage points of GDP*”.²⁹³
176. The text of the Paris Agreement,²⁹⁴ agreed the year following the publication of the IPCC report containing this last statement, acknowledges in its Article 8(1) that harm, in the form of loss and damage, has already occurred and that some further harm is irreversible. Article 8(1) states, indeed, that:

“Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage”

Only loss and damage that has occurred or is irreversible can be minimised and addressed, rather than averted. As explained next, the States whose acts and omissions have caused significant harm to the climate system and other parts of the environment knew or ought to have known — as they had all the relevant information to take action — that their conduct could have such consequences.

²⁹⁰ Intergovernmental Panel on Climate Change, *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 (2014), statement 3.2 ([link](#)).

²⁹¹ Intergovernmental Panel on Climate Change, *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 (2014), p. 20 ([link](#)).

²⁹² *Glasgow Climate Pact*, Decision 1/CMA.3, FCCC/PA/CMA/2021/10/Add.1, para. 5 ([link](#)); United Nations Environment Programme (2021), United Nations Environment Programme, Emissions Gap Report (2021), Executive Summary, Conclusions 6 and 7 ([link](#)). See also Decision 1/CMA.5, Outcome of the first global stocktake, 13 December 2023, para. 5 ([link](#)).

²⁹³ Intergovernmental Panel on Climate Change, *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 (2014), p. 17 ([link](#)).

²⁹⁴ ‘Adoption of the Paris Agreement’, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/L.9, Annex, ([link](#)).

3.2.4. Awareness in both scientific and policy circles since at least the 1960s

177. The impact of GHG emissions on the environment, including the climate system, as a major cause for concern and action has been known for decades, both in scientific and policy circles.
178. In her Expert Opinion, Professor Naomi Oreskes, a world authority on the history of climate science, confirms that:

“at least from the 1960s, the United States and other States with high cumulative emissions of greenhouse gases (GHGs), including France and the UK, were aware that (i) the release of greenhouse gases into the Earth’s atmosphere had the potential to alter the climate system, and (ii) that such interference, if unmitigated, could have catastrophic effects for humans and the environment”²⁹⁵

179. As further noted by Professor Oreskes: *“such knowledge was both in public domain and specifically in the power of certain governments, which funded the relevant research and employed many of the scientists who led the decisive studies”*.²⁹⁶ She explains that US President John F. Kennedy authorized government funding for weather modification research through the National Science Foundation (NSF), an independent agency of the US federal government.²⁹⁷ The discussions on deliberate weather modification evidence the explicit recognition that *“inadvertent weather modification”* could be of large consequence. For example, the NSF’s 1962 annual report (released in 1963) cited a 1962 seminar in which the US Weather Bureau meteorologist Harry Wexler had analyzed a variety of factors that could modify Earth’s radiation balance, including changing the carbon dioxide content of the atmosphere.²⁹⁸ The report indicated that this was a cause for concern insofar as scientist Gilbert Plass had:

“suggested that man may already be inadvertently modifying the atmosphere at an alarming rate by burning ever-increasing amounts of

²⁹⁵ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 4 (emphasis original)

²⁹⁶ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 5.

²⁹⁷ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 18, referring to National Science Foundation Act of 1950, Public Law No. 85-510, 72 Stat. 353 (1958) ([link](#)). This amendment to the National Science Foundation Act of 1950 made NSF the official coordinating agency for weather modification research projects and required that the agency report annually.

²⁹⁸ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 18.

fossilized fuel, thus releasing larger amounts of carbon dioxide than ever before in historical times.”²⁹⁹

Such warming, if continued, could cause the icepack to “*vanish from the frozen north and frozen tundra would thaw*”.³⁰⁰

180. Professor Oreskes further refers to the establishment in 1964 by the NSF Director of a Special Commission on Weather Modification to review the state of knowledge and respond to a request from the federal government to analyze potential purposes of weather modification and control.³⁰¹ The 1965 Report of this Commission referred to weather and climate modification as being already underway and not merely as a local effect:

“Weather and climate modification is becoming a reality [...] [T]he inadvertent modification of the weather and climate by such influences as the products of urban development, surface modification for agriculture and silviculture, [and] compositional changes through the combustion of fossil fuels and other exhausts are becoming of sufficient consequence to affect the weather and climate of large areas and ultimately the entire planet”.³⁰²

181. Around the same time, in November 1965, another report, this time from the Environmental Pollution Panel to the United States President’s Science Advisory Committee stated, in an annex fully devoted to “Atmospheric Carbon Dioxide”, the following:

“Through his worldwide industrial civilization, Man is unwittingly conducting a vast geophysical experiment. Within a few generations he is burning the fossil fuels that slowly accumulated in the earth over the last 500 million years. The CO₂ produced by this combustion is being injected into the atmosphere; about half of it remains there. The estimated recoverable reserves of fossil fuels are sufficient to produce nearly a 200% increase in the carbon dioxide content of the atmosphere.

By the year 2000 the increase in atmospheric CO₂ will be close to 25%. **This may be sufficient to produce measurable and perhaps marked changes in climate, and will almost certainly cause significant changes in the temperature and other properties of the stratosphere** [...] The climatic changes that may be produced by the increased CO₂

²⁹⁹ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 18, referring to National Science Foundation, *Weather Modification: Fourth Annual Report* (1962), 19.

³⁰⁰ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 18, citing National Science Foundation, *Weather Modification: Fourth Annual Report* (1962), 20.

³⁰¹ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 19.

³⁰² National Science Foundation, *Weather and Climate Modification: Report of the Special Commission on Weather Modification* (December 1965), p. 8 ([link](#)).

content could be deleterious from the point of view of human beings”
(emphasis added)³⁰³

Two of the leading scientists whose work had confirmed the link between GHG emissions and climate change, Roger Revelle and Charles David Keeling, served on this Committee.³⁰⁴

182. Earlier that year, US President Lyndon Johnson himself had referred to the polluting effects of increasing emissions of carbon dioxide from fossil fuels in a Special Message to the Congress on Conservation and Restoration of Natural Beauty, of 8 February 1965, in the following terms:

“Air pollution is no longer confined to isolated places. **This generation has altered the composition of the atmosphere on a global scale through radioactive materials and a steady increase in carbon dioxide from the burning of fossil fuels**”³⁰⁵

183. The NSF issued its tenth annual report on the topic of weather modification in 1968.³⁰⁶ The next year, in the aftermath of Hurricane Camille, US President Richard Nixon called the attention of Congress to the “*special interest*” of this report. In his message to Congress, President Nixon noted: “*in recent months many American communities were ravaged by storms that were among the most violent and destructive in our history ... Swept away by wind and water were families, homes, businesses, and dreams for the future*”. Nixon expressly linked the wreckage caused by Hurricane Camille to “*mounting concern with the quality of the environment generally*” and stressed the importance of “*the issue of air pollution, including the possible effect on weather and climate*”.³⁰⁷
184. Then, in November 1969, President Nixon appointed a Task Force on Air Pollution including representatives of the United Steelworkers of America, the US Steel Corporation, Ford Motor Company, and many prominent scientists. The Task Force’s report, *Cleaner Air for the Nation*, was transmitted to the President in June 1970 and publicly released in August. In a section on “*Climatic Effects of*

³⁰³ *Restoring the Quality of Our Environment, Report of the Environmental Pollution Panel to the United States President’s Science Advisory Committee*, The White House, November 1965, Appendix Y4, pp. 126-127 ([link](#)).

³⁰⁴ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in *Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change* (dated 29 January 2024) (**Exhibit D**), para. 22.

³⁰⁵ Lyndon B. Johnson, Special Message to the Congress on Conservation and Restoration of Natural Beauty, 8 February 1965 ([link](#)).

³⁰⁶ National Science Foundation, *Weather Modification: Tenth Annual Report for Fiscal Year Ended June 30, 1968* (1969) ([link](#)).

³⁰⁷ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in *Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change* (dated 29 January 2024) (**Exhibit D**), para. 24, referring to Richard Nixon, Letter of Transmittal to the Congress of the United States 2 (27 October 1969), Atmos. Sci. [Oversized Materials, 1969-70] box4, Edward E. David papers (WHCF SMOF), RNPL.

Pollutants”, the report concluded that: “*the greatest consequences of air pollution for man’s continued life on earth are its effects on the earth’s climate*”.³⁰⁸

185. This and the other evidence reported in Professor Oreskes’ Expert Opinion regarding the clear and actionable knowledge in policy circles of the problem of climate change are only a sample of a much wider body of evidence concerning not only the United States but also other countries. By way of illustration, in 1969 the issue was raised by a British Lord in the UK House of Lords by reference to rising temperatures:

“My Lords, can my noble friend say whether he and British Railways have taken account of the fact that what were abnormal temperatures last summer may not be abnormal if we continue to discharge carbon dioxide into the air by the burning of various fossil carbons, so increasing the greenhouse effect?”³⁰⁹

In France, an international symposium organised in 1968 by an Interministerial Delegation of Land Planning and Regional Attractiveness also discussed what was by then widely circulating in the scientific and policy circles with respect to the problem of pollution, namely:

“pollution of a global character, that is to say the increase in the rate of carbon dioxide in the entire atmosphere, which could perhaps, in a decade or half a century, begin to pose problems of global climate change?”³¹⁰

Pollution was indeed understood, when discussed at the global level, as including emissions of carbon dioxide and their interference with the climate system.

186. This is the understanding on the basis of which GHG emissions and climate change featured in two landmark intergovernmental conferences of foundational importance for the entire field of international environmental law, namely the International Biosphere Conference convened in September 1968 in Paris, under the aegis of the United Nations Educational, Scientific, and Cultural Organization (UNESCO), and the United Nations Conference on the Human Environment, convened in June 1972 in Stockholm. As explained by Professor Oreskes, by the mid 1960s, global pollution resulting from emissions of carbon dioxide was being discussed in a range of intergovernmental organisations, including the International Labour Organization (ILO), the World Health Organization (WHO), and the World

³⁰⁸ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 25, referring to US President’s Task Force on Air Pollution, *Cleaner Air for the Nation: The Report of the President’s Task Force on Air Pollution* (1970), p. 34 ([link](#)).

³⁰⁹ ‘Railways: Use of Continuous Welded Rail’, House of Lords Debate, 5 November 1969, vol 305, cols 335-9335 ([link](#)).

³¹⁰ Colloque des techniques avancées et de l’aménagement du territoire, *Colloque international sur l’aménagement du territoire et les techniques avancées* (1968), 51 ([link](#)).

Meteorological Organization (WMO).³¹¹ For example, in the WMO context, the issue of climate change was already being discussed as one of the three core problems of air pollution at the global level in the mid 1960s, as evidenced by a Report of the UN Secretary-General of July 1968:

“Application of meteorology to the protection of the atmosphere is mainly related to the problem of increasing air-pollution. There are large-scale air pollution problems where we are interested in global spread of debris from nuclear tests, the increase of acidity due to increased industrialization over a large part of the globe **or the increase of the carbon-dioxide in the earth's atmosphere which may change our climate**” (emphasis added)³¹²

187. By 1977, the work on climate change in the WMO was advanced enough to include specific predictions. Evidence of this is provided by the Technical Note published by the WMO under the title “*Effects of Human Activities on Global Climate*”, which reached the following conclusions:

“With the current state of knowledge about how the Earth’s climate system operates and about possible influences, it is difficult to make any predictions for the natural course of the climate in the next several decades. However, climate system models have now developed to the point where it is believed that a second kind of prediction can be made, viz., assuming that no unusually large naturally-induced fluctuation occurs in the interval, the climate will probably respond in a given way for a given change of one or more of the external or boundary conditions of the model. This makes possible a prediction of the course of the climate as a result of anthropogenic influences, other external factors remaining the same.

Experiments with a number of different models with widely varying degrees of complexity have now converged on approximately the same conclusions, namely:

- **The largest single effect of human activities on the climate is due to the increase in atmospheric carbon dioxide concentration resulting from burning fossil fuels (coal, petroleum, natural gas)**, since the additional carbon dioxide gas absorbs infra-red radiation from the surface that would otherwise escape into space, producing an increase in lower atmosphere temperature.
- **Virtually** all of the other major activities of mankind also contribute to a warming of the lower atmosphere, for example, through injection into the atmosphere of airborne particles (“aerosols”) and of other infra-red-absorbing trace gases (such as chlorofluoromethanes, nitrous oxide, etc.), and through the direct addition of heat (“thermal pollution”).

³¹¹ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 33, referring to ‘Activities of United Nations Organizations and programmes relevant to the human environment: Report of the Secretary-General’ (11 July 1968) E/4553 ([link](#)).

³¹² ‘Activities of United Nations Organizations and programmes relevant to the human environment: Report of the Secretary-General’ (11 July 1968) E/4553, para. 78 ([link](#)).

- **A best estimate of the resultant warming of the mean surface temperature of the Earth due to human activities is about 1°C by 2000 AD (25 per cent increase in atmospheric carbon dioxide) and about 3°C by 2050 AD (doubling of atmospheric carbon dioxide),** with an uncertainty of roughly a factor of two. Warming of the polar regions is expected to be three to five times greater than the global average.

These conclusions are based on the assumption that there will be no worldwide effort to curb the use of fossil fuels and that the rate of carbon dioxide release to the atmosphere will continue to increase at a quasi-exponential rate, with only a slightly reduced rate of increase toward the end of the time frame [...]

The estimated climate change due to human activities for the year 2000 AD is probably larger than any natural climate change that has been experienced in the past 1000 years or more [...]

The question is raised of how the decision-makers of the world can make use of this information, dealing as it does with a probable change that will only become readily apparent after a decade or two.” (emphasis added)³¹³

188. In July 1979, a report of the United States National Academy of Sciences commissioned by the Office of Science and Technology Policy was even more assertive. In the foreword of the Report, known as the “Charney Report”, the then Chairman of the Climate Research Board, V. E. Suomi, introduced the findings of the study in the following terms:

“For more than a century, we have been aware that changes in the composition of the atmosphere could affect its ability to trap the sun’s energy for our benefit. We now have incontrovertible evidence that the atmosphere is indeed changing and that we ourselves contribute to that change. Atmospheric concentrations of carbon dioxide are steadily increasing, and these changes are linked with man’s use of fossil fuels and exploitation of the land. Since carbon dioxide plays a significant role in the heat budget of the atmosphere, it is reasonable to suppose that continued increases would affect climate [...] **The conclusions of this brief but intense investigation may be comforting to scientists but disturbing to policymakers. If carbon dioxide continues to increase, the study group finds no reason to doubt that climate changes will result and no reason to believe that these changes will be negligible.** The conclusions of prior studies have been generally reaffirmed. However, the study group points out that the ocean, the great and ponderous flywheel of the global climate system, may be expected to slow the

³¹³ William W. Kellogg, *Effects of Human Activities on Global Climate. A summary, with consideration of the implications of a possibly warmer Earth*, WMO Technical Note No. 156 (Geneva: WMO Secretariat, 1977), at VII-VIII (underscoring original; bold letters added) ([link](#)).

course of observable climatic change. **A wait-and-see policy may mean waiting until it is too late**³¹⁴

189. The effects of GHG emissions had thus been known for decades when NASA scientist James Hansen delivered his testimony to the United States Senate on 23 June 1988 emphasising three main conclusions on the state of science:

“Number one, **the earth is warmer in 1988 than at any time in the history of instrumental measurements**. Number two, the global warming is now large enough that **we can ascribe with a high degree of confidence a cause and effect relationship to the greenhouse effect**. And number three, our computer climate simulations indicate that **the greenhouse effect is already large enough to begin to affect the probability of extreme events such as summer heat waves [...]** Altogether the evidence that the earth is warming by an amount which is too large to be a chance fluctuation and the similarity of the warming to that expected from the greenhouse effect represents a very strong case. In my opinion, that the greenhouse effect has been detected, and it is changing our climate now” (emphasis added)³¹⁵

190. Only a few months later, on 27 September 1988, then British Prime Minister Margaret Thatcher delivered a speech to the Royal Society, in which she expressly referred to the threat of climate change, echoing the reference in the 1965 Report of the Environmental Pollution Panel to an inadvertent experiment of geological proportions:

“For generations, we have assumed that the efforts of mankind would leave the fundamental equilibrium of the world's systems and atmosphere stable. But it is possible that with all these enormous changes (population, agricultural, use of fossil fuels) concentrated into such a short period of time, **we have unwittingly begun a massive experiment with the system of this planet itself**.

Recently three changes in atmospheric chemistry have become familiar subjects of concern. **The first is the increase in the greenhouse gases—carbon dioxide, methane, and chlorofluorocarbons—which has led some to fear that we are creating a global heat trap which could lead to climatic instability**. We are told that a warming effect of 1°C per decade would greatly exceed the capacity of our natural habitat to cope. Such warming could cause accelerated melting of glacial ice and a consequent increase in the sea level of several feet over the next century. This was brought home to me at the Commonwealth Conference in Vancouver last year when the President of the Maldiv Islands reminded us that the highest part of the Maldives is only six feet above sea level. The population is 177,000. It is noteworthy that the five

³¹⁴ *Carbon Dioxide and Climate : A Scientific Assessment, Report of an Ad Hoc Study Group on Carbon Dioxide and Climate* (Washington DC : National Academy of Sciences, 1979), Foreword, at pp. vii-viii (emphasis added) ([link](#)).

³¹⁵ Statement of Dr. James Hansen, Director, NASA Goddard Institute for Space Studies, 23 June 1988, Hearing before the Committee on Energy and Natural Resources of the United States Senate ([link](#)).

warmest years in a century of records have all been in the 1980s—though we may not have seen much evidence in Britain! [...]

In studying the system of the earth and its atmosphere we have no laboratory in which to carry out controlled experiments. We have to rely on observations of natural systems. We need to identify particular areas of research which will help to establish cause and effect. We need to consider in more detail the likely effects of change within precise timescales. And to consider the wider implications for policy—for energy production, for fuel efficiency, for reforestation. This is no small task, for the annual increase in atmospheric carbon dioxide alone is of the order of three billion tonnes. **And half the carbon emitted since the Industrial Revolution remains in the atmosphere.** We have an extensive research programme at our meteorological office and we provide one of the world's four centres for the study of climatic change. We must ensure that what we do is founded on good science to establish cause and effect.” (emphasis added)³¹⁶

191. Thus, the understanding of the causes and the impact of climate change was well established both in scientific and policy circles, at the national and international level, already in the 1960s, with the issue gaining sufficient prominence to be specifically addressed by heads of State and government. Yet, GHG emissions increased massively and, in fact, they have continued to increase until this very day. As noted in the Expert Report by Professor Corinne Le Quéré:

“Despite the urgent need to decrease global GHG emissions, emissions have continued to rise in the past decade. CO₂ emissions, the dominant source of GHG emissions, have continued to rise in the past decade (2013-2022) by 0.2% per year on average. Methane emissions are rising steeply, by 0.9% per year on average over the past decade, but with large uncertainties. All gases combined, global GHG emissions have continued to rise over the past decade, by 0.6% per year on average. These trends are not aligned with limiting global warming well below 2°C or to 1.5°C above pre-industrial levels, which require rapid decreases in emissions of CO₂ and methane in the short term”³¹⁷

192. The focus of the questions put to the Court in the operative part of Resolution 77/276 is on the obligations under international law governing the Relevant Conduct and the legal consequences of such conduct under those obligations. States whose acts and omissions resulted in massive GHG emissions and thereby caused significant harm to the climate system and other parts of the environment knew or should have known, in the light of the widely available scientific information, the implications of their conduct at least from the 1960s onwards. Yet, even today, emissions continue to rise.

³¹⁶ Margaret Thatcher, Speech to the Royal Society, 27 September 1988 (emphasis added) ([link](#)).

³¹⁷ Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (**Exhibit B**), Summary, para. 3 (emphasis original).

3.3. Concluding submissions

193. For the foregoing reasons, the Republic of Vanuatu submits that the Court, in order to answer the two questions put to it, should refer to the specific conduct characterized in Resolution 77/276. This Relevant Conduct consists of acts and omissions of individual States – and of a specific group thereof – that have resulted over time in a level of anthropogenic GHG emissions from activities within their jurisdiction or control which have interfered with the climate system and other parts of the environment to an extent which amounts to at least significant harm to the latter, whether or not the anthropogenic GHG emissions of a given State over time are the only or the main cause of climate change, and whether or not they are the only or the main cause of the specific harm suffered by another State, people or individual. There is ample evidence indicating which specific States have displayed the Relevant Conduct and, taken together, have caused climate change and its adverse effects. There is also ample evidence that at least from the 1960s, States with high cumulative GHG emissions knew or should have known, given the widely available scientific information, the implications of their conducts. Thus, there is a solid evidentiary basis for the Court to assess the obligations governing the Relevant Conduct and its legal consequences at the level of specific individual States, a specific group of States or in general, without reference to one or more specific States or group thereof.

CHAPTER IV
THE OBLIGATIONS OF STATES IN RELATION
TO CLIMATE CHANGE

4.1. Summary of Vanuatu's submission

194. Given the vast spatial and temporal scope of the Relevant Conduct, the UN General Assembly has turned to the Court to advise on its legality under the entire corpus of international law. Only the Court has the general competence to do so. The text of Resolution 77/276 emphasizes in several preambular paragraphs and in the chapeau paragraph of the operative part that the General Assembly seeks legal guidance “*having particular regard*”, without limitation, to a range of rules from treaties and general international law. Within this wide corpus of international law, Question (a) requests the Court to clarify the obligations governing the Relevant Conduct defined in broad terms (see Chapter III, Section 3.2.2.) as “*anthropogenic emissions of greenhouse gases*”. The obligations to be identified and clarified are those of “States” and only “under international law”. These obligations are those that concern the protection of the “environment”, including the “climate system” as one of its “parts”, from the Relevant Conduct, for the benefit of “States” and of “present and future generations”.
195. The Republic of Vanuatu submits that the following obligations arising from general international law specifically govern the acts and omissions of States underpinning the Relevant Conduct: the duty of due diligence; the obligations arising from the rights recognized in the Universal Declaration of Human Rights; the principle of prevention of significant harm to the environment; the duty to protect and preserve the marine environment; the obligations arising from the right to self-determination; the duty to co-operate and the obligations arising from the principle of good faith. These obligations are binding on all States and the Relevant Conduct is in breach of them. In addition, the following obligations arising from treaties in force also govern the Relevant Conduct of States which are parties to one or more of them: obligations arising from the Charter of the United Nations and the subsequent interpretive practice under it, including the rights recognized in the Universal Declaration of Human Rights, the right of peoples to self-determination, the duty to co-operate and the obligations arising from the principle of good faith; obligations arising from the rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; obligations arising from the right to clean, healthy and sustainable environment as it relates to other rights and existing international law; obligations arising from the UNFCCC and the Paris Agreement; obligations arising from the

United Nations Convention on the Law of the Sea; and obligations arising from the Convention on the Rights of the Child. These obligations are binding on States parties to the relevant treaties and the Relevant Conduct is in breach of them. Each of these obligations, their specific application to the Relevant Conduct and the reasons why the latter is in principle inconsistent with them are explained in detail in this Chapter.

4.2. Overview

196. The question formulated by the UN General Assembly in letter (a) of the operative part of Resolution 77/276 reads as follows:

“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”

197. The UN General Assembly is requesting the Court to have “*particular regard*”, without limitation, to certain treaties and rules of general international law that protect the climate system and other parts of the environment from a certain conduct, i.e. the Relevant Conduct.

198. For Question (a), the net is cast wide, with a broad characterization of the Relevant Conduct as “*anthropogenic emissions of greenhouse gases*” (see Chapter III, Section 3.2.2). As explained in Chapters II and III of this Written Statement, the term “*greenhouse gases*” is defined as:

“Gaseous constituents of the *atmosphere*, both natural and *anthropogenic*, that absorb and emit radiation at specific wavelengths within the spectrum of radiation emitted by the Earth’s surface, by the atmosphere itself, and by clouds. This property causes the *greenhouse effect*. Water vapour (H₂O), *carbon dioxide* (CO₂), *nitrous oxide* (N₂O), *methane* (CH₄) and *ozone* (O₃) are the primary GHGs in the Earth’s atmosphere. Human-made GHGs include *sulphur hexafluoride* (SF₆), *hydrofluorocarbons* (HFCs), *chlorofluorocarbons* (CFCs) and *perfluorocarbons* (PFCs); several of these are also O₃-depleting (and are regulated under the *Montreal Protocol*)”³¹⁸

³¹⁸ IPCC Glossary ([link](#)).

The term “*anthropogenic emissions*” is in turn defined as follows:

“Emissions of greenhouse gases (GHGs), precursors of GHGs and aerosols caused by human activities. These activities include the burning of fossil fuels, deforestation, land use and land use changes (LULUC), livestock production, fertilisation, waste management, and industrial processes”³¹⁹

199. The expression “*anthropogenic emissions of greenhouse gases*” thus refers, specifically, to emissions of certain gases from certain activities. Preambular paragraph 5 of Resolution 77/276 further clarifies that, what is at stake, is “*the conduct of States over time in relation to activities that contribute to climate change and its adverse effects*”. Thus, all GHG emissions “*over time*”, i.e. cumulative GHG emissions, must be taken into account for the identification of the relevant obligations.
200. Moreover, the focus is on obligations governing “*the conduct of States ... in relation to*” activities such as “*the burning of fossil fuels, deforestation, land use and land use changes (LULUC), livestock production, fertilisation, waste management, and industrial processes*”, to quote the IPCC Glossary, whether such activities are performed by the State itself or by non-State actors, such as companies.
201. This Chapter sets out the submissions of the Republic of Vanuatu with respect to the governing law within which the relevant obligations must be identified (Section 4.3) and then identifies some of the most directly relevant obligations, explaining how they govern the Relevant Conduct (Section 4.4). The last section summarizes the key conclusions of the Chapter (Section 4.5).

4.3. The governing law

202. Given the vast and entirely unprecedented implications of climate change as a global problem, the conduct which causes it touches upon a wide range of matters governed by international law. Due to the implications of climate change for human rights, the law of the sea, environmental protection, international peace and security and other matters, the Relevant Conduct is regulated from a range of perspectives under different treaties and rules of general international law.
203. This is an important consideration explaining why the international community, acting through the most representative world assembly, the UN General Assembly, has turned to the International Court of Justice for advice. Only the Court has the general competence to assess the Relevant Conduct under the entire corpus of international law, rather than under specific treaties or bodies of international law. Resolution 77/276 is clear in this respect. Three aspects merit particular attention.

³¹⁹ IPCC Glossary ([link](#)).

4.3.1. *Under the chapeau of the operative part, the Court is to have particular regard, without limitation, to certain treaties and rules of general international law*

204. The chapeau of the operative part of the Resolution 77/276 requests the Court to have particular regard to a wide range of instruments and rules in answering the questions put to it:

“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”

The specific instruments and rules of general international law identified are not the only ones to be considered by the Court, as clearly indicated by the expression “having **particular** regard”.

205. With respect to treaties, the UN Charter is relevant and applicable because it embodies the fundamental principles of international law, particularly in Articles 1 (purposes) and 2 (principles), including sovereign equality, good faith, the duty to co-operate and the right to self-determination, as subsequently elaborated on in other UN General Assembly resolutions and in the case law of the Court itself. The 1966 International Covenants on Civil and Political Rights (ICCPR)³²⁰ and on Economic, Social and Cultural Rights (ICESCR)³²¹ are relevant and applicable because they embody the key treaty pillars of the “international bill of rights” with very wide geographical application and the incorporation by reference of detailed interpretive materials (e.g. views of human rights treaty bodies and general comments). Moreover, both treaties expressly protect the right to self-determination. The UNFCCC and the Paris Agreement are referenced because they contain rules that specifically address, from the date of their entry into force and without being exhaustive, aspects of the Relevant Conduct and of its legal consequences, including provisions on mitigation, adaptation, loss and damage, finance, technology transfer and capacity-building. UNCLOS is listed mainly due to the relevance and applicability to the Relevant Conduct of its Part XII, particularly Articles 192 (obligation to protect and preserve the marine environment), 193 (limits on the right to exploit natural resources) and 194 (prevention of pollution).

³²⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) ([link](#)).

³²¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (ICESCR) ([link](#)).

206. Similarly, the reference to a range of obligations under general international law makes clear that the question is not limited to one or more treaties or even treaty law, but that it also explicitly engages the requirements of general international law. Four main customary rules or clusters thereof are identified, although the enumeration is non-exhaustive. The duty of due diligence is important both to modulate the operation of certain treaty obligations and on a stand-alone basis.³²² In combination with a treaty obligation, the duty of due diligence emphasizes the level of diligence to be displayed under such obligation, setting a stringent and evolving standard to assess respect or breach. In addition, the duty of due diligence covers a longer timespan than the other rules identified, which is important given that the Relevant Conduct has unfolded “*over time*”, with evidence since at least 1850, accelerating in the second half of the twentieth century. The rights recognized in the Universal Declaration of Human Rights as part of general international law³²³ are a key component of the international bill of rights, and they apply to all States. Reference to the principle of prevention of significant environmental harm³²⁴ is important because it is now well established that GHG emissions have caused significant harm to the climate system, which is a part of the environment, as well as – directly and indirectly (through the adverse effects of climate change) – to other parts of the environment. The duty to protect and preserve the marine environment, codified in Article 192 of the UNCLOS as an obligation, is recognised as having customary grounding.³²⁵ Acidification, warming, harm to marine ecosystems, among other impacts, can all be understood as a violation of the customary norm codified in Article 192 of the UNCLOS.

³²² There is ample support for the customary grounding of this duty: *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 22; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996 (I), p. 226, para. 29; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), para. 101; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015 (II), p. 706, para. 104. These precedents have been selected by the Court itself as support for this duty in its judgment in the Silala case: *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, Judgment, I.C.J. Reports 2022, p. 614, para. 99.

³²³ The customary grounding of such rights is suggested or explicitly asserted in: *Barcelona Traction, Light and Power Company, Limited, Judgment*, I.C.J. Reports 1970, p. 3, paras. 33-34; *United States Diplomatic and Consular Staff in Tehran (USA v. Iran)*, I.C.J. Reports 1980, p. 3, para. 91.

³²⁴ There is ample support for the customary grounding of the prevention principle: *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 27-29; *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I. C. J. Reports 1997, p. 7, para. 140; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), para. 101; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015 (II), p. 706, para. 104; *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.

³²⁵ There is ample support for the customary grounding of this duty. The Court itself has recognised it in *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2022, p. 266, para. 95.

4.3.2. *The preambular paragraphs emphasise the relevance and applicability of other treaties, instruments and rules*

207. Four preambular paragraphs of Resolution 77/276 (in addition to the first preambular paragraph which states the unprecedented nature of the problem) refer to a range of treaties, instruments and rules that the UN General Assembly specifically “*recalls*” or “*emphasizes*” as important for the answer:

“Recalling its resolution 77/165 of 14 December 2022 and all its other resolutions and decisions relating to the protection of the global climate for present and future generations of humankind, and its resolution 76/300 of 28 July 2022 on the human right to a clean, healthy and sustainable environment,

Recalling also its resolution 70/1 of 25 September 2015 entitled “Transforming our world: the 2030 Agenda for Sustainable Development”,

Recalling further Human Rights Council resolution 50/9 of 7 July 2022 and all previous resolutions of the Council on human rights and climate change, and Council resolution 48/13 of 8 October 2021, as well as the need to ensure gender equality and empowerment of women,

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 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” (italics original, emphasis added, footnotes omitted).

The terms in bold letters in the previous excerpt from Resolution 77/276 (“*among other instruments*” and “*including*”) make it abundantly clear that these references are not intended to be exhaustive. This is consistent with the expression “*having particular regard to*” used in the chapeau of the operative part of the Resolution. The UN General Assembly is asking the Court to consider the Relevant Conduct in the light of the entire corpus of international law, first to identify and clarify the most relevant obligations and then to assess the Relevant Conduct and determine the resulting legal consequences.

4.3.3. *The UNFCCC, the Kyoto Protocol and the Paris Agreement are part of the broader corpus of international law relevant and applicable*

208. The UNFCCC, the Kyoto Protocol and the Paris Agreement are recalled as part of the corpus of international law applicable to the Relevant Conduct and, more specifically, “*as expressions of the determination to address decisively the threat posed by climate change*” but also “*noting with concern*” the significant gaps in terms of both mitigation and adaptation action that they were intended to achieve.
209. These instruments are of necessity only one part of the law governing the Relevant Conduct because they do not address matters as fundamental as human rights, the right to self-determination, the protection of the marine environment, and many others. In the case of the Paris Agreement, its adoption was only politically possible at a very late stage of the problem, in recognition – as it is clear from its Article 8 of the Paris Agreement on irreversible loss and damage – that the UNFCCC regime has failed “*to achieve [...] stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*” (Article 2 of the UNFCCC).
210. The treaties, instruments and rules mentioned in the preambular paragraphs and those in the chapeau of the operative part overlap, but only partly so. This is another indication that the UN General Assembly considered, in a resolution remarkably adopted by consensus, that the law governing a global problem of the magnitude and implications of climate change is not limited to what is stated in the chapeau of the operative part. The Court can select from the entire corpus of international law those obligations that are most relevant, “*having particular regard*” to certain treaties and rules which the UN General Assembly wishes to see clarified in their application to the Relevant Conduct.

4.4. Identification of the obligations governing the Relevant Conduct

4.4.1. *The terms used in Question (a) of the operative part*

211. Question (a) of the operative part of Resolution 77/276 requests the Court to identify and clarify, having particular regard to the applicable law discussed earlier Section 4.3, 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”

212. Before presenting the views of the Republic of Vanuatu with respect to the specific obligations concerned, it is useful to briefly characterize the main aspects of the question itself. Four aspects of this formulation must be addressed, namely: “*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*”.

213. The first aspect emphasizes that the UN General Assembly is consulting the Court about “*obligations of States*”, not of other actors, and this “*under international law*”, not under domestic law. The scope of the international law to be examined has already been addressed (Section 4.3).
214. The second aspect describes the basic common denominator of all the obligations to be identified and clarified, namely that they seek “*to ensure the protection of the climate system and other parts of the environment*”. Section 3.2.2 of this Written Statement explained that the “*climate system*” is part of the “*environment*”. Yet, the question is not limited to the protection of the “*climate system*” and it also concerns the protection of the “*environment*” in general. Any obligation that, either directly or indirectly, aims to protect the “*environment*”, including the “*climate system*”, “*from anthropogenic emissions of greenhouse gases*” is therefore covered by the question. Thus, the obligations arising from both treaties and general international law that govern the conduct of States in relation to activities that may affect the environment, including the climate system, are specifically covered. Obligations “*to ensure the protection of the climate system and other parts of the environment*” in order to respect, protect and fulfil human rights or the right of peoples to self-determination are also covered. This is clear from the subsequent reference to protection “*for present and future generations*” and, more generally, from the reference to human rights instruments and norms in the chapeau of the operative part and in several preambular paragraphs of Resolution 77/276.
215. The third aspect further specifies what the relevant obligations seek to protect from, namely the Relevant Conduct, already characterised in Chapter III. The characterization of the Relevant Conduct provided in Question (a) is very general: “*from anthropogenic emissions of greenhouse gases*”. Any obligation of States under international law that addresses such broad conduct, whether focusing on a specific activity or a type of activity or certain pollutants or on the protection of certain objects or subjects, is thus covered by the question.
216. As for the fourth aspect, the terminology used is as broad as possible and encompasses both the inter-State dimension which is the focus of Question (b)(i) and the human dimension, present and future, which is the focus of Question (b)(ii). Importantly, an obligation that seeks to ensure the protection of the environment as such (e.g. the principle of prevention of significant environmental harm) or a part thereof (e.g. the duty to protect and preserve the marine environment) or in order to protect human rights (e.g. the obligations to respect, protect and fulfil human rights) may have already been breached by the Relevant Conduct, despite the fact that the obligation aims to protect the climate system and other parts of the environment for States and for present and future generations. The ordinary treatment of such a situation under the general international law of State responsibility is that the breach

triggers “legal consequences” but it “[does] *not affect the continued duty of the responsible State to perform the obligation breached*”,³²⁶ which remains in force and continues to govern the Relevant Conduct.

4.4.2. *Obligations governing, as such, the Relevant Conduct from different perspectives*

217. In referring to a range of specific treaties, instruments and rules, the UN General Assembly recognized that, in international practice, it is widely acknowledged that the Relevant Conduct is governed, as such, by a range of obligations. The adoption of Resolution 77/276 by consensus, with the preambular paragraphs analyzed in the previous section and the chapeau of the operative part, confirms this wide acknowledgment.
218. This means that general international law obligations such as those to exercise due diligence, to respect, protect and fulfil the human rights enshrined *inter alia* in the Universal Declaration on Human Rights, to prevent significant harm to the environment, to protect and preserve the marine environment and to respect and promote the right of peoples to self-determination apply as such and impose specific requirements on all States in relation to the Relevant Conduct. The same can be said of obligations arising from treaties, although these are binding only on States parties to such treaties.
219. It is not possible to reduce all these obligations to either a single treaty or a single obligation. This is for four main reasons.
220. *First*, doing so would amount to disregarding the specific scope of application and requirements of each of these obligations. One illustration is provided by the obligations of States to respect, protect and fulfil the right to life, embodied in human rights treaties and recognized by this Court as part of general international law.³²⁷ When the right to life is affected by the adverse impacts of climate change, the applicable obligations of a State cannot be reduced to – or subsumed by – its concurrent obligation to protect and preserve the marine environment, whether founded in treaty³²⁸ or custom,³²⁹ or its mitigation obligations arising under Article 4 of the UNFCCC or, still, the customary principle of prevention of significant environmental harm. The conduct of a State that fails “*to perform its duty to provide*

³²⁶ UN General Assembly Resolution 56/83 ‘Responsibility of States for Internationally Wrongful Acts’, 12 December 2001, A/RES/56/83, Annex (Draft Articles on the Responsibility of States for Internationally Wrongful Acts), art. 29 ([link](#)).

³²⁷ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 24-25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 105-106. On human rights generally, see *Barcelona Traction, Light and Power Company, Limited, Judgment*, I.C.J. Reports 1970, p. 3, paras. 33-34; *United States Diplomatic and Consular Staff in Tehran (USA v. Iran)*, I.C.J. Reports 1980, p. 3, para. 91.

³²⁸ UNCLOS, pt XII ([link](#)).

³²⁹ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, *Judgment*, I.C.J. Reports 2022, p. 266, para. 95.

adaptation and mitigation measures to address climate change impacts”³³⁰ may constitute a violation of the right to life, irrespective of whether the State in question has complied with its other obligations under international law, including but not limited to the three aforementioned examples (protection and preservation of the marine environment, Article 4 of the UNFCCC, and the prevention principle). Each obligation has its own scope of application and specific requirements.

221. For the right to life under Article 6(1) of the ICCPR, the Human Rights Committee made clear, in *Daniel Billy et al. v. Australia*, that the obligations arising from this right govern, as such, a conduct akin to the Relevant Conduct, and it has explained the specific requirements that must be observed to comply with such obligations:

“The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life. The Committee considers that such threats may include adverse climate change impacts, and recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The Committee recalls that States parties should take all appropriate measures to address the general conditions in society that may give rise to direct threats to the right to life or prevent individuals from enjoying their right to life with dignity.”³³¹

222. Each obligation identified has its own scope of application and specific requirements. A State may claim to be in conformity with its obligations under Article 4 of the UNFCCC and Article 4 of the Paris Agreement but that does not mean that its conduct is not in breach, as a result of its GHG emissions over time, of the obligations under general international law to protect and preserve the marine environment, or to prevent significant harm to the environment, or to respect and ensure the right to life, or, still, to respect and promote the right of peoples to self-determination.

223. There are many reasons in principle and logic which support this view:

- (a) The UNFCCC and the Paris Agreement do not, expressly or by necessary implication, cover the field of international law obligations in respect of climate change. Nor do the provisions of the UNFCCC and the Paris

³³⁰ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.3 ([link](#)).

³³¹ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.3 (citations omitted) ([link](#)).

Agreement, in their operation and effect, govern all State conduct of relevance to climate change, or supplant human rights obligations.³³²

(b) The UNFCCC and Paris Agreement impose *horizontal* obligations (ie inter-State), while human rights law also imposes *vertical* obligations (ie between States and people/peoples within their jurisdiction). It would not be sound in principle or logic to say that, by satisfying a horizontal obligation under, say, the Paris Agreement, a vertical obligation under the Convention will necessarily also be satisfied in the context of climate change.

(c) The IPCC Sixth Assessment Report (AR6) states that “reaching 1.5°C in the near-term, would cause unavoidable increases in multiple climate hazards and present multiple risks to ecosystems and humans.”³³³ Accordingly, even if warming were kept to 1.5°C above pre-industrial levels compatibly with the temperature goals in the Paris Agreement, there *already is*, and *there will continue to be*, harms, loss and damage. International law is not silent in relation to these; as developed in this Written Statement, myriad obligations arising across the corpus of public international law would intersect with these harms, loss and damage. If this were not the case, there would be a troubling lacuna in the system of international law. This Court should not embrace any construction of the various obligations which would lead to such a lacuna.

224. The essential point is that **these obligations are distinct, each governing certain aspects of the Relevant Conduct, and none of them offers a shield to protect States from engaging their international responsibility if they do not perform all applicable obligations.**

225. *Second*, this conclusion does not mean that the requirements of one rule or set of rules (for example, obligations of climate mitigation or environmental protection) may not be taken into account for the interpretation of another (for example, the right to life), without subsuming the latter into the former. Some participants in this

³³² The preambular language in the Paris Agreement confirms that it was written and concluded against the backdrop of international human rights law, to complement not replace it (“*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”).

³³³ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.3 ([link](#)). See also Intergovernmental Panel on Climate Change, *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*, Full Report (2018), pp. 44, 447 (“warming of 1.5°C is not considered ‘safe’ for most nations, communities, ecosystems and sectors and poses significant risks to natural and human systems as compared to the current warming of 1°C (high confidence),” especially for “disadvantaged and vulnerable populations.”) ([link](#)).

advisory proceeding might resist this ordinary application of the rule of systemic integration, which forms part of the general rules of treaty interpretation under customary international law,³³⁴ as codified in Article 31 of the Vienna Convention on the Law of Treaties.³³⁵ In the *Billy* case, for example, Australia argued that:

“there is no basis for the [complainants’] argument that international climate change treaties are relevant to the interpretation of the Covenant, because there are stark and significant differences between the Paris Agreement and the Covenant. The two instruments have different aims and scopes. Sixteen [16] States that have signed the Agreement have not signed the Covenant. Accordingly, interpreting the Covenant through the Paris Agreement would be contrary to the fundamental principles of international law.”³³⁶

Although the majority opinion did not focus on the Paris Agreement,³³⁷ the Human Rights Committee disagreed with Australia’s submission that the general rule of treaty interpretation did not allow for an extension of the right to life to include

³³⁴ *Territorial Dispute (Libyan Arab Jamuhiriyy/Chad)*, Judgment, I. C. J. Reports 1994, p. 6, p. 21, para. 41; *United States - Gasoline (Brazil and Venezuela v. United States)* Appellate Body, WT/DS2/AB/R, WT/DS4/AB/R, Report No AB-1996-1, Doc No 96-1597 (29 April 1996) ITL 013 (WTO 1996), 16 ([link](#)).

³³⁵ Under Article 31(1) of the Vienna Convention on the Law of Treaties (23 May 1969, entry into force 27 January 1980), 1155 UNTS 331 ([link](#)), a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. Under Article 31(3), there shall be taken into account, together with the context: Article 31(3)(c) then provides that there shall be taken into account, together with context, “any relevant rules of international law applicable in relations between the parties”. The corpus of applicable international law rules include not only those arising from treaties, but also general principles of law and rules of customary international law: see International Law Commission, “Draft Conclusions of the Work of the Study Group, Finalized by Mr. Martti Koskenniemi”, annexure to *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, 13 April 2006, UN Doc A/CN.4/L.682, para. 19 ([link](#)). See *Philip Morris v. Uruguay*, ICSID Case No ARB/10/7, Award (8 July 2016), para. 290 (“Article 31(3)(c) [...] directs the Tribunal to refer to the rules of customary international law as they have evolved”) ([link](#)). This Court has applied the approach of systemic integration when interpreting treaty provisions on many occasions, as have other international courts and tribunals: see e.g., *Kasikili/Sedudu Island (Botswana v. Namibia)*, Judgment, I.C.J. Reports 1999, p. 1045, para. 93 ; *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, I.C.J. Reports 2003, p. 161, paras. 41-45 ; *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, I.C.J. Reports 2008, p. 177, paras. 112-114; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, paras. 64-66, 204-205; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, I.C.J. Reports 2017, p. 3, paras. 89-91. See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, para. 175; *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 44 ([link](#)). See, further, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgement, Inter-American Court of Human Rights (ser. C), 6 February 2020, para. 198 ([link](#)); *Al-Dulimi v. Switzerland*, (App No 5809/08, 21 June 2016) (ECtHR GC) 175 ILR 1, para. 134 ([link](#)). In the context of investor-state arbitration: *Philip Morris v. Uruguay*, ICSID Case No ARB/10/7, Award (8 July 2016), para. 290 ([link](#)). In the context of the WTO, see *European Communities - Trade in Large Civil Aircraft (United States v. European Communities)* Appellate Body WT/DS316/AB/R, Report No AB-2010-1, Doc No 11-2462 (18 May 2011), para. 845 ([link](#)).

³³⁶ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 4.1 ([link](#)).

³³⁷ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, Annex II: Individual opinion by Committee Member Gentian Zyberi (concurring) ([link](#)).

adverse climate change impacts as reasonably foreseeable threats.³³⁸ In rejecting Australia's restrictive interpretation, the Committee confirmed its own interpretation of Article 6 of the ICCPR in *General Comment No. 36*,³³⁹ concluding that “*environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life*”.³⁴⁰ Notably, *General Comment No. 36* provides that:

“The obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of State parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law.”³⁴¹

This statement captures well the rule of systemic integration, specifically in the interpretation of States' obligations regarding human rights that are adversely impacted by climate change. The Court has previously endorsed other General Comments of the Human Rights Committee in determining the content of rules of international law.³⁴²

226. In any event, the Court has itself affirmed the customary rule of systemic integration, as codified in Article 31(3)(c) of the Vienna Convention on the Law of Treaties, in a number of cases,³⁴³ implicitly in relation to the right to life.³⁴⁴ In its advisory opinion on the *Legality of Nuclear Weapons*, the Court considered that the right to life enshrined in Article 6 of the ICCPR did not cease to apply in case of armed conflict, but the term “*arbitrary*” had to be interpreted in the light of the

³³⁸ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022 paras. 8.3-8.5 ([link](#)).

³³⁹ Human Rights Committee, *General Comment No. 36: Article 6: Right to Life* (3 September 2019) UN Doc. CCPR/C/GC/36 para. 62 ([link](#)).

³⁴⁰ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.5 ([link](#)).

³⁴¹ Human Rights Committee, *General Comment No. 36: Article 6: Right to Life* (3 September 2019) UN Doc. CCPR/C/GC/36 para. 62 ([link](#)).

³⁴² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 136; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, *Judgment*, I.C.J. Reports 2010, p. 639, paras. 66-68, 77; *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, Advisory Opinion*, I.C.J. Reports 2012, p. 10, para. 39.

³⁴³ *Kasikili/Sedudu Island (Botswana v. Namibia)*, *Judgment*, I.C.J. Reports 1999, p. 1045, para. 93 ; *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *Judgment*, I.C.J. Reports 2003, p. 161, paras. 41-45 ; *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, *Judgment*, I.C.J. Reports 2008, p. 177, paras. 112-114; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, I.C.J. Reports 2010, p. 14, paras. 64-66, 204-205; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, *Judgment*, I.C.J. Reports 2017, p. 3, paras. 89-91.

³⁴⁴ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 24-25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 105-106.

relevant rules of international humanitarian law.³⁴⁵ Importantly, the right to life was neither subsumed nor displaced by this interpretive reference to international humanitarian law. The Court considered the application of the right to life as such (taking into account relevant rules of international humanitarian law) to the conduct at stake in those proceedings and, later in its advisory opinion, it also considered the application of international humanitarian law as such, rather than for the systemic interpretation of another primary rule.³⁴⁶

227. This is the correct approach, with respect to the interpretive rule of systemic integration rule and, more generally, the concurrent operation of two or more rules from different instruments or sources that cannot be subsumed, even when their content is almost identical. As the Court noted in *Nicaragua v. United States*:

“even if a treaty norm and a customary norm relevant to the present dispute were to have exactly the same content, this would not be a reason for the Court to take the view that the operation of the treaty process must necessarily deprive the customary norm of its separate applicability.”³⁴⁷

Thus, the possibility of resorting to systemic integration from the perspective of one or more applicable rules in no way entails that any of them will cease to apply to the benefit of the other. This is particularly so when the several distinct rules govern different aspects of the Relevant Conduct from the perspective of their specific scopes of operation and requirements.

228. *Third*, the applicability of different obligations to the Relevant Conduct must specifically take into account, in addition to the scope *ratione materiae* of each of them, also their scope of application *ratione personae, loci* and *temporis*. In this regard, it is useful to make two important observations. The first concerns the emphasis in both the preambular paragraphs and the chapeau of the operative part of Resolution 77/276 on rules of **general international law**, which are applicable to the conduct of all States. The Court could assess the Relevant Conduct under such obligations, whether it focuses on the conduct of a specific State, a specific group of States or the Relevant Conduct in general. The second observation concerns the **scope of application *ratione temporis*** of these obligations. The Relevant Conduct concerns cumulative GHG emissions, and it has therefore unfolded over time. A large part of the GHG emissions driving climate change and, therefore, of the acts and omissions of States which significantly contributed to the problem, happened in the past, at a time well before some of the relevant treaties were in force. For example, the UNFCCC only entered into force for States parties on 21 March 1994 and the Paris Agreement on 4 November 2016. Before those

³⁴⁵ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 25.

³⁴⁶ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 74-87.

³⁴⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment. I.C.J. Reports 1986, p. 14, para. 175.

dates, the Relevant Conduct was nevertheless regulated under international law, and the relevant rules of both treaty and customary international law that applied to such conduct continue to apply today alongside the UNFCCC and the Paris Agreement.

229. The temporal dimension of the Relevant Conduct and the differences in the requirements and scopes of application *ratione materiae, personae, loci* and *temporis* are important. They explain why the UN General Assembly specifically referred in Resolution 77/276, including in the chapeau of the operative part, to a range of treaties, instruments and rules of general international law in addition to the UNFCCC and the Paris Agreement.
230. *Fourth*, some of the obligations governing the Relevant Conduct must be given normative priority due to their *jus cogens* character and/or the priority arising from Article 103 of the UN Charter. As explained in Sections 4.4.3.E and 4.4.4.A and B this Written Statement, the right to self-determination, certain obligations arising from human rights and, more generally, the obligations arising from the UN Charter prevail over other obligations in case of conflict. No relation of speciality or posteriority can be invoked to defeat the application of this hierarchically superior norms.

4.4.3. *Obligations arising from general international law for all States*

231. In the terminology used by the Court, the term “general international law” refers, essentially, but without limitation, to customary international law as the embodiment of the corpus of international law which is of general application to all States. By way of illustration, in paragraph 204 of its judgment in the *Pulp Mills* case, the Court referred to:

“a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under **general international law** to undertake an environmental impact assessment” (emphasis added).³⁴⁸

232. More recently, in the *Silala case* of December 2022, the Court reaffirmed its longstanding reliance on the terminology of general international law, referring to its past practice:

“The Court recalls that in **general international law** it is ‘every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States’ (*Corfu Channel (United Kingdom v. Albania)*, *Merits*, Judgment, I.C.J. Reports 1949, p. 22). “A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State” in a transboundary context, and in particular as regards a shared resource (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*),

³⁴⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14.

Judgment, I.C.J. Reports 2010 (I), p. 55-56, para. 101, citing *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996 (I), p. 242, para. 29; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015 (II), p. 706, para. 104” (emphasis added)³⁴⁹

233. In the chapeau of the operative part of Resolution 77/276, the UN General Assembly refers to four rules or sets thereof which have been recognised by the Court as part of general international law (see paragraph 206 above):

“Having particular regard to [...] 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”.

234. The Republic of Vanuatu respectfully submits that all these rules, as well as the right to self-determination, the duty to co-operate and the obligations arising from the principle of good faith are, without limitation, important “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”, which the Court should clarify in response to Question (a).

A. The duty of due diligence

235. This Court has frequently affirmed the duty of due diligence under general international law, most recently in the context of transboundary resources.³⁵⁰ The Republic of Vanuatu submits that the duty of all States to exercise due diligence in the prevention of reasonably foreseeable harm from activities within their jurisdiction or control crystallized as a primary obligation of international law no later than at the end of the nineteenth century.³⁵¹ This duty of due diligence has since found more granular expression in other obligations of international law, which are later addressed. The duty of due diligence has thus applied as positive law to the Relevant Conduct since the late nineteenth century.

³⁴⁹ *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, Judgment, I.C.J. Reports 2022, p. 614, para. 99.

³⁵⁰ *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, Judgment, I.C.J. Reports 2022, p. 614, para. 99, citing *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 22; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996 (I), p. 242, para. 29; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), p. 14, para. 101; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015 (II), p. 706, para. 104.

³⁵¹ Specifically, since at least: *Alabama Claims of the United States of America against Great Britain*, Award rendered on 14 September 1872 by the tribunal of arbitration established by Article I of the Treaty of Washington of 8 May 1871, XXIX Reports of International Arbitral Awards p. 125 ([link](#)).

236. It is accordingly important for this Court to provide authoritative guidance on the duty of due diligence, within the scope of Question (a), as an obligation of States to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions for States, peoples, and individuals of the present and future generations. Particularly useful for both the UN General Assembly and UN Members would be the clarification of when reasonably foreseeable harms to other legal subjects, caused by the Relevant Conduct, may trigger a State's obligation to take preventive measures that corresponded to that risk. Notably, the duty of due diligence must be exercised in proportion to the degree of risk and does not include any inherent threshold of significant harm before the duty is triggered.³⁵² In Vanuatu's submission, the duty also includes taking practicable steps to prevent harm arising from any acts or omissions that occurred before the risk became reasonably foreseeable; if the State takes no such steps, those earlier acts and omissions may form part of a longer series that constitutes a composite wrongful act.
237. As is well known, the very first case before this Court concerned several incidents in the Corfu Channel, principally the sinking of British naval vessels by striking mines in the territorial waters of Albania.³⁵³ In this context, the Court formulated the duty of due diligence under general international law as "*every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States*".³⁵⁴ The Court based this duty on international practice regarding territorial waters and, more generally, the exclusive control and obligations of vigilance that are incumbent on any State by virtue of its territorial sovereignty.³⁵⁵ Because due diligence is a corollary of "*the fundamental principle of State sovereignty, on which the whole of international law rests*",³⁵⁶ it is unsurprising that this duty finds general expression in much older practice. At the same time, one should not conflate a State's sovereignty, by which its control over territory is merely presumed, with the fact of control, which is the true basis of international responsibility. As this Court recalled in its 1971 advisory opinion on *South West Africa* "[p]hysical control of a territory, and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States."³⁵⁷

³⁵² *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. 129 ([link](#)); See Jorge E. Viñuales, 'Due Diligence in International Environmental Law: A Fine-grained Cartography', in Heike Krieger, Anne Peters, Leonhard Kreuzer (eds.), *Due Diligence in the International Legal Order* (Oxford University Press, 2020) (**Exhibit ZZA**), p. 112, see p. 122.

³⁵³ *Corfu Channel (United Kingdom v. Albania)*, Merits, *Judgment*, I.C.J. Reports 1949.

³⁵⁴ *Corfu Channel (United Kingdom v. Albania)*, Merits, *Judgment*, I.C.J. Reports 1949, p. 22.

³⁵⁵ *Corfu Channel (United Kingdom v. Albania)*, Merits, *Judgment*, I.C.J. Reports 1949, pp. 17-23.

³⁵⁶ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, *Judgment*, I.C.J. Reports 1986, p. 14, para. 263.

³⁵⁷ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 16, p. 54.

238. Primary obligations of due diligence appeared frequently in arbitral, diplomatic, and treaty practice throughout the nineteenth century, often concerning the treatment of aliens and their property. But the most authoritative entry point is the landmark arbitration between the United Kingdom and the United States in the *Alabama Claims*, decided in 1872.³⁵⁸ The Court has previously relied on this arbitral award in affirming the “*fundamental principle*” that “*international law prevails over domestic law*”³⁵⁹ and that “*an international tribunal has the right to decide as to its own jurisdiction*”.³⁶⁰ The duty of due diligence is equally fundamental. The Republic of Vanuatu submits that the reasoned award in the *Alabama Claims* reflected the state of general international law on the duty of due diligence at the time, providing a nineteenth-century baseline for the obligations of States that coincides with the starting point of cumulative GHG emissions. For this reason, it is important to recall in some detail how the tribunal in that case determined the parameters of this fundamental duty.
239. The compromis in the *Alabama Claims* reaffirmed that a neutral State was “*bound*” under international law to exercise “*due diligence*” in several respects, focused on the prevention of any national production or international trade in vessels or munitions that the State had “*reasonable ground*” to believe were intended to carry on war against another State with which it was at peace.³⁶¹ The tribunal held that the duty of due diligence “*ought to be exercised by neutral governments in exact proportion to the risks to which either of the belligerents may be exposed, from a failure to fulfil the obligations of neutrality on their part*”.³⁶² The circumstances called for “*all possible solicitude for the observance of the rights and the duties involved in the proclamation of neutrality*” issued by the United Kingdom in 1861.³⁶³ Hence, a neutral State’s duty of heightened diligence (“*all possible solicitude*”) corresponded “*in exact proportion to the risks*” of harm that were reasonably foreseeable in the circumstances of the American Civil War.³⁶⁴ More specifically, the fitting and departure of warships was clearly in violation of the

³⁵⁸ *Alabama Claims of the United States of America against Great Britain*, Award rendered on 14 September 1872 by the tribunal of arbitration established by Article I of the Treaty of Washington of 8 May 1871, XXIX Reports of International Arbitral Awards p. 125 ([link](#)).

³⁵⁹ *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion*, I.C.J. Reports 1988, p. 12, para. 57.

³⁶⁰ *Nottebohm case (Liechtenstein v. Guatemala) (Preliminary Objection), Judgment*, I.C.J. Reports 1953, p. 111, p. 119; *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal), Judgment*, I.C.J. Reports 1991, p. 53, para. 46.

³⁶¹ Treaty of Washington between Her Britannic Majesty and the United States of America (adopted 8 May 1871, entered into force 17 June 1871), article VI ([link](#)).

³⁶² *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. 129 ([link](#)).

³⁶³ *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 ([link](#)).

³⁶⁴ *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. 129 ([link](#)).

duty of due diligence, whereas the provision of coal supplies to vessels in British ports would violate the duty depending on “*special circumstances of time, of persons, or of place*”.³⁶⁵ The tribunal held that the United Kingdom was obliged “*to take in due time any effective measures of prevention*”, yet its orders for detention of a warship were “*issued so late that their execution was not practicable*”.³⁶⁶ The United Kingdom could have cured its initial negligence, but subsequent measures to arrest the warship were “*so imperfect as to lead to no result*” and were insufficient to release it from “*the responsibility already incurred*”.³⁶⁷

240. The reasoned award in the *Alabama Claims* thus modulated the duty of due diligence according to relevant circumstances, which included: (i) risk of harm caused by acts or omissions, whether present or past; (ii) degree or seriousness of that harm; (iii) applicable legal relations between the States; (iv) commercial transactions that may contribute to the harm; and (v) timely and effective measures to prevent the harm. International responsibility was engaged whenever the State’s conduct fell short of due diligence, even if the ultimate harm depended on further conduct beyond its control or never occurred at all. Crucially, once a State realized that its earlier acts or omissions had contributed to the ongoing risk of harm, it was obliged to mitigate that cumulative risk through effective measures of prevention. Moreover, any inaction or deficient action of the State itself, as an enabler of private action, is also governed by the duty of due diligence.³⁶⁸
241. In 1875, three years after the arbitral award, the Institut de Droit International (IDI) affirmed that a neutral State was “*bound to exercise vigilance to prevent other persons from placing war vessels at the disposal of any of the belligerent States*” and “*to prosecute the individuals who violate the duties of neutrality*”.³⁶⁹ The “*mere fact*” of such activities in a State’s territory would not be enough to engage its international responsibility; a “*manifest negligence*” had to be shown.³⁷⁰ The IDI’s

³⁶⁵ *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 ([link](#)).

³⁶⁶ *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 ([link](#)).

³⁶⁷ *Alabama Claims of the United States of America against Great Britain*, Award rendered on 14 September 1872 by the tribunal of arbitration established by Article I of the Treaty of Washington of 8 May 1871, XXIX Reports of International Arbitral Awards p.125 ([link](#)).

³⁶⁸ See Jorge E. Viñuales, ‘Due Diligence in International Environmental Law: A Fine-grained Cartography’, in Heike Krieger, Anne Peters, Leonhard Kreuzer (eds.), *Due Diligence in the International Legal Order* (Oxford University Press, 2020) (**Exhibit ZZA**), p. 122, see also p. 113.

³⁶⁹ ‘International Duties of Neutral States—Rules of Washington’ in James Brown Scott (ed), *Resolutions of the Institute of International Law Dealing with the Law of Nations: With an Historical Introduction and Explanatory Notes* (Oxford University Press 1916) ([link](#)). See also the original version in French: ‘Devoirs internationaux des Etats neutres. Règles de Washington. Session de La Haye.’ (1877) 1 Annuaire de l’Institut de Droit International 139 ([link](#)).

³⁷⁰ ‘International Duties of Neutral States—Rules of Washington’ in James Brown Scott (ed), *Resolutions of the Institute of International Law Dealing with the Law of Nations: With an Historical Introduction and Explanatory Notes* (Oxford University Press 1916) ([link](#)). See also the original version in French: ‘Devoirs internationaux des Etats neutres. Règles de Washington. Session de La Haye.’ (1877) 1 Annuaire de l’Institut de Droit International 139 ([link](#)).

resolution was reflected in the 1907 Hague Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War, obliging a neutral State “to employ the means at its disposal” to prevent the fitting out or arming of vessels that it had “reason to believe” would be used in hostile operations against a State “with which [it] is at peace”.³⁷¹

242. Here, it is worth recalling how this Court’s formulation of the duty of due diligence in the *Corfu Channel* case was expressly based not on the 1907 Hague Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines,³⁷² which was only “applicable in time of war”, but rather on “certain general and well-recognized principles”, including “elementary considerations of humanity, **even more exacting in peace than in war**” (emphasis added).³⁷³ In essence, due diligence is a fundamental corollary of a State’s exclusive control over territory, requiring the State to exercise its jurisdiction in a manner “corresponding to circumstances” and thus “protect within the territory 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”.³⁷⁴
243. Some participants in this advisory proceeding might submit that there were no rules of international law regulating GHG emissions during the Industrial Revolution. Not so. The relevance of this line of authority since the *Alabama Claims* is to affirm the duty of due diligence as a primary rule of international law that traverses the entire span of the Relevant Conduct. It might also be submitted by some participants this early practice on due diligence was confined to the duties of neutral States or the protection of aliens, rather the prevention of environmental harm. Yet, these were merely the most salient expressions, at that stage in the development of international relations, of the fundamental duty of due diligence as a corollary of control over territory. At this juncture, it is worth noting that the 1941 award in the *Trail Smelter Arbitration* expressly relied on “[i]nternational decisions, in various matters, **from the Alabama case onward, and also earlier ones,**” for the more general rule that a “State owes at all times a duty to protect other States against injurious acts by individuals from within its jurisdiction” (emphasis added).³⁷⁵ In any event, the risk of environmental harm, whether referred to as such or by other names, was hardly unknown to international law of the nineteenth and early

³⁷¹ Hague Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War (adopted 18 October 1907, entered into force 26 January 1910), art. 8, see art. 25 ([link](#)).

³⁷² Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines (adopted 18 October 1907, entered into force 26 January 1910), art. 4 ([link](#)).

³⁷³ *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 22.

³⁷⁴ *Island of Palmas case (Netherlands v. United States of America)*, PCA, Award of the Tribunal (April 1928) II Reports of International Arbitral Awards p. 829, p. 839 ([link](#)).

³⁷⁵ *Trail Smelter Arbitration*, RIAA, vol. III, pp. 1905–82, p. 1963 ([link](#)).

twentieth centuries, reflected in landmark arbitrations on the protection and preservation of fisheries.³⁷⁶

244. Some participants may nevertheless argue that the general duty of due diligence has been subsumed or displaced by the *lex specialis* of the principle of prevention in respect of environmental harm. However, the Republic of Vanuatu submits that two main points of distinction are well established, one concerning the material scope of the obligations and the other their respective thresholds of harm.
245. First, the duty of due diligence has wider material scope than the prevention principle, insofar as it regulates the risk of harms in general and not only environmental harm.³⁷⁷ This is an important difference for the purpose of the present proceedings. The General Assembly has asked this Court to advise on legal consequences of the Relevant Conduct with respect to States, peoples, and individuals who are injured or otherwise affected by climate change, without any limit as to the types of harms that may be causally linked to climate change. Hence, Question (b) asks the Court to provide guidance on the obligations of States and their legal consequences in respect of harms that are not narrowly “environmental” in character but extend also to the full gamut of material and moral injuries that are known to international law, albeit mediated by significant harm to the climate system and other parts of the environment.
246. Second, the duty of due diligence does not contain the same threshold requirement of “*significant*” harm as does the prevention principle, such that a State is always required to exercise due diligence in conducting its activities and regulating those under its jurisdiction and control.³⁷⁸ That means, effectively, that States must constantly be duly diligent, even in the absence of full scientific certainty regarding the implications of their conduct, whether acts or omissions. The Seabed Chamber of the International Tribunal for the Law of the Sea confirmed the latter conclusion affirming “*the obligation to apply the precautionary approach*” irrespective of the Nodules Regulations and Sulphides Regulations at stake in that case, relying entirely and exclusively on the due diligence required by general international law:

“Having established that under the Nodules Regulations and the Sulphides Regulations, both sponsoring States and the Authority are under an obligation to apply the precautionary approach in respect of activities in the Area, it is appropriate to point out that **the precautionary approach is also an integral part of the general obligation of due diligence of sponsoring States, which is applicable**

³⁷⁶ *North Atlantic Coast Fisheries Case (Great Britain/United States)*, PCA, Award (7 September 1910) 11 Reports of International Arbitral Awards p. 167 ([link](#)).

³⁷⁷ See Jorge E. Viñuales, ‘Due Diligence in International Environmental Law: A Fine-grained Cartography’, in Heike Krieger, Anne Peters, Leonhard Kreuzer (eds.), *Due Diligence in the International Legal Order* (Oxford University Press, 2020) (**Exhibit ZZA**), p. 116.

³⁷⁸ See Jorge E. Viñuales, ‘Due Diligence in International Environmental Law: A Fine-grained Cartography’, in Heike Krieger, Anne Peters, Leonhard Kreuzer (eds.), *Due Diligence in the International Legal Order* (Oxford University Press, 2020) (**Exhibit ZZA**), p. 116.

even outside the scope of the Regulations. The due diligence obligation of the sponsoring States requires them to take all appropriate measures to prevent damage that might result from the activities of contractors that they sponsor. This 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. A sponsoring State would not meet its obligation of due diligence if it disregarded those risks. Such disregard would amount to a failure to comply with the precautionary approach” (emphasis added)³⁷⁹

247. The difference in harm thresholds is important in view of the development of scientific knowledge and governmental awareness of climate change alongside the historical and ongoing cumulation of GHG emissions. As early as 1832, the renowned British engineer Charles Babbage wrote that “*chemical changes*” caused by “*the combustion of fuel*” were “*constantly increasing the atmosphere by large quantities of carbonic acid [CO₂] and other gases noxious to animal life*”, cautioning that “*the means by which nature decomposes or reconverts these elements into a solid form, are not sufficiently known*”.³⁸⁰ At this early state of scientific knowledge about pollution, with only nascent evidence concerning the scope and potential negative impact of the Relevant Conduct, the standard of due diligence would reflect what, at the time, were plausible indications of potential risks. In contrast, as explained by the Expert Opinion of Professor Naomi Oreskes,³⁸¹ by the 1960s the causal link between anthropogenic GHG emissions and observed climate change was well established in both scientific and policy circles, as were the potentially catastrophic effects if such interference with the climate system remained unmitigated. This consolidated scientific consensus leads to a higher standard of due diligence. Specifically, it meant that any State with jurisdiction or control over GHG emissions incurred an obligation to exercise a much higher degree of diligence not to allow its territory to be used for acts or omissions presenting such potentially catastrophic implications for the rights of other States, peoples, and individuals.
248. Whilst the duty of due diligence contains no threshold of significant harm, the Relevant Conduct before this Court contemplates acts or omissions that have caused significant harm to the climate system or other parts of environment. This Court may offer an important clarification of the obligations of States by affirming that a State which has displayed the Relevant Conduct is, in principle, in breach of its duty to exercise due diligence in the prevention of significant harm to the climate system

³⁷⁹ *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 ([link](#)), 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 ([link](#)).

³⁸⁰ Charles Babbage, *On the Economy of Machines and Manufactures* (first published 1832, Cambridge University Press, 2009), p. 17 ([link](#)).

³⁸¹ Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 4.

and other parts of the environment, give the massively adverse implications for other States, peoples, or individuals. The relevant harms to Vanuatu, its peoples and its individuals, are set out in detail in Chapter II.

B. Obligations arising from the rights recognized in the Universal Declaration of Human Rights

249. The Universal Declaration of Human Rights (UDHR) provides a solid basis for identifying the human rights obligations governing the Relevant Conduct. This is because the UDHR guarantees several rights impacted by climate change,³⁸² such as the rights to life, liberty, and security;³⁸³ privacy, home and family life;³⁸⁴ freedom of movement and residence within the borders of each State;³⁸⁵ not be arbitrarily deprived of one's property;³⁸⁶ a standard of living adequate for the health and well-being of oneself and one's family, including food, clothing, housing and medical care and necessary social services;³⁸⁷ and cultural life.³⁸⁸ Importantly, the UDHR expressly extends these rights to "[a]ll human beings"³⁸⁹ without imposing any territorial or temporal restriction on States' obligations to respect, protect and fulfil them. Their incorporation in a wide range of treaties provides an additional and independent basis on which such obligations rest, but without supplanting or hindering the application of these obligations as part of general international law.³⁹⁰
250. The rights recognised within the UDHR have attained customary international law status. Vanuatu points at the following lines of evidence of consistent State practice and *opinio juris*,³⁹¹ to be considered in concert:

³⁸² See e.g. Dr Ian Fry, Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, *Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation*, A/77/226 (26 July 2022) para. 88 ([link](#)) ("Throughout the world, the rights of people are being denied as a consequence of climate change"); 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, *Statement on human rights and climate change*, HRI/2019/1 (14 May 2020), para. 3 ([link](#)).

³⁸³ Resolution 217 A(III): Universal Declaration of Human Rights, 10 December 1948, art. 3 ([link](#)); see also See Human Rights Committee, *General Comment No. 36 on Article 6: right to life*, CCPR/C/GC/36 (3 September 2019) para. 62 ([link](#)).

³⁸⁴ Resolution 217 A(III): Universal Declaration of Human Rights, 10 December 1948, art. 12 ([link](#)).

³⁸⁵ Resolution 217 A(III): Universal Declaration of Human Rights, 10 December 1948, art. 13 ([link](#)).

³⁸⁶ Resolution 217 A(III): Universal Declaration of Human Rights, 10 December 1948, art.17 ([link](#)).

³⁸⁷ Resolution 217 A(III): Universal Declaration of Human Rights, 10 December 1948, art. 25 ([link](#)).

³⁸⁸ Resolution 217 A(III): Universal Declaration of Human Rights, 10 December 1948, art. 27 ([link](#)).

³⁸⁹ Resolution 217 A(III): Universal Declaration of Human Rights, 10 December 1948, art. 1 ([link](#)).

³⁹⁰ Vanuatu recalls that international law rules derived from different sources can apply separately and in parallel, even where the relevant rules have the same content and even among parties to a treaty: see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, paras. 178-179; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 3, para. 88.

³⁹¹ *North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark and Federal Republic of Germany v. Netherlands)*, I.C.J. Reports 1969, p. 3, paras. 74, 77; *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99, para. 55. Although State practice

- (a) The rights recognized in the UDHR emanate from the national constitutions and other domestic legislation of the fifty-five member States of the UN at the time,³⁹² and thus can be seen as codifying prior State practice;
- (b) These rights underpin numerous widely ratified international and regional human rights treaties, including the near-universally ratified Convention on the Rights of the Child;³⁹³
- (c) Most States have incorporated some or all of the relevant rights into their domestic legal systems,³⁹⁴ with domestic courts regularly referring to the UDHR as a source of legal obligations;³⁹⁵
- (d) UN practice consistently and routinely refers to UDHR rights as applicable to all States, including in UN General Assembly resolutions³⁹⁶

needs to be virtually or substantially uniform, it need not be “perfect” and some degree of inconsistency will not be fatal to a norm crystallizing as customary international law: see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, I.C.J. Reports 1986, p. 14, para. 186.

³⁹² See William A Schabas, *The Customary International Law of Human Rights* (OUP, 2021), p. 15 (**Exhibit ZY**); Michael O’Boyle and Michelle Lafferty, ‘General Principles and Constitutions as Sources of Human Rights Law’, in Dinah Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press, 2013) (**Exhibit ZN**), p. 199, see also fn. 20 (which identifies that the fifty-five member states were: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, the Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, the Philippine Republic, Poland, Saudi Arabia, Siam, Sweden, Syria, Turkey, the Ukrainian Soviet Socialist Republic, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom, the United States, Uruguay, Venezuela, Yugoslavia).

³⁹³ All UN Member States have ratified at least one core human rights treaty and 80 per cent have ratified four or more: see United Nations, ‘Universal Declaration of Human Rights: The Foundation of International Human Rights Law’ (website) ([link](#)).

³⁹⁴ See Michael O’Boyle and Michelle Lafferty, ‘General Principles and Constitutions as Sources of Human Rights Law’, in Dinah Shelton, ed., *The Oxford Handbook of International Human Rights Law* (Oxford University Press, 2013) (**Exhibit ZN**), pp. 203-204. For a comprehensive list of constitutional provisions referring to the status of international law, including references to the UDHR, as at the year 1996, see Annex 1 in Hurst Hannum, ‘The Status of the Universal Declaration of Human Rights in National and International Law’ (1995/96) 25 *Georgia Journal of International and Comparative Law* 287, pp. 355-376 ([link](#)).

³⁹⁵ For a comprehensive list of national cases citing the UDHR as at the year 1996, see Annex 2 in Hurst Hannum, ‘The Status of the Universal Declaration of Human Rights in National and International Law’ (1995/96) 25 *Georgia Journal of International and Comparative Law* 287, pp. 377-391 ([link](#)). For more recent examples of domestic cases referring to the UDHR, see e.g., *European Roma Rights v. Immigration Officer at Prague Airport* (2004) 131 ILR 652 (UK), 684–5 ([link](#)); *Re Minister for Immigration, ex p Ame* (2005) 222 CLR 439; [2005] HCA 36 (Australia), paras. 87, 123, 125 ([link](#)); *Juri-Nepal v. Government of Nepal*, Supreme Court of Nepal, 158 ILR 476 2014 (Nepal), 516–7, 523–4 ([link](#)).

³⁹⁶ See the extensive examples referred to and discussed in Myres S. McDougal, Harold D. Lasswell, Lung-chu Chen, *Human Rights and World Public Order* (Oxford University Press, 2nd ed, 2019) pp. 328-330 (**Exhibit ZP**) (referring also to ‘United Nations Action in the Field of Human Rights’ (1974) UN Doc ST/HR/2, 129-151) ([link](#)). See, further, Bruno Simma and Philip Alston, ‘The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles’ (1992) 12 *Australian Yearbook of International Law* 82, 98 ([link](#)).

and in the Universal Periodic Review procedure of the UN Human Rights Council,³⁹⁷ and

- (e) Legal scholarship³⁹⁸ and international and regional courts and tribunals, including this Court,³⁹⁹ overwhelmingly recognize the customary international law status of UDHR rights.

251. The inclusion of the UDHR's principles in legal systems around the world corroborates their status as "*general principles of law*".⁴⁰⁰ This Court has itself recognized the "*fundamental principles enunciated in the [UDHR]*" as a source of

³⁹⁷ Inclusion of the UDHR as a basis for review in the Universal Periodic Review procedure was supported by Algeria (on behalf of the African Group of states), Argentina, Australia, Azerbaijan, Bangladesh, Belgium, Bhutan, Brazil, Canada, Chile, China, Costa Rica, Cuba, Ecuador, Egypt, Finland (on behalf of the EU), Indonesia, Iran, Italy, Japan, Malaysia, Mexico, Pakistan (on behalf of the OIC), Panama, Peru, Philippines, Romania, Singapore, Sri Lanka, Switzerland, Thailand, Tunisia, the US, Uruguay, Venezuela, and Zambia: see Sangeeta Shah and Sandesh Sivakumaran, "The Use of International Human Rights Law in the Universal Periodic Review" (2021) 21 *Human Rights Law Review* 264, 268, fn. 23 (**Exhibit ZV**).

³⁹⁸ William A Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021), p. 18, pp. 15-21 (**Exhibit ZY**); Olivier de Schutter, *International Human Rights Law, Cases, Materials, Commentary* (Cambridge University Press, 3rd ed, 2019), p. 60 (**Exhibit ZZD**); Ilias Bantekas and Lutz Oette, *International Human Rights, Law and Practice* (Cambridge University Press, 3rd ed, 2020) ([link](#)) p. 63 (explaining how the UDHR's customary international law status can be derived from various types of evidence); Myres S. McDougal, Harold D. Lasswell, Lung-chu Chen, *Human Rights and World Public Order* (Oxford University Press, 2nd ed, 2019), p. xcvi (**Exhibit ZO**) ("*The authoritative effect of the Universal Declaration is recognized in a number of ways: as the authoritative identification and clarification of human rights guaranteed under the UN Charter, as part of customary international law, as a vital component of jus cogens, and as an indispensable component of the developing global bill of human rights*"), see pp. lxi, 180, 325-326. See also the references cited in Hurst Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law" (1995/ 96) 25 *Georgia Journal of International and Comparative Law* 287, pp. 331-332, 340 ("*there would seem to be little argument that many provisions of the [UDHR] today do reflect customary international law.*") ([link](#)); See further, John P. Humphrey, "The Universal Declaration of Human Rights: Its History, Impact and Juridical Character", in *Human Rights: Thirty Years after the Universal Declaration* (B.G. Ramcharan ed., 3d ed., 1979) (**Exhibit ZZE**), pp. 21, 29-30 ("*The thesis [...] is that, in addition to their admitted moral and political authority, the justiciable provisions of the Declaration, including certainly, those enunciated in articles two to twenty-one inclusive, have now acquired the force of law as part of the customary law of nations.*"); Frederic L Kirgis, "Custom on a Sliding Scale" (1987) 81 *American Journal of International Law* 146, 147-148 ([link](#)) ("*The [UDHR] has come to be regarded as an authoritative articulation of customary international law, at least with respect to the most fundamental rights, no matter how widespread or persistent the non-conforming state conduct may be*"). Reynoldo Galindo Pohl, *Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission* (28 January 1987) U.N. Doc. E/CN.4/1987/23, para. 22 ([link](#)) ("*The rights and freedoms set out in the Universal Declaration have become international customary law through State practice and opinio juris*" on both the "*strictest approach*" and "*more liberal standards of contemporary doctrines on the constitutive elements of*" customary international law.) See, generally, Louis B. Sohn, "The Human Rights Law of the Charter" (1977) 12 *Texas International Law Journal* 129, (**Exhibit ZJ**), p. 133 and fn. 18.

³⁹⁹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Separate Opinion of Judge Robinson*, I.C.J. Reports 2019, para. 35 ("*Certainly the [UDHR] reflects customary international law*"). In the regional context, see e.g., *In the matter of Anudo Ochieng Anudo v. United Republic of Tanzania* (African Court of Human and Peoples' Rights, *Judgment*, 22 March 2018), para. 76 (recognizing the UDHR as "*forming part of Customary International Laws*") ([link](#)).

⁴⁰⁰ Article 38(1)(c) of the ICJ Statute. See, Olivier de Schutter, *International Human Rights Law, Cases, Materials, Commentary* (Cambridge University Press, 3rd ed, 2019), pp. 63-64 (**Exhibit ZZD**); Bruno Simma and Philip Alston, "The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles" (1992) 12 *Australian Yearbook of International Law* 82, 105-106 ([link](#)); Nigel S. Rodley, "Human Rights and Humanitarian Intervention: The Case Law of the World Court" (1989) 38 *International and Comparative Law Quarterly* 321, 326, 333 (**Exhibit ZQ**).

legal obligations,⁴⁰¹ consistent with the understanding that substantive obligations can be derived from general principles.⁴⁰² Moreover, the Court has confirmed that the obligations arising from basic human rights have an *erga omnes* character.⁴⁰³

252. As explained in the **Expert Report of Professor Martin Scheinin on International Human Rights Law Obligations of States in Respect of Climate Change**, appended to this Written Statement, a consequence of the UDHR rights' manifestation in multiple sources of international law is that:

“irrespective of the treaty ratification patterns of States or the period of time under assessment – at least since 1945-1948 – the *substantive* human rights obligations of different States to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases are by and large the same”.⁴⁰⁴

253. The human rights obligations applicable to the Relevant Conduct require both refraining from infringing upon such rights and actively protecting and fulfilling

⁴⁰¹ *United States Diplomatic and Consular Staff in Tehran, Judgment*, I. C. J. Reports 1980, para. 91. See also references to the “principles” embodied in the UDHR by individual members of this Court, e.g., *Nottebohm (Liechtenstein v. Guatemala), Second Phase, Dissenting Opinion of Judge Guggenheim ad-hoc*, I.C.J. Reports 1955, p. 63 (refusal to recognize Liechtenstein's ability to exercise diplomatic protection “*would be contrary to the basic principle embodied in art. 15(1) of the [UDHR] ... , according to which everyone has the right to a nationality*”); *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Separate Opinion of Judge Bustamante* [translation]: I.C.J. Reports, 1962, p. 379 (“[I]t must be recalled that the right of defence before the law is expressly mentioned in the [UDHR]”); *Aegean Sea Continental Shelf, (Greece v. Turkey)*, Dissenting opinion of Judge Stassinopoulos, I.C.J. Reports 1978, 83-84 (“*the original source of general principles is to be found in the idea of freedom and democracy and, beyond that, in the [UDHR]*”); *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal, Dissenting Opinion of Judge Evensen*, I.C.J. Reports 1987, p. 173 (citing arts. 13 and 15 of the UDHR, which are “*basic principles of law spelt out in the [UDHR]*”); *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Separate Opinion of Judge Evenson*, I.C.J. Reports 1989, p. 211 (art. 16 of the [UDHR] “*is a concrete expression of an established principle of human rights in the modern law of nations [...]*”).

⁴⁰² *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 15 (recognising that the underlying principles of the *Genocide Convention*, can be binding on States “*even without any conventional obligation*”); *Case Concerning East Timor (Portugal v. Australia)*, p. 90, para. 29 (referring to the “*principle*” of self-determination as “*one of the essential principles of contemporary international law*”); *Barcelona Traction, Light and Power Company, Limited, Judgment*, I.C.J. Reports 1970, p. 3, para. 34 (deriving obligations *erga omnes* “*from the principles and rules concerning the basic rights of the human person*”); *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Judgment of 9 April 1949, I.C.J. Reports 1949, p. 22 (referring to “*obligations ... based ... on certain general and well-recognized principles*”, among them “*elementary considerations of humanity*”); *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment*, I.C.J. Reports 1986, p. 14 (evaluating the legality of State conduct on the basis of “*fundamental general principles of humanitarian law*”).

⁴⁰³ *Barcelona Traction, Light and Power Company, Limited, Judgment*, I.C.J. Reports 1970, p. 3, para. 34 (deriving obligations *erga omnes* “*from the principles and rules concerning the basic rights of the human person*”); *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment*, I.C.J. Reports 2012, p. 422, paras. 64-70.

⁴⁰⁴ Expert Report of Professor Martin Scheinin on International Human Rights Law Obligations of States in Respect of Climate Change (dated 31 December 2023) (**Exhibit C**), para. 9.

them.⁴⁰⁵ These obligations extend to all facets of governance and policy-making and include an obligation to provide remedies to victims of violations.⁴⁰⁶ As discussed in more detail below, human rights treaty bodies have confirmed the extraterritorial operation of these obligations.⁴⁰⁷

254. The Relevant Conduct is in breach of the obligations arising from the human rights recognized by the UDHR. A landmark Statement on “Human Rights and Climate Change” adopted by five human rights treaty bodies explains what is specifically required to comply with human rights obligations in the context of GHG emissions:

“in order for States to comply with their human rights obligations and to realize the objectives of the Paris Agreement, they **must adopt and implement policies aimed at reducing emissions. These policies must reflect the highest possible ambition, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development** [...]

In their efforts to reduce emissions, **States parties should contribute effectively to phasing out fossils fuels, promoting renewable energy and addressing emissions from the land sector, including by combating deforestation.** In addition, **States must regulate private actors, including by holding them accountable for harm they generate both domestically and extraterritorially. States should also discontinue financial incentives or investments in activities and infrastructure that are not consistent with low greenhouse gas emissions pathways,** whether undertaken by public or private actors, as a mitigation measure to prevent further damage and risk.” (emphasis added)⁴⁰⁸

⁴⁰⁵ See e.g. Human Rights Committee, *General Comment No. 36 on Article 6: right to life*, CCPR/C/GC/36 (3 September 2019) para. 62 ([link](#)); Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26 (22 August 2023) paras. 68-69 ([link](#)). See, further, *Joint statement by treaty bodies on human rights and climate change*, para. 10.

⁴⁰⁶ See e.g., Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, UN Doc CRC/C/GC/26 (22 August 2023) paras. 69, 106 ([link](#)).

⁴⁰⁷ 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, *Statement on human rights and climate change*, HRI/2019/1 (14 May 2020) para. 10 ([link](#)). See further, in the context of extraterritorial obligations in respect of economic, social and cultural rights: Committee on Economic, Social and Cultural Rights, *General comment No. 26 on land and economic, social and cultural rights*, E/C.12/GC/26 (24 January 2023), paras. 40-47 ([link](#)). Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, para. 10.7 ([link](#)).

⁴⁰⁸ 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, *Statement on human rights and climate change*, HRI/2019/1 (14 May 2020) paras. 11 and 12, footnotes omitted (emphasis added) ([link](#)). The footnotes in these paras. refer to additional statements and

255. The contrast between what is required and the conduct of many major GHG emitters and producers of fossil fuels is stark. The UNEP Production Gap Report (2023) finds that:

“While 17 of the 20 countries profiled have pledged to achieve net-zero emissions, and many have launched initiatives to reduce emissions from fossil fuel production activities, **most continue to promote, subsidize, support, and plan on the expansion of fossil fuel production. None have committed to reduce coal, oil, and gas production in line with limiting warming to 1.5°C.**” (emphasis added)⁴⁰⁹

This report further notes that “*In total, government plans and projections would lead to an increase in global production until 2030 for coal, and until at least 2050 for oil and gas, creating increasingly large production gaps over time.*”⁴¹⁰ Such plans are not only inconsistent with the pathways agreed in Article 2 of the Paris Agreement, it is also in direct contradiction with what these States have committed to do in their nationally determined contributions (NDCs) under the Paris Agreement. As noted by the UNEP Report:

“the increases estimated under the government plans and projections pathways would lead to global production levels in 2030 that are 460%, 29%, and 82% higher for coal, oil, and gas, respectively, than the median 1.5°C-consistent pathways ... **The disconnect between governments’ fossil fuel production plans and their climate pledges is also apparent across all three fuels.**”⁴¹¹

256. More fundamentally, increasing production of fossil fuels despite its dire consequences on human rights is an outright violation of the obligations arising from human rights. In a Joint Statement issued by five UN Special Rapporteurs and one Independent Expert, it is clearly stated that:

“While coal, oil and gas literally fuel the climate emergency, which is already preventing the full enjoyment of a range of human rights with disproportionate impacts on certain groups and communities, they also directly contribute to biodiversity loss, toxic pollution and water scarcity.

In fact, fossil fuels are at the heart of the planetary ecological crisis and their tremendous negative impacts on human rights are felt throughout

practice of these committees of further relevance for the link between contribution to climate change and human rights obligations.

⁴⁰⁹ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), p. 5 ([link](#)). The 20 countries studied are (in alphabetical order): Australia, Brazil, Canada, China, Colombia, Germany, India, Indonesia, Kazakhstan, Kuwait, Mexico, Nigeria, Qatar, Russian Federation, Saudi Arabia, South Africa, United Arab Emirates, United Kingdom and the United States.

⁴¹⁰ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), p. 4 ([link](#)).

⁴¹¹ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)).

their life cycle, from exploration and extraction to combustion and contamination.

Fossil fuels exploitation affects the rights to life, health, food, water and sanitation, education, an adequate standard of living, cultural rights, and a clean, healthy and sustainable environment with marginalised and vulnerable communities bearing the brunt of the consequences.

To address the planetary crisis and tackle the wide range of fossil fuels negative human rights impacts, States must urgently decarbonise and detoxify” (emphasis added)⁴¹²

257. The loss and damage already caused by States having displayed the Relevant Conduct, as acknowledged in Article 8 of the Paris Agreement and in the IPCC Reports (see [Chapters II and III]) amounts, from the perspective of human rights, to mass human rights violations of both present and future generations.⁴¹³ As noted by the OHCHR in its *Key Messages on Human Rights and Loss and Damage*:

“Human rights law requires urgent action to prevent climate change related violations of human rights and establish guarantees of non-repetition. It further requires that harms caused by climate change are remedied [...] Under human rights law, the actors responsible for climate change related harms (primarily States and businesses) should be accountable for remedying them”⁴¹⁴

258. The UN Human Rights Committee’s views in *Daniel Billy et al. v. Australia* further illustrate how a State’s failure to protect internationally protected human rights against the adverse effects of climate change can trigger State responsibility and enliven the obligation to provide an effective remedy, including “full reparation”, to the victims.⁴¹⁵

259. A more detailed analysis of the content of States’ obligations in connection with specific rights is provided later in this Chapter ([Section 4.4.4.B]), underscoring the

⁴¹² Statement by Mr. David Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Mr. Pedro Arrojo Agudo, Special Rapporteur on the human rights to safe drinking water and sanitation; Mr. Marcos A. Orellana, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Mr. Livingstone Sewanyana, Independent Expert on the promotion of a democratic and equitable international order; Mr. Surya Deva, Special Rapporteur on the right to development; and Mr. Olivier De Schutter, Special Rapporteur on extreme poverty and human rights, 30 November 2023 ([link](#)).

⁴¹³ In relation to the obligations owed by States to future generations, see Section 4.4.5.

⁴¹⁴ Office of the High Commissioner for Human Rights, *Key Messages on Human Rights and Loss and Damage*, November 2023, Key message 1 ([link](#)).

⁴¹⁵ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 11 ([link](#)). In the same paragraph, the Committee goes on to say: “Accordingly, the State party is obligated, *inter alia*, to provide adequate compensation to the authors for the harm that they have suffered; engage in meaningful consultations with the authors’ communities in order to conduct needs assessments; continue its implementation of measures necessary to secure the communities’ continued safe existence on their respective islands; and monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable”. Further, the State party must “take steps to prevent similar violations” in future.

interconnectedness between human rights protection and the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases.

260. For immediate purposes, the Republic of Vanuatu embraces the following conclusions in the **Expert Report of Professor Martin Scheinin**:

“On the basis of the assessment that the substantive human rights obligations by States are by and large the same and cover, — through States’ voluntary ratification of human rights treaties or on account of customary norms of international law — the whole catalogue of human rights enshrined in the 1948 Universal Declaration of Human Rights, it is very likely that many States have violated or are currently in breach of their legal obligations under international human rights law on account of their contribution to GHG emissions or failure to respond to climate change.

...

Consequently, the scope of 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, as addressed in question (a) posed by the General Assembly, includes the full catalogue of human rights and both negative and positive State obligations.”⁴¹⁶

C. The principle of prevention of significant harm to the environment

261. The principle of prevention of significant environmental harm is well established in general international law. Initially recognized in the 1941 arbitral award in the *Trail Smelter* arbitration in a transboundary context,⁴¹⁷ the Court formulated a few years later the general rule in the *Corfu Channel* case as “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States”⁴¹⁸. This understanding has been restated by the Court as recently as December 2022, in the *Silala* case, where the Court referred to this same rule and its recognition in the case law of the Court:

“The Court observes that the Parties agree that they are bound by the **customary obligation to prevent transboundary harm**. Furthermore, the Parties now agree that this obligation applies to the *Silala* waters irrespective of whether they flow naturally or are “artificially

⁴¹⁶ Expert Report of Professor Martin Scheinin on International Human Rights Law Obligations of States in Respect of Climate Change (dated 31 December 2023) (**Exhibit C**), paras. 36-37.

⁴¹⁷ *Trail Smelter Arbitration*, RIAA, vol. III, pp. 1905–82, at p. 1965 (“*The Tribunal, therefore, finds that the above decisions, taken as a whole, constitute an adequate basis for its conclusions, namely, that, under the principles of international law, as well as of the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.*”). The Court has expressly relied on this decision in its case law. See *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, para. 35 ([link](#)).

⁴¹⁸ *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 22.

enhanced”. The Parties also agree that **the obligation to prevent transboundary harm** is an obligation of conduct and not an obligation of result, and that it may require the notification of, and exchange of information with, other riparian States and the conduct of an environmental impact assessment (...) **The Court recalls that in general international law** it is “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States” (Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949, p. 22). “**A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State**” in a transboundary context, and in particular as regards a shared resource (Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I), p. 55-56, para. 101, citing Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 242, para. 29; Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. Reports 2015 (II), p. 706, para. 104)” (emphasis added)⁴¹⁹

262. The current understanding of the principle is found in Principle 21 of the Declaration of the Stockholm Conference on the Human Environment⁴²⁰ and Principle 2 of the Rio Declaration on Environment and Development,⁴²¹ both referred to in preambular paragraph 5 of Resolution 77/276:

“Principle 21: States have [...] 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.”⁴²²

“Principle 2: States have [...] the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”⁴²³

⁴¹⁹ *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.

⁴²⁰ *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972*, A/CONF.48/14/Rev.1, part one, chap. I ([link](#)).

⁴²¹ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I ([link](#)).

⁴²² *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972*, A/CONF.48/14/Rev.1, part one, chap. I ([link](#)).

⁴²³ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I ([link](#)).

263. It is in this formulation that the Court recognized, in paragraphs 27 to 29 of its Advisory Opinion on the *Legality of Nuclear Weapons* that the prevention principle is a rule of general international law:

“In both their written and oral statements, some States furthermore argued that any use of nuclear weapons would be unlawful by reference to existing norms relating to the safeguarding and protection of the environment, in view of their essential importance. Specific references were made to various existing international treaties and instruments (...) Also cited were **Principle 21 of the Stockholm Declaration of 1972 and Principle 2 of the Rio Declaration of 1992** which express the common conviction of the States concerned that they have a duty ‘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’ (...) Other States questioned the binding legal quality of these precepts of environmental law (...) The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognizes 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. **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.**” (emphasis added)⁴²⁴

The Court has confirmed several times that the principle of prevention is part of customary international law.⁴²⁵

264. Of note, such recognition refers not only to the obligation of prevention in relation to the environment of other States but also of “*areas beyond national control*”. This is the scope which is generally recognized also in other international decisions.⁴²⁶

⁴²⁴ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 27-29.

⁴²⁵ *Gabcikovo-Nagymaros Project (Hungary/Slovakia), Judgment*, I. C. J. Reports 1997, p. 7, para. 140; *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment*, I.C.J. Reports 2010, p. 14, para. 101; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment*, I.C.J. Reports 2015 (II), p. 706, para. 104; *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.

⁴²⁶ *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion of 2 April 2015, ITLOS Case No 21, paras. 111, 120 ([link](#)); *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean* ITLOS Case No. 23, Order of 25 April 2015 (Provisional Measures), para. 68-73 ([link](#)); *In the matter of the South China Sea Arbitration before and Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea*, PCA Case No. 2013-19, Award (12 July 2016), para. 927 ([link](#)); *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)*, PCA Case No. 2017-06, Award concerning the preliminary objections of the Russian Federation (21 February 2020), para. 295 ([link](#)); *Advisory Opinion OC-23/17* ('The Environment and Human Rights'), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 131 ([link](#)).

It is further an obligation owed *erga omnes*.⁴²⁷ Referring to the recognition of the principle by the Court in the *Pulp Mills* case, the ITLOS Seabed Chamber has observed that:

“The Court’s reasoning in a transboundary context may also apply to activities with an impact on the environment in an area beyond the limits of national jurisdiction; and the Court’s references to “shared resources’ may also apply to resources that are the common heritage of mankind.”⁴²⁸

In any event, from the perspective of the climate system, which is ubiquitous, and also given the reference in the operative part to “*other parts of the environment*”, both the transboundary and the global dimensions are directly concerned by the Relevant Conduct.

265. Importantly, the principle of prevention specifically governs the Relevant Conduct. Preambular paragraph 5 of Resolution 77/276 expressly:

“[e]mphasize[s] the importance [...] 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**” (emphasis added)

266. As already explained, the “*climate system*” is part of the “*environment*” both “*of other States*” and “*of areas beyond the limits of national jurisdiction*”. Indeed, the climate system is defined (scientifically in the IPCC Glossary and, consistently, in Article 1(3) of the UNFCCC) as:

“The **global** system consisting of five major components: the *atmosphere*, the *hydrosphere*, the *cryosphere*, the *lithosphere* and the

⁴²⁷ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 48, commentary, paras. 7 and 10 ([link](#)); Institut de Droit International, Resolution: Obligations and rights *erga omnes* in International Law, Rapporteur Mr Giorgio Gaja, Krakow Session (27 August 2005), preamble (“*Considering that a wide consensus exists to the effect that the prohibition of acts of aggression, the prohibition of genocide, obligations concerning the protection of basic human rights, obligations relating to self-determination and obligations relating to the environment of common spaces are examples of obligations reflecting those fundamental values*”); *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, finalized by Mr. Martti Koskenniemi, 13 April 2006, UN Doc A/CN.4/L.682 and Add.1, para. 390, footnote 552 ([link](#)); *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. 180 ([link](#)); *David R. Aven and Others v. Costa Rica*, ICSID Case No UNCT/15/3, Award (18 September 2018), para. 738 ([link](#)), quoting in relation to the protection of the environment, the concept of *erga omnes* obligations introduced in *Barcelona Traction, Light and Power Company, Limited, Judgment*, I.C.J. Reports 1970, p. 3, at para. 33.

⁴²⁸ *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. 148 ([link](#)).

biosphere and the interactions between them” (IPCC Glossary, emphasis added)⁴²⁹

“‘Climate system’ means the **totality** of the atmosphere, hydrosphere, biosphere and geosphere and their interactions” (UNFCCC, Article 1(3), emphasis added)

267. The “*activities*” which have caused the bulk of GHG emissions, mainly fossil fuels and industry and land use, land-use change and forestry (see [Chapter III, Section 3.2.2]) unfold “*within [the] jurisdiction or control*” of specific States and groups of States, which can be clearly identified (see [Chapter III, Section 3.2.3.B]).
268. The anthropogenic GHG emissions from these activities under the jurisdiction or control of specific States and groups of States have caused significant harm to the climate system and other parts of the environment. The need for the interference resulting from the activities to be “*significant*” is widely recognized as part of the customary rule. In the *Pulp Mills* case, the Court restated the prevention principle specifically referring to the requirement of “*significance*”:

“The Court points out that the principle of prevention, as a customary rule, has its origins in the due diligence that is required of a State in its territory. It is “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States” (Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949, p. 22). A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing **significant** damage to the environment of another State. This Court has established that this obligation “is now part of the corpus of international law relating to the environment” (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 242, para. 29)” (emphasis added)⁴³⁰

In the commentary to the International Law Commission’s Draft Articles on Prevention, the threshold to consider harm as “*significant*” is said to depend on each specific situation but it is understood that “‘*significant*’ is something more than ‘*detectable*’ but need not be at the level of ‘*serious*’ or ‘*substantial*.’”⁴³¹ In Vanuatu’s submission, any harm to the climate system or other part of the environment that

⁴²⁹ IPCC Glossary ([link](#)).

⁴³⁰ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 101. The Court has subsequently referred to the prevention principle, including the requirement of “significance”, in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015 (II), p. 706, paras. 104, 153; *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, 99. See *Trail Smelter Arbitration*, RIAA, vol. III, pp. 1905–82, at page 1980 (referring to damage of a “material” nature) ([link](#)). See, further, Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, 12 December 2001, GA Res. 56/82, UN Doc. A/RES/56/82, art. 2(a) ([link](#)).

⁴³¹ 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, art. 2(a), see commentary to art. 2, at para. 4 ([link](#)).

may involve a violation of internationally protected human rights will meet the requisite threshold of “significance”.⁴³²

269. Each State is required, by this principle, to use all the means at its disposal to avoid activities which take place in its territory, or in any area under its jurisdiction, that cause significant damage to the climate system and other parts of the environment. This is a due diligence obligation which requires States not only to adopt appropriate legal frameworks and formulate policy measures consistent with international standards and the current scientific understanding of the problem, but also taking proactive steps to ensure that such frameworks are effectively applied and measures are implemented.⁴³³ The level of diligence is thus a high one, with its exact level depending on factors such as the gravity of the outcome that may result from negligence,⁴³⁴ the capabilities of the State of origin of the activity,⁴³⁵ and the historical moment at which diligence is assessed.⁴³⁶ The latter is important because the expected level of diligence is higher when more is known, e.g. as a result of the work of the IPCC, about the consequences of the Relevant Conduct.⁴³⁷

⁴³² In support of this submission, the Republic of Vanuatu relies on the Inter-American Court of Human Rights in *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 140 (“*In the Court’s opinion, any harm to the environment that may involve a violation of the rights to life and to personal integrity, in accordance with the meaning and scope of those rights as previously defined ... must be considered significant harm*”) ([link](#)).

⁴³³ 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 art. 3, at para. 10 ([link](#)); *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 197; *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, paras. 115 and 239 ([link](#)); *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion of 2 April 2015, ITLOS Case No 21, paras. 131-140 ([link](#)).

⁴³⁴ *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. 117 (“[D]ue diligence” is a variable concept. It may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge. It may also change in relation to the risks involved in the activity.”) ([link](#)). see also *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion of 2 April 2015, ITLOS Case No 21, para. 132 ([link](#)). This is acknowledged in the commentary to the ILC Prevention Articles, when it is stated that “degree of care required is proportional to the degree of risk involved in the business”, 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 art. 3, para. 18 ([link](#)).

⁴³⁵ This is only partially admitted in order to preserve a minimum level of due diligence. *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, paras. 158-159 (where the Chamber only admitted the possibility that the requirement to adopt precautionary measures may be graduated according to the capabilities of States), ([link](#)). The commentary to the ILC Articles also reflects this criterion, 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 art. 3, at para. 13 (“The economic level of States is one of the factors to be taken into account in determining whether a State has complied with its obligation of due diligence. But a State’s economic level cannot be used to dispense the State from its obligation under the present articles.”) ([link](#)).

⁴³⁶ *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. 117 ([link](#)), see also *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion of 2 April 2015, ITLOS Case No 21, para. 132 ([link](#)).

⁴³⁷ See also the Expert Report of Professor Naomi Oreskes on Historical Knowledge and Awareness, in

270. Two specific statements taken from the Summary for Policymakers of the IPCC’s Synthesis Report of 2023 are particularly relevant in this context:

“Continued emissions will further affect all major climate system components. **With every additional increment** of global warming, **changes in extremes continue to become larger**” (emphasis added).⁴³⁸

“**Some future changes are unavoidable and/or irreversible** but can be limited by **deep, rapid and sustained global greenhouse gas emissions reduction**. **The likelihood of abrupt and/or irreversible changes increases with higher global warming levels**. **Similarly, the probability of low-likelihood outcomes associated with potentially very large adverse impacts increases with higher global warming levels**” (emphasis added).⁴³⁹

These two statements make clear the significant harm that the Relevant Conduct has already caused to the climate system itself. Further, they show that the only duly diligent conduct from States having displayed the Relevant Conduct is cessation, in the form of all necessary measures to achieve “*deep, rapid and sustained global greenhouse gas emissions reduction*”. In the absence of such measures, “*the likelihood of abrupt and/or irreversible changes increases*”.

271. Furthermore, the significance of the harm is borne out by the impacts on human rights which have already been experienced in the Pacific and Vanuatu specifically, as set out in Sections 4.4.3.B (Obligations arising from the rights recognized in the Universal Declaration of Human Rights), 4.4.3.E (Obligations arising from the right to self-determination), 4.4.4.B (Obligations arising from the rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), 4.4.4.C (Obligations arising from the right to clean, healthy and sustainable environment as it relates to other rights and existing international law), 4.4.4.F (Obligations arising from the Convention on the Rights of the Child), and 4.4.5 (Obligations arising with respect to future generations).

Government Circles, of the Effects of Fossil Fuel Combustion as the Cause of Climate Change (dated 29 January 2024) (**Exhibit D**), para. 4 (“at least from the 1960s, the States with the highest cumulative emissions of greenhouse gases (GHGs), including the United States of America, were aware that (i) the release of greenhouse gases into the Earth’s atmosphere had the potential to alter the climate system, and (ii) that such interference, if unmitigated, could have catastrophic effects for humans and the environment.”)

⁴³⁸ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.1.3 ([link](#)).

⁴³⁹ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.3 ([link](#)).

272. In such a context, diligent conduct to prevent both significant harm to the climate system and other parts of the environment and catastrophic harm in the form of climate change and its adverse effects has been described as follows:

“global annual GHG emissions must be reduced by 45 per cent compared with emissions projections under policies currently in place in just eight years”⁴⁴⁰

“[b]eyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required”⁴⁴¹

“little or no new CO₂-emitting infrastructure can be commissioned, and that existing infrastructure may need to be retired early (or be retrofitted with carbon capture and storage technology) in order to meet the Paris Agreement climate goals”⁴⁴²

“rapid and deep and, in most cases, immediate greenhouse gas emissions reductions in all sectors this decade”⁴⁴³

“Deep, rapid and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce projected losses and damages for humans and ecosystems ... and deliver many co-benefits, especially for air quality and health ... Delayed mitigation and adaptation action would lock-in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages ... Near-term actions involve high up-front investments and potentially disruptive changes that can be lessened by a range of enabling policies”⁴⁴⁴

“Net zero CO₂ energy systems entail: a substantial reduction in overall fossil fuel use, minimal use of unabated fossil fuels”⁴⁴⁵

273. Instead, **what we see from countries having displayed the Relevant Conduct is delay, low ambition and, in practice, concrete plans to expand the extraction and use of fossil fuels.** This is the exact opposite of the due diligence required from them by the principle of prevention.

⁴⁴⁰ United Nations Environment Programme, *Emissions Gap Report* (2022), Executive Summary, at page xvi, ([link](#)).

⁴⁴¹ International Energy Agency, *Net Zero by 2050. A Roadmap for the Global Energy Sector* (Summary for policymakers) (2021), p. 11 ([link](#)).

⁴⁴² Dan Tong, Qiang Zhang, Yixuan Zheng, Ken Caldeira, Christine Shearer, Chaopeng Hong, Yue Qin & Steven J. Davis, ‘Committed emissions from existing energy infrastructure jeopardize 1.5 °C climate target’ (2019) 572 *Nature* 373 (**Exhibit Y**), p. 373.

⁴⁴³ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.6 ([link](#)).

⁴⁴⁴ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement C.2 ([link](#)).

⁴⁴⁵ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement C.3.2 ([link](#)).

274. The implications of delayed action are well understood. The UNEP Emissions Gap Report 2023 makes this point very clear:

“The consequences of the continued delay in stringent emission reductions are evident when examining the past decade of Emissions Gap Reports. As highlighted in the Emissions Gap Report 2019 (UNEP 2019) the underlying data from the reports reveal that had serious climate action been initiated in 2010, the annual emission reductions necessary to achieve emission levels consistent with the below 2°C and 1.5°C scenarios by 2030 would have been only 0.7 per cent and 3.3 per cent on average, respectively (Höhne *et al.* 2020). **The lack of stringent emission reductions means that the required emission cuts from now to 2030 have increased significantly. To reach emission levels consistent with a below 2°C pathway in 2030, the cuts required per year are now 5.3 per cent from 2024, reaching 8.7 per cent per year on average for the 1.5°C pathway.** To compare, the fall in total global GHG emissions from 2019 to 2020 due to the COVID-19 pandemic was 4.7 per cent (UNEP 2022).” (emphasis added)⁴⁴⁶

275. The low level of ambition is equally well established. The UNFCCC’s 2022 Nationally Determined Contributions (NDCs) Synthesis Report found that *“the total global GHG emission level in 2030 taking into account implementation of all latest NDCs is estimated to be 10.6 (3.6–17.5) per cent above the 2010 level and 0.3 percent below the 2019 level.”*⁴⁴⁷ To be sure, 0.3% below 2019 levels is far removed from the 45% below 2019 levels that GHG emissions need to be at in 2030 for a pathway consistent with the 1.5°C target.⁴⁴⁸

276. Moreover, the implementation of even these low-ambition NDCs is anything but certain. In fact, a complete disregard for such commitments is what emerges from deeds (current policies) rather than mere words, as shown by UNEP’s Production Gap Report 2023:

“the increases estimated under the government plans and projections pathways would lead to global production levels in 2030 that are 460%, 29%, and 82% higher for coal, oil, and gas, respectively, than the median 1.5°C-consistent pathways ... The disconnect between governments’ fossil fuel production plans and their climate pledges is also apparent across all three fuels.” (emphasis added)⁴⁴⁹

⁴⁴⁶ United Nations Environment Programme, *Emissions Gap Report 2023 : Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), at p. 30.

⁴⁴⁷ ‘Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat’, 26 October 2022, FCCC/PA/CMA/2022/4, 7, para. 13 ([link](#)).

⁴⁴⁸ Intergovernmental Panel on Climate Change, *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 (2018), statement C.1 ([link](#)).

⁴⁴⁹ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up ? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)).

277. Irrespective of the level of diligence that one or more States may show in the future, their lack of diligence in the past has already caused both significant harm to the environment, including the climate system and its subcomponents (e.g. the marine environment, species, ecosystems and biological diversity) and, taking the conduct of the main GHG emitters together, climate change and the associated loss and damage. The situation of Vanuatu provides an illustration of this significant harm, loss and damage (see Chapter II, Section 2.6).
278. In the light of the foregoing considerations, the only possible conclusion is that the principle of prevention of significant harm to the environment governs the Relevant Conduct and it has been breached. This is so whether the violation is assessed at the level of a single State having displayed the Relevant Conduct, at that of a group of States having together caused climate change and its adverse effects or at that of the legality, in principle, of the Relevant Conduct in general.

D. The duty to protect and preserve the marine environment

279. The duty to protect and preserve the marine environment is codified in Article 192 of the UNCLOS in concise but clear terms: “States have the obligation to protect and preserve the marine environment”.⁴⁵⁰
280. This duty is widely recognised as a free-standing obligation with independent legal force,⁴⁵¹ and its customary character has been acknowledged both by this Court.⁴⁵² In its April 2022 judgment in *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea*, this Court noted indeed that “it [was] not contested between the Parties that all States have the **obligation under customary international law to protect and preserve the marine environment**” (emphasis added).⁴⁵³

⁴⁵⁰ See *M/V Louisa (Saint Vincent and the Grenadines v. Spain)*, ITLOS Case No. 18, Order of 23 December 2010 (Provisional Measures), ITLOS Reports 2008-2010, p. 58, para. 76 ([link](#)); *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean*, ITLOS Case No. 23, Order of 25 April 2015 (Provisional Measures), ITLOS Reports 2015, p. 146, para. 69 ([link](#)); see, further, *In the matter of the South China Sea Arbitration before and Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea*, PCA Case No. 2013-19, Award (12 July 2016), para. 941 ([link](#)).

⁴⁵¹ *M/V Louisa (Saint Vincent and the Grenadines v. Spain)*, ITLOS Case No. 18, Order of 23 December 2010 (Provisional Measures), para. 76 ([link](#)); *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean*, ITLOS Case No. 23, Order of 25 April 2015 (Provisional Measures), para. 69 ([link](#)); *In the matter of the South China Sea Arbitration before and Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea*, PCA Case No. 2013-19, Award (12 July 2016), para. 941 ([link](#)).

⁴⁵² *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2022, p. 266, para. 95.

⁴⁵³ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2022, p. 266, para. 95.

281. As a free-standing obligation, the Republic of Vanuatu submits that the duty to protect and preserve the marine environment is owed *erga omnes*.⁴⁵⁴ Further, it has both a positive and a negative dimension; as explained by the arbitral tribunal in the *South China Sea* arbitration:

“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**” (emphasis added)⁴⁵⁵

In both cases, by its very terms, this is a general duty, which encompasses but is not limited to the environmental degradation caused by “pollution”.⁴⁵⁶

282. Importantly, the standard applicable is one of “*due diligence*” and States have both a direct duty not to degrade the marine environment as well as a duty “*in relation to ensuring activities within their jurisdiction and control do not harm the marine environment*”.⁴⁵⁷ The requisite due diligence has been characterized by the ITLOS Seabed Disputes Chamber and the ITLOS itself, by reference to the case law of the ICJ, as entailing “*not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators*” (emphasis added).⁴⁵⁸ Moreover, what meets the standard of due diligence changes over time in the light of scientific and technological development and the evolving understanding of the implications of an activity.⁴⁵⁹

⁴⁵⁴ See Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 48, commentary, para. 10 ([link](#)); *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. 180 ([link](#)).

⁴⁵⁵ *In the matter of the South China Sea Arbitration before and Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea*, PCA Case No. 2013-19, Award (12 July 2016), para. 941 ([link](#)).

⁴⁵⁶ *In the matter of the Chagos Marine Protected Area Arbitration before an Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea (Mauritius v. UK)*, Permanent Court of Arbitration, Award (18 March 2015), para. 320 (“*the Tribunal rejects the suggestion that [...] Part XII of the Convention (relating to the protection and preservation of the marine environment) [is] limited to measures aimed at controlling marine pollution. While the control of pollution is certainly an important aspect of environmental protection, it is by no means the only one*”), available at the following link: <https://pca-cpa.org/en/cases/11/> (visited on 15 March 2024) ([link](#)).

⁴⁵⁷ *In the matter of the South China Sea Arbitration before and Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea*, PCA Case No. 2013-19, Award (12 July 2016), para. 944 ([link](#)).

⁴⁵⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 197, cited in: *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. 115 ([link](#)); and *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion of 2 April 2015, ITLOS Case No 21, para. 131 ([link](#)).

⁴⁵⁹ *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. 117 ([link](#)).

283. The object protected by the duty is the “*marine environment*”. This term is generally understood in a non-territorial manner, as encompassing “*all maritime areas*”, as well as all the dimensions, living and non-living, of the marine environment.⁴⁶⁰ The marine environment is part of the “*climate system*”, as this term is understood scientifically and legally. To recall the scientific definition given in the IPCC Glossary and the legal definition provided in Article 1(3) of the UNFCCC,⁴⁶¹ the climate system relevantly consists of the **hydrosphere**.
284. This concise characterization of the duty to protect and preserve the marine environment in general international law makes clear that it specifically governs the Relevant Conduct, whether the latter is seen as pollution of the marine environment already caused or to be caused, or from the perspective of the wider degradation of the marine environment, as such and as part of “*the climate system and other parts of the environment*”. This duty applies to all those parts of the Relevant Conduct which took place from the emergence of the principle as a binding rule until the present day.
285. Such displays of the Relevant Conduct constitute a clear breach of the duty to protect and preserve the marine environment. The work of the IPCC, specifically the Summary for Policymakers of the 2023 Synthesis Report establishes such breach in the clearest terms. The marine environment is directly harmed, indeed polluted, by the anthropogenic GHG emissions from specific States, and such harm goes well beyond the threshold of significance:

“Continued emissions will further affect all major climate system components [...] projected changes include further reduced extents and/or volumes of almost all cryospheric elements (high confidence), further global mean sea level rise (virtually certain), and increased ocean acidification (virtually certain) and deoxygenation (high confidence).”⁴⁶²

In turn, this has further impacts on the marine environment. The same IPCC Summary for Policymakers concludes that, “[o]cean warming and ocean

⁴⁶⁰ *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion of 2 April 2015, ITLOS Case No 21, paras. 111, 120 ([link](#)); see *In the matter of the South China Sea Arbitration before and Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea*, PCA Case No. 2013-19, Award (12 July 2016), paras. 927 ([link](#)); *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)*, PCA Case No. 2017-06, Award concerning the preliminary objections of the Russian Federation (21 February 2020), para. 295 ([link](#)).

⁴⁶¹ See IPCC Glossary: “The global system consisting of five major components: the *atmosphere*, the **hydrosphere**, the *cryosphere*, the *lithosphere* and the *biosphere* **and the interactions between them**” (emphasis added) ([link](#)); United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107 (UNFCCC), art. 3(1): the **totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions**” (emphasis added) ([link](#)).

⁴⁶² Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.1.3 ([link](#)).

acidification have adversely affected food production from fisheries and shellfish aquaculture in some oceanic regions (high confidence)".⁴⁶³

286. In Vanuatu's context specifically, as explained above in Chapter II, Section 2.6, sea surface temperature has risen (and is continuing to rise).⁴⁶⁴ The changing sea surface temperature is posing challenges for temperature-sensitive marine ecosystems including coral reefs, seagrass beds, and fish.⁴⁶⁵ For example, Vanuatu's main commodity is tuna, however tuna are reportedly increasingly moving away from the country's waters due to ocean warming.⁴⁶⁶ Further, data shows that since the 18th century, the level of ocean acidification has been slowly increasing in Vanuatu's waters.⁴⁶⁷ Under all emissions scenarios, the acidity level of sea waters in the Vanuatu region will continue to increase over the 21st century.⁴⁶⁸ Moreover, deoxygenation impacts the growth of corals and organisms that construct their skeletons from carbonate minerals. These species are critical to the balance of tropical reef ecosystems.⁴⁶⁹
287. Accordingly, the Republic of Vanuatu submits that, in its response to Question (a) of the operative part of Resolution 77/276, the Court should clarify the operation of the customary duty to protect and preserve the marine environment with respect to the Relevant Conduct, as displayed by specific States or a specific group of States, or with respect to the Relevant Conduct in general. It should then conclude, in its response to Question (b), that the Relevant Conduct is inconsistent with this duty and triggers legal consequences.

E. Obligations arising from the right to self-determination

⁴⁶³ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2.4 ([link](#)).

⁴⁶⁴ See Section 2.6 (The situation of Vanuatu).

⁴⁶⁵ Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu's Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 10 ([link](#)).

⁴⁶⁶ Republic of Vanuatu, *Climate Change Impact Case Study: Vanuatu and Migration* (2023), p. 1 ([link](#)); Somino Sengupta, 'Can Nations be Sued for Weak Climate Action? We'll Soon Get an Answer' (*The New York Times*, 29 March 2023) ([link](#)).

⁴⁶⁷ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 12; International Climate Change Adaptation Initiative, Vanuatu Meteorology and Geohazard Department, Australian Bureau of Meteorology, & Commonwealth Scientific and Industrial Research Organisation (CSIRO) Pacific Climate Change Science Program, *Current and future climate of Vanuatu* (2011), p. 5 ([link](#)).

⁴⁶⁸ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 12.

⁴⁶⁹ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 12.

288. Self-determination is expressly recognized in the UN Charter,⁴⁷⁰ as a principle and as a right.⁴⁷¹ Since this recognition, it has found expression in several key UN General Assembly resolutions,⁴⁷² and in international and regional human rights treaties.⁴⁷³ The modern formulation of the right to self-determination is (emphasis added):

“All peoples have the right to self-determination; by virtue of that right they **freely determine their political status and freely pursue their economic, social and cultural development.**”⁴⁷⁴

289. This Court has recognized that self-determination: (a) is “*one of the essential principles of contemporary international law*”,⁴⁷⁵ (b) is a “*fundamental human right, [with] a broad scope of application*”,⁴⁷⁶ and (c) gives rise to obligations which, having evolved from the UN Charter and from UN practice, are of an *erga*

⁴⁷⁰ Charter of the United Nations (UN Charter), 1945, art. 1(2) (as a purpose of the UN being “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...”) and art. 55 (referring to the goal of the UN, in the fields of social and economic development and respect for human rights, to create the “*conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples*”) ([link](#)).

⁴⁷¹ The French version of these provisions refers to respect for the “right” of self-determination, the “*principe de l’égalité de droits des peuples et leur droit à disposer d’eux-mêmes*”).

⁴⁷² See e.g., UN General Assembly, Declaration on the Granting of Independence to the Colonial Countries and Peoples, UNGA Res. 1514 (XV), 14 December 1960 ([link](#)); Resolution on Permanent Sovereignty over Natural Resources, GA Res 1803 (XVII), UN GAOR, 17th sess, 1194th plen mtg, UN Doc A/RES/1803(XVII) (14 December 1962) ([link](#)); UN General Assembly Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970, Annex, ([link](#)).

⁴⁷³ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, art. 1 ([link](#)); International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3, art. 1 ([link](#)); African Charter of Human and Peoples Rights, art. 20 ([link](#)).

⁴⁷⁴ UN General Assembly, Declaration on the Granting of Independence to the Colonial Countries and Peoples, UNGA Res. 1514 (XV), 14 December 1960, para. 2 ([link](#)); common Article 1(1) of the International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 and International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3 ([link](#) and [link](#)); UN General Assembly Resolution 61/295: United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295, 2 October 2007, UN Doc A/RES/61/295, art. 3 ([link](#)). See also the varied but similar words used to express the equivalent right under the African Charter of Human and Peoples’ Rights, art. 20(1) ([link](#)).

⁴⁷⁵ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995 (June 30), p. 90, at para. 29. Further, the European Court of Justice has affirmed that the principle of self-determination, as referred to in the UN Charter, is a “customary principle” and among the “rules of general international law”: see, respectively, European Court of Justice, Judgment of 21 December 2016, *Council v. Front Polisario*, C-104/16 P, EU:C:2016:973, para. 88 ([link](#)); European Court of Justice, Judgment of February 27th 2018, *The Queen, on the application of Western Sahara Campaign UK v. Commissioners for Her Majesty’s Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs*, C-266/16, para. 63 ([link](#)).

⁴⁷⁶ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Rep. 2019, p. 95, para. 144. As to the broad scope of application, see e.g., *Loizidou v. Turkey*, European Court of Human Rights Application No 15318/89, 18 December 1996, Concurring Opinion of Judge Wildhaber, joined by Judge Rysdsal, p. 24 ([link](#)); *In Re Secession of Quebec* [1998] 2 SCR 217 (Supreme Court of Canada), para. 135 ([link](#)); and *Katangese Peoples’ Congress v. Zaire*, African Commission on Human and Peoples’ Rights, Communication 75/92, 1995, para. 6 ([link](#)).

omnes character.⁴⁷⁷ It is also widely recognized that the right to self-determination enjoys the status of a *jus cogens* norm.⁴⁷⁸

290. Although the right to self-determination has been significant in the context of decolonization,⁴⁷⁹ it belongs to “*all peoples*” irrespective of their colonial status.⁴⁸⁰ Thus, its beneficiaries include peoples who make up the entire population of a State,⁴⁸¹ as well as minority groups within State who constitute a “*people*”, including Indigenous peoples.⁴⁸² This is significant because Indigenous peoples, as individuals and communities, have been recognized as victims of human rights

⁴⁷⁷ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, para. 29; *Chagos Archipelago, Advisory Opinion*, I.C.J. Rep. 2019, p. 139, para. 180; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, pp. 172, 199, paras. 88, 155-156. See also, Human Rights Committee, *General Comment No. 12: Article 1 (Right to Self-determination)* (13 March 1984), HRI/GEN/1/Rev.9, para. 5 ([link](#)). See, further: Marcelo G Kohen, “Self-Determination” in Jorge E Viñuales (ed), *The UN Friendly Relations Declaration at 50 An Assessment of the Fundamental Principles of International Law* (Cambridge University Press, 2020) 153 (**Exhibit ZM**).

⁴⁷⁸ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 48, commentary, p. 85, para. 5 of commentary to art. 26 (Compliance with peremptory norms): “Those peremptory norms that are clearly accepted and recognized include ... the right to self-determination” ([link](#)). See also *Chagos Archipelago*, Separate Opinion of Judge Robinson, I.C.J. Rep. 2019 (July 9), p. 317, at para. 71(a); Dire Tladi, “Fourth Report of the Special Rapporteur on Peremptory Norms of General International Law (Jus Cogens)”, 31 January 2019, UN Doc A/CN.4/727, p. 48–52, paras. 108–115 ([link](#)); Marcelo G Kohen, “Self-Determination” in Jorge E Viñuales (ed), *The UN Friendly Relations Declaration at 50 An Assessment of the Fundamental Principles of International Law* (Cambridge University Press, 2020) (**Exhibit ZM**), p. 151, 153.

⁴⁷⁹ *Chagos Archipelago, Advisory Opinion*, I.C.J. Rep. 2019, pp. 131-135, paras. 144-162; *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 12, paras. 54-59; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276* (1970), *Advisory Opinion*, I.C.J. Reports 1971, p. 16, para. 52. See common art. 1(3) of the ICCPR and ICESCR (reference to “those having responsibility for the administration of Non-Self-Governing and Trust Territories”) ([link](#) and [link](#)), GA Res 1514(XV), UN Doc A/RES/1514(XV) (14 December 1960), para. 5; UN General Assembly Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970, Annex, ([link](#)). See, further, in the regional context: African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) CAB/LEG/67/3 rev. 5, ILM 58 (Banjul Charter), art. 20(2) and (3) ([link](#)).

⁴⁸⁰ GA res 1514 (XV), UN GAOR, UN Doc A/RES/1514(XV) (14 December 1960), para. 2; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art. 1(1) and International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, art. 1(1) ([link](#) and [link](#)). See *Wall, Advisory Opinion*, I.C.J. Reports 136, paras. 118, 122 (confirming that the Palestinian people had the right to self-determination). See further the examples of state practice referred to in: Robert McCorquodale, “Group Rights” in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (Oxford University Press, 3rd ed, 2018), p. 350 (“For example, when East and West Germany were united into one state in 1990, it was expressly stated in a treaty signed by four of the five permanent members of the UN that this was done as part of the exercise of the right of self-determination by the German people [Treaty on the Final Settlement With Respect to Germany (1990) 29 ILM 1186]. The right of self-determination was also referred to in the context of the dissolution of the USSR and Yugoslavia [eg the terms of the European Community’s Declaration on Yugoslavia and its Declaration on the Guidelines on Recognition of New States in Eastern Europe and the Society Union (16 December 1991), (1992) 31 ILM 1486]”) (**Exhibit ZT**).

⁴⁸¹ For commentary on the meaning of “peoples”, see e.g., Marcelo G Kohen, “Self-Determination” in Jorge E. Viñuales (ed), *The UN Friendly Relations Declaration at 50 An Assessment of the Fundamental Principles of International Law* (Cambridge University Press, 2020) (**Exhibit ZM**), p. 160; Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford University Press, 3rd ed, 2013) 158 (**Exhibit ZW**).

⁴⁸² UN General Assembly Resolution 61/295: United Nations Declaration on the Rights of Indigenous Peoples, 2 October 2007, A/RES/61/295, recitals 15-16 and arts. 3-4 ([link](#)).

violations emanating from a State’s failure to protect them against the adverse effects of climate change.⁴⁸³

291. The Republic of Vanuatu can invoke the right on behalf of its people. As Professor Martin Scheinin observes in his Expert Report:

“States are entitled to invoke, in relation to other States and the international community as a whole, the right of all peoples to self-determination, acting as custodians of the human rights of the members of their population as a whole, as well as in order specifically to claim and protect the rights of a distinct ‘people’ within the country.”⁴⁸⁴

292. In terms of its substantive content, the right to self-determination is intimately connected to territorial integrity.⁴⁸⁵ For Indigenous peoples, their close ties to their land are “*the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival*”.⁴⁸⁶ This profound connection is eloquently captured by the Hon. Sethy Regenvanu, First Minister of Lands of the Republic of Vanuatu, who stated:

“Land to a ni-Vanuatu is what a mother is to a baby. It is with land that he defines his identity and it is with land that he maintains his spiritual strength. Ni-Vanuatu do allow others the use of their land, but they always retain the right of ownership.”⁴⁸⁷

These ties go beyond mere possession and production; they encompass a material and spiritual element that Indigenous peoples must fully enjoy to preserve their cultural legacy and transmit it to future generations.⁴⁸⁸ In the Pacific context, such

⁴⁸³ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022 ([link](#)).

⁴⁸⁴ Expert Report of Professor Martin Scheinin on International Human Rights Law Obligations of States in Respect of Climate Change (dated 31 December 2023) (**Exhibit C**), para. 32.

⁴⁸⁵ UN General Assembly, Declaration on the Granting of Independence to the Colonial Countries and Peoples, UNGA Res. 1514 (XV), 14 December 1960, paras. 6, 7 ([link](#)).

⁴⁸⁶ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment of 31 August 2001, Inter-American Court of Human Rights 2001 Series C, No. 79, para. 149 ([link](#)). See, also: I/A Court H.R., *Yakye Indigenous Community v. Paraguay*, Judgment of June 17, 2005, Series C, No. 125, para. 135; I/A Court H.R., *Saramaka People v. Suriname*, Judgment of 28 November 2007, Inter-American Court of Human Rights Series C, No. 125, para. 90 ([link](#)); I/A Court H.R., *Moiwana Community v. Suriname (2005)*, Judgment of 15 June 2005 Inter-American Court of Human Rights. Series C, No. 124, paras. 132-133 ([link](#)); I/A Court H.R., *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment of 27 June 2012 (Merits and Compensation), Series C No. 245, paras. 145–147 ([link](#)). The distinctive relationship that Indigenous peoples have with their territories has also been recognised by national courts, see e.g., *Mabo v. Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1 (Australia), pp. 15-16 (Mason CJ and McHugh J), 68-70 (Brennan J), 100 (Deane and Gaudron JJ) (Australia) ([link](#)); *Northern Territory v. Griffiths (Deceased) on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7; (2019) 269 CLR 1 at paras. 23, 84, 98, 153, 187, 206, 217, 223 (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ) (Australia) ([link](#)); *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 (Canada), paras. 65, 71, see paras. 137-139 ([link](#)).

⁴⁸⁷ The Hon Sethy Regenvanu, First Minister of Lands, quoted in Howard van Trease, *The Politics of Land in Vanuatu: From Colony to Independence* (Suva, University of the South Pacific, 1987), p. xi ([link](#)).

⁴⁸⁸ Committee on the Elimination of Racial Discrimination, Opinion adopted by the Committee under art 14 of the Convention, concerning communication No. 54/2013 (*Lars-Andwers Ågren et al. v. Sweden*)

close ties are often reflected in peoples' cultures and languages.⁴⁸⁹ Specifically, in the Ni-Vanuatu context, these close ties manifest in the spiritual and metaphysical relationship people have with certain crops and the how certain crops (e.g., Yam) are central to Kastom.⁴⁹⁰

293. The right of peoples to exercise control over territory finds further expression in the recognition of permanent sovereignty over natural resources, which this Court has confirmed is a customary norm.⁴⁹¹ Permanent sovereignty over natural resources is a stand-alone principle,⁴⁹² but it also forms part of the right of self-determination.⁴⁹³ It entails that (emphasis added):

“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

CERD/C/102/D/54/2013 (18 November 2020), para. 6.6 ([link](#)). See *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment of 31 August 2001, Inter-American Court of Human Rights 2001 Series C, No. 79, para. 149 ([link](#)). See also I/A Court H.R., *Mary and Carrie Dann v. United States*, Inter-American Court of Human Rights Doc. 5 rev. 1 at 860, 27 Dec. 2002, para. 130, footnote no. 97 ([link](#)); I/A Court H.R., *Plan de Sánchez Massacre v. Guatemala (Reparations and Costs)*, 19 November 2004 Inter-American Court of Human Rights Series C No. 116, para. 85 ([link](#)). See further, Committee on the Elimination of Racial Discrimination, Decision 2 (54) on Australia (54th Sess. 1999), A/54/18, para. 4 ([link](#)).

⁴⁸⁹ For example, in the Cook Islands Maori ‘enua’ means ‘land, country, territory, afterbirth’; in Futuna ‘fanua’ means ‘country, land, the people of a place’; and in Tonga, ‘fonua’ means ‘island, territory, estate, the people of the estate, placenta’ and ‘fonualoto’, ‘grave’. In several other Polynesian languages ‘pro-fanua is both the people and the territory that nourishes them, as a placenta nourishes a baby’: see John Campbell, “Climate-Induced Community Relocation in the Pacific: The Meaning and Importance of Land” in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Oxford: Hart Publishing, 2010), p. 61 (**Exhibit Z**).

⁴⁹⁰ See, e.g. Impact Statement of Dr. Vincent Lebot, root tuber crop breeder and researcher with the French Agricultural Research Centre for International Development (CIRAD), the Republic of Vanuatu, 14 March 2024 (**Exhibit U**), paras. 13-18; Statement of Alpi Nangia dated 12 January 2024 (**Exhibit F**), para. 26; Statement of Mangau Iokai dated 12 January 2024 (**Exhibit H**), para. 16-26 (on the centrality of Yam to his peoples’ Kastom), paras. 27-32 (on his spiritual relationship to the Yam), see further para. 47 (“the Yam is inseparable from us. It is our identity”); Statement of Werry Narua dated 12 January 2024 (**Exhibit G**), paras. 13-17.

⁴⁹¹ *Armed Activities on the Congo (Congo v. Uganda)*, Judgement, I.C.J. Reports 2005, p. 251-252, para. 244.

⁴⁹² *Permanent Sovereignty over natural resources*, GA Res. 1803 (XVII), U.N. GAOR, 17th Sess. (14 December 1962) UN Doc A/RES/1803, para. 1; *Charter of Economic Rights and Duties, Charter of Economic Rights and Duties of States*, GA Res 3281 (XXIX), UN GAOR, 29th sess, 2315th plen mtg, Agenda Item 48, Supp No 31, A/RES/3281(XXIX) (12 December 1974) annex art 2(1) ([link](#)); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art. 47 ([link](#)); ICESCR art. 25 ([link](#)); United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295, 2 October 2007, UN Doc A/RES/61/295, art. 8(2)(b) ([link](#)). See, further, *Case Concerning East Timor (Portugal v. Australia)*, Dissenting Opinion of Judge Weeramantry, I.C.J. Rep 1995, pp. 197-199.

⁴⁹³ Common art. 1(2) of the ICCPR and ICESCR ([link](#) and [link](#)); GA Res. 1314 (XIII), “Recommendations concerning international respect of the right of the peoples and nations to self-determination”, U.N. GAOR, 13th Sess., Supp. no. 18, at 27, U.N. Doc. A/4090 (1958) (which established the Commission on Permanent Sovereignty over Natural Resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a “*basic constituent of the right to self-determination*”); Declaration on the Right to Development, UNGA Res. 41/128, U.N. GAOR, 41st Sess., Supp. no. 53, at 186, UN Doc. A/41/30 (1997), art. 1(2) ([link](#)) (the right to development implies “the right of peoples to self-determination, which includes [the] right to full sovereignty over all their natural wealth and resources”); Human Rights Committee, *General Comment No. 12: Article 1 (Right to Self-determination)* (13 March 1984), HRI/GEN/1/Rev.9, para. 5 ([link](#)).

mutual benefit, and international law. **In no case may a people be deprived of its own means of subsistence.**” (emphasis added)⁴⁹⁴

This principle is of critical importance in the context of Vanuatu, where, as the Hon. Sethy Regenvanu emphasized, the Ni-Vanuatu people’s connection to their land is intrinsic to their identity and spiritual strength.

294. The right to self-determination in all relevant aspects is clearly impaired by climate change.⁴⁹⁵ By altering the environmental conditions that underpin the political, economic, social and cultural aspects of peoples’ existence, climate change already impairs the ability of peoples to freely make autonomous choices about their political status and in pursuit of their economic, social and cultural development; the ability of peoples to exercise sovereignty over their natural resources; and deprives them of their means of subsistence.
295. In the Pacific, the warming of seas results in a lethal impact on coral reefs,⁴⁹⁶ which impacts the fisheries and tourism these reefs provide for millions of people across the Pacific and thus impairs the exercise of permanent sovereignty over these natural resources.⁴⁹⁷ The submergence of land, increased flooding and storm surges, stronger tropical cyclones and the destruction of freshwater resources and cultivable land deprive peoples of their own means of subsistence. Further, increased

⁴⁹⁴ Common art. 1(2) of the ICCPR and ICESCR ([link](#) and [link](#)).

⁴⁹⁵ Tekau Frere, Clement Yow Mulalap and Tearinaki Tanielu, “Climate Change and Challenges to Self-Determination: Case Studies from French Polynesia and the Republic of Kiribati” (2020) 129 *Yale Law Journal* 648, 653-656 ([link](#)). See David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 15 July 2019, UN Doc A/74/161, para. 26 ([link](#)). See also UN Human Rights Council, *Human Rights and Climate Change*, HRC res 35/20, UN Doc A/HRC/RES/35/20 (7 July 2017) recital 12 ([link](#)); UN Human Rights Council, “Addressing Human Rights Protection Gaps in the Context of Migration and Displacement of Persons across International Borders Resulting from the Adverse Effects of Climate Change and Supporting the Adaptation and Mitigation Plans of Developing Countries to Bridge the Protection Gaps”, 23 April 2018, UN Doc A/HRC/38/21, para. 19 ([link](#)); Secretary-General, *The impacts of climate change on the human rights of people in vulnerable situations* (6 May 2022) UN Doc A/HRC/50/57, paras. 7, 8, 15 ([link](#)).

⁴⁹⁶ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), p. 382 ([link](#)).

⁴⁹⁷ See Charlotte Moritz, Jason Vii, Warren Lee Long, Jerker Tamelander, Aurelie Thomassin, Serge Planes (eds), *Status and Trends of Coral Reefs of the Pacific* (2018), p. 24 ([link](#)); see also Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), p. 413 ([link](#)).

temperature,⁴⁹⁸ heatwaves, drought,⁴⁹⁹ tropical cyclones,⁵⁰⁰ and waves in the small islands, result in food insecurity and cause losses and damage.⁵⁰¹

296. These impacts and resulting losses and damage are acutely felt in Vanuatu. Vanuatu is, as stated in Chapter II, Section 2.6, one of the few places in the world where the subsistence economy still outweighs the cash economy in terms of providing livelihoods for the population,⁵⁰² with approximately 90% of all households engaging in vegetable crop production. Moreover, the growing and use of certain root crops, which have significant cultural and spiritual value, have been undermined by the impacts of climate change, such as increased temperature, heatwaves, drought, and tropical cyclones.⁵⁰³
297. Extreme weather events, particularly tropical cyclones, have already led to significant losses and damages in Vanuatu's agricultural sector.⁵⁰⁴ The increased temperature and other climate change impacts have made crop maturity less predictable,⁵⁰⁵ which in turn undermines food security, culture and livelihoods.⁵⁰⁶

⁴⁹⁸ Intergovernmental Panel on Climate Change, "Chapter 15: Small Islands" in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), pp. 2099 ([link](#)).

⁴⁹⁹ Intergovernmental Panel on Climate Change, "Chapter 15: Small Islands" in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), pp. 2065 ([link](#)).

⁵⁰⁰ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2021), p. 71 ([link](#)); Intergovernmental Panel on Climate Change, "Chapter 4: Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities" in *Special Report on the Ocean and Cryosphere in a Changing Climate* (2018), pp. 360-361 ([link](#)).

⁵⁰¹ For example, Tropical Cyclone Pam devastated Vanuatu in 2015 and caused loss and damage to the agricultural sector valued at USD 56.5 million (64.1% of GDP): Michelle Mycoo and Morgan Wairiu, Intergovernmental Panel on Climate Change, "Chapter 15: Small Islands" in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), pp. 2045, 2066 ([link](#)).

⁵⁰² Internal Displacement Monitoring Centre, *Sudden-Onset Hazards and the Risk of Future Displacement in Vanuatu* (2020), p. 4 ([link](#)), citing Ralph Regenvanu, *The traditional economy as source of resilience in Vanuatu* (2009) ([link](#)).

⁵⁰³ Amy Savage, Hilary Bambrick & Danielle Gallegos, "Climate extremes constrain agency and long-term health: A qualitative case study in a Pacific Small Island Developing State" (2021) 31 *Weather and Climate Extremes*, p. 2 ([link](#)).

⁵⁰⁴ An impact assessment carried out in 2020 after Tropical Cyclone Pam estimated that the economic loss to the agriculture sector was 8% of the country's GDP. The crop damage was around 69% of the total agricultural damage with forestry estimated at 16%. The populations most impacted were also those most vulnerable, including farming communities operating at the subsistence levels. See Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), pp. 5-6. United Nations Capital Development Fund, *Economic Impacts of Natural Hazards on Vulnerable Populations in Vanuatu* (2020) ([link](#)).

⁵⁰⁵ See Statement of Jenny Toata dated 12 January 2024, (**Exhibit J**), para. 14

⁵⁰⁶ For example, earlier maturity of some root crops is being reported by root crop farmers in the northern islands, like Torres and Banks, and they are harvesting earlier compared to the past: see Commonwealth Scientific and Industrial Research Organisation (CSIRO) & Secretariat of the Pacific Regional Environment Programme (SPREP), 'Climate change impacts on root crop production in Vanuatu: Infobyte prepared for the Vanuatu Meteorology and Geo-hazards Department as part of the Van-KIRAP project' (2023) (**Exhibit V**), p. 1, citing Leo, P. *Provincial Agriculture Officer, Sanma Province and Van-KIRAP Project Agriculture Focal Point*, Department of Agriculture and Rural Development. Personal Communication. 28 April 2023. See, further,

Studies conducted by SPC in the northern province of Vanuatu have documented several climate change-related harms to agriculture in these communities, illustrating the Ni-Vanuatu people’s high exposure and sensitivity to climate change impacts and limited abilities to adapt naturally to such changes.⁵⁰⁷

298. To assist the Court in understanding the situation in Vanuatu, the Government of Vanuatu has collected numerous impact statements from community members in Tanna, which observe unprecedented changes in the climate, weather, and gardens. Many of these statements demonstrate the negative impact of these changes on the people’s capacity to grow crops and manage their gardens, as well as on the quality of the crops.⁵⁰⁸ The accumulation of loss and damage from frequent, intense, and overlapping climate-induced disasters has left Vanuatu in a continuous state of ‘recovery-mode’, with government resources under heavy strain to provide concurrent response and recovery efforts.⁵⁰⁹ This situation leaves things “*out of balance*”⁵¹⁰ and, in Vanuatu’s submission, constrains the choices available to Ni-Vanuatu peoples to pursue their economic and cultural self-determination.
299. The current impacts experienced by Vanuatu are just a glimpse of the devastating future that awaits the Pacific region and the world if urgent action is not taken to address climate change. The Intergovernmental Panel on Climate Change projects that the entire land territories of some States are at risk of being submerged in the second half of this century as a result of climate change-induced sea level rise.⁵¹¹ The Office of the UN High Commissioner for Human Rights has observed that extreme weather events pose further threats to the habitability and territorial

Impact Statement of Dr. Vincent Lebot, root tuber crop breeder and researcher with the French Agricultural Research Centre for International Development (CIRAD), the Republic of Vanuatu, 14 March 2024 (**Exhibit U**), paras. 48-62 (on food security in Vanuatu); Statement of Alpi Nangia dated 12 January 2024 (**Exhibit F**), paras. 17-18; Statement of Jenny Toata dated 12 January 2024, (**Exhibit J**), paras. 10-14; Statement of Johnny Loh dated 12 January 2024 (**Exhibit K**), paras. 17-19 (on the changing quality of Banana, Coconut and Taro) and 30-32 (on changing weather); Statement of Mangau Iokai dated 12 January 2024 (**Exhibit H**), paras. 8-15, 34; Statement of Werry Narua dated 12 January 2024 (**Exhibit G**), paras. 32-35; Statement of Nine Women (Linet Iawain, Yalitea Iakaho, Sera Nawahta, Nelly Pilia, Naus Iaho, Nancy Iacitan, Sera Naburam, Yoba Merarangi, Jenny Toata) dated 12 January 2024 (**Exhibit I**), paras. 9-16.

⁵⁰⁷ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 5.

⁵⁰⁸ See Statement of Alpi Nangia dated 12 January 2024 (**Exhibit F**), paras. 17-18; Statement of Jenny Toata dated 12 January 2024, (**Exhibit J**), paras. 10-14; Statement of Johnny Loh dated 12 January 2024 (**Exhibit K**), paras. 17-19 (on the changing quality of Banana, Coconut and Taro) and 30-32 (on changing weather); Statement of Mangau Iokai dated 12 January 2024 (**Exhibit H**), paras. 8-15, 34; Statement of Werry Narua dated 12 January 2024 (**Exhibit G**), paras. 32-35; Statement of Nine Women (Linet Iawain, Yalitea Iakaho, Sera Nawahta, Nelly Pilia, Naus Iaho, Nancy Iacitan, Sera Naburam, Yoba Merarangi, Jenny Toata) dated 12 January 2024 (**Exhibit I**), paras. 9-16.

⁵⁰⁹ See Impact Statement of Peter Korisa Kamil, Head of the National Disaster Recovery Coordination Unit within the Department of Strategic, Policy, Planning and Aid Coordination (DSPPAC), the Republic of Vanuatu, 14 March 2024 (**Exhibit Q**), paras. 16-17, 19. See also Impact Statement of Robson Tigona, Lecturer in Environmental Sciences at Vanuatu National University (**Exhibit O**), para. 45.

⁵¹⁰ See Statement of Johnny Loh dated 12 January 2024 (**Exhibit K**), para. 32; Statement of Mangau Iokai dated 12 January 2024 (**Exhibit H**), para. 9.

⁵¹¹ Intergovernmental Panel on Climate Change, “Chapter 15: Small Islands” in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), pp. 2095 ([link](#)).

existence of low-lying island States, with implications for the right to self-determination.⁵¹² The International Law Commission has elaborated on these implications:

“Land inundation stemming from sea-level rise can pose risks to the territorial integrity of States with extensive coastlines and to small island States; at its most extreme, sea-level rise may threaten the continued existence of some low-lying States. In such cases, **the right to self-determination could be at risk, since it is unlikely that the whole community would be able to be relocated and remain together elsewhere, with functioning institutions and governance capacity.** In these and other cases, **the impact of sea-level rise may deprive indigenous peoples of their traditional territories and sources of livelihoods. The potential loss of traditional territories from sea-level rise and coastal erosion ... threatens the cultural survival, livelihoods and territorial integrity of indigenous peoples.**” (emphasis added)⁵¹³

300. The accuracy of such projections is supported by the experienced reality of sea-level rise, loss of land and ecosystem degradation. In Vanuatu, the inundation of coastal areas has already displaced some communities from their ancestral land.⁵¹⁴ Six villages on four of Vanuatu’s islands have been relocated because rising sea levels have made water supplies too salty for drinking.⁵¹⁵ Given that approximately 60% of the population is living within one kilometre of the coast,⁵¹⁶ sea level rise and inundation threaten to forcibly displace many more communities in the future. This forced displacement from ancestral lands and ecosystems leads to grave

⁵¹² See Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights (15 January 2009), UN Doc A/HRC/10/61, para. 40 ([link](#)).

⁵¹³ International Law Commission, “Sea-level Rise in Relation to International Law: Second Issues Paper” by Patrícia Galvao Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on Sea-level Rise in Relation to International Law’ UN Doc A/CN.4/752 (19 April 2022) para. 252(j) ([link](#)).

⁵¹⁴ For example, the residents of Tegua island in Torba province were inundated by high tides and relocated to higher ground in the village of Lirak in 2004: Internal Internal Displacement Monitoring Centre, *Disaster Displacement: Vanuatu country briefing* (2019), pp. 7-8 ([link](#)), citing Taito Nakalevu & Brian Phillips, *Post Relocation Survey Report, Tegua Community, Torba Province, Vanuatu* (August 2021) ([link](#)). In its Expert Report, SPC refers to Nguna-Pele Island, which already faces coastal inundation and erosion, water salination, and land degradation exacerbated by sea-level rise: Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 6. See also Intergovernmental Panel on Climate Change, “Chapter 29: Small Islands” in *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects, Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2014), p. 1620 ([link](#)); Alex Chapman, William Davies, Ciaran Downey, & MacKenzie Dove, *Climate Risk Country Profile: Vanuatu* (World Bank Group 2021), p. 17 ([link](#)).

⁵¹⁵ See Republic of Vanuatu, *Climate Change Impact Case Study: Vanuatu and Migration* (2023), p. 1 ([link](#)), citing Somino Sengupta, ‘Can Nations be Sued for Weak Climate Action? We’ll Soon Get an Answer’ (*The New York Times*, 29 March 2023) ([link](#)).

⁵¹⁶ Intergovernmental Panel on Climate Change, “Chapter 15: Small Islands” in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), pp. 2063-2064 ([link](#)).

cultural losses.⁵¹⁷ It impairs territorial sovereignty and inhibits the affected peoples from making a free choice about their futures.⁵¹⁸

301. Another consequence of this displacement is that different linguistic groups are being brought closer together in fewer habitable areas, which is resulting in a decline in the use of indigenous languages as indigenous communities adjust to their new surroundings.¹⁹ As languages gradually disappear, so too does the cultural identity and sense of cultural self of the communities.⁵¹⁹ This in turn impairs the freedom of peoples to freely pursue their cultural development and thus undermines the right to self-determination.
302. In light of the foregoing matters, the Relevant Conduct is clearly governed by the obligations arising from the right to self-determination. At a general level, those obligations are to:
- (a) *respect the right* — a negative obligation, requiring that States refrain from conduct causing a violation of the right; and
 - (b) *promote the realization of right* — a positive obligation, requiring that States take positive action to facilitate realization of and respect for the right, both individually and through international cooperation.⁵²⁰

⁵¹⁷ Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), p. 1.

⁵¹⁸ UN Human Rights Council, ‘International Solidarity and Climate Change: Report of the Independent Expert on Human Rights and International Solidarity’ UN Doc A/HRC/44/44 (1 April 2020) para. 47 ([link](#)) (“[r]ising sea levels, hurricanes and other extreme events are decimating the territories of all too many small island developing States and, by extension, negatively affecting human rights, including ... self-determination”); Tekau Frere, Clement Yow Mulalap and Tearinaki Tanielu, “Climate Change and Challenges to Self-Determination: Case Studies from French Polynesia and the Republic of Kiribati” (2020) 129 *Yale Law Journal* 648 at p. 649 (“As sea levels rise, fresh-water sources turn salty, the ocean acidifies, and storms of historic intensities rage, island nations may become unlivable, and their peoples may be forced to emigrate. In exchange for acceptance by host countries, these peoples may very well lose their right to self-govern”) ([link](#)).

⁵¹⁹ Mike Waiwai, Pauliane Basil, Stephanie Stephens, Leana William, Florence Iautu, George Koran, Willy Missack, Christopher Bartlett, Priyanka Gurung, Purnima Banjade, Basundhara Bhattarai, Hemant Ojha & Saleemul Huq, *Case Study on Non-Economic Loss & Damage to Vanuatu’s Coastal Ecosystems and Community Livelihoods from Slow Onset Events to support the design and operationalization of the Loss & Damage Fund* (2023) ([link](#)).

⁵²⁰ Common art. 1(3) of the ICCPR and ICESCR (“shall promote the realization of the right of self-determination” and “shall respect that right”) ([link](#) and [link](#)); UN Charter, art. 1(3) (“promoting and encouraging respect for human rights and for fundamental freedoms”), 55 (the UN shall “promote ... universal respect for, and observance of, human rights and fundamental freedoms”) ([link](#)); UN General Assembly Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970, Annex, ([link](#)) (referring to both obligations to *promote* the realization of the right and to *respect* the right, referring also to the “duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence”). See, also, Human Rights Committee, *General Comment No. 12: Article 1 (Right to Self-determination)* (13 March 1984), HRI/GEN/1/Rev.9, para. 6 ([link](#)); Committee on the Elimination of Racial Discrimination, *General Recommendation No. 21 UN Doc CERD/48/Misc.7/Rev.3* (8 March 1996) para. 3 ([link](#)) (to *promote*, through joint and separate action, universal respect for and observance of human rights under the UN Charter) Sub-Commission on Prevention of Discrimination and Protection of Minorities ‘The Right to Self-determination: Implementation of United Nations Resolutions’ (1980) UN Doc E/CN.4/Sub.2/405/Rev.1, at paras. 61, 91 ([link](#)). See, further, *Wall*, I.C.J. Reports 2004, p. 197, para. 149 (re negative obligation to *respect* the right).

303. More specifically, Vanuatu submits that all States are obligated to *respect* the right to self-determination by refraining from any conduct that causes or allows significant harm to the climate system and other parts of the environment and, by extension, to the right to self-determination. Further, States are obliged to *promote and further realize* the right the right to self-determination, by adopting and implementing laws, policies and programmes and engaging in international cooperation with other States to address and avert the threats posed by the Relevant Conduct to the climate system and other parts of the environment, and thus to the right to self-determination.
304. These obligations apply to all those parts of the Relevant Conduct which took place from the emergence of the right to self-determination as a binding rule of international law until the present day. On this issue of temporal scope, Vanuatu submits:
- (a) *First*, the principle of self-determination had been invoked by States on numerous occasions prior to its recognition in the UN Charter, since as early as the 18th century including in the contexts of the American, French and Bolshevik revolutions;⁵²¹ the peace settlements that ended World War 1;⁵²² and as a *right* in international dispute settlement in the *Åland Islands Case* of the early 1920s,⁵²³ which led to the recognition of the islands’ co-sovereign standing with various cultural and linguistic safeguards.⁵²⁴ Fundamentally, these examples illustrate how the very existence of international law is intrinsically tied to the right to self-determination of peoples as the normative foundation for the recognition of sovereign States. Accordingly, obligations related to self-determination—and by extension, environmental stewardship—have evolved, but have always existed under international law in some form, forming a continuous duty. Thus, a baseline for the assessment of the Relevant Conduct is that the

⁵²¹ See Malcolm Shaw, ‘The Establishment of the Legal Right to Self-Determination’ in Malcolm Shaw (ed), *Title to Territory in Africa* (OUP 1986), p. 59-91 (**Exhibit ZK**); Rupert Emerson, *From Empire to Nation* (1960), p. 297 (**Exhibit ZU**); Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (CUP 1995), p. 11 ([link](#)); Lenin, *The Right of Nations to Self-Determination* (1969; reprint, Foreign Languages Press, 2022), p. 167 ([link](#)).

⁵²² US President Woodrow Wilson stated that “[P]eoples may now be dominated and governed only by their own consent. ‘Self-determination’ is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril’: Wilson, *War Aims of Germany and Austria* (1918) ([link](#)); see Ray S Baker, William E Dodd, and Howard S Leach (eds), *The Public Papers of Woodrow Wilson: War and Peace* (Harper and Brothers, 1927), p. 182 ([link](#)) (referred to in Robert McCorquodale, “Group Rights” in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (Oxford University Press, 3rd ed, 2018), p. 346) (**Exhibit ZT**). Further, British Prime Minister, Lloyd George declared that one reason for the UK entering the First World War had been the “principle of self-determination” and that future territorial questions should be resolved by respecting “the consent of the governed”: address to the Trade Union Conference, 5 January 1918, reported in *The New York Times Current History* (New York) 270 (also referred to in Robert McCorquodale, “Group Rights” in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (Oxford University Press, 3rd ed, 2018) 346) (**Exhibit ZT**).

⁵²³ Minutes of the 14th Meeting of the Council, 24 June 1921, League of Nations Official Journal, 697, at 699 (**Exhibit ZD**).

⁵²⁴ Minutes of the 14th Meeting of the Council, 24 June 1921, League of Nations Official Journal, 697, at 699 (**Exhibit ZD**).

violation of the right to self-determination has never been legal under international law.

(b) *Second, in the alternative*, that the relevant obligations have been binding on States at least since 1945, when self-determination was codified in the UN Charter, thus covering the Relevant Conduct from that time.

305. This Court confirmed in the *Chagos Archipelago advisory opinion* that the right to self-determination had become a customary norm by the time of the adoption of General Assembly Resolution 1514(XV) on 14 December 1960.⁵²⁵ Importantly, when making these statements, the Court explained that it had “*confine[d] itself ... to analysing the right to self-determination in the context of decolonization*”.⁵²⁶ Further, the Court was concerned only with the applicable international law for the period between 1965 to 1968. The Court’s reasoning in that advisory opinion can therefore stand consistently with (and certainly does not foreclose) the position of Vanuatu regarding the temporal scope of the right to self-determination.
306. States are internationally responsible for violating the right to self-determination where, by the Relevant Conduct, they have undermined the conditions necessary for the exercise of the right to self-determination. Significantly, leaders of Pacific Island States, including Vanuatu, have given voice to the will of their peoples to continue living on their ancestral islands in accordance with their right to self-determination.⁵²⁷ Yet the Relevant Conduct has continued, resulting in violations of the right to self-determination, which are likely to continue to occur in Vanuatu and across the Pacific with increased intensity, scale and frequency as the climate crisis worsens.
307. In Vanuatu’s submission, legal consequences flow from these violations of the right to self-determination in this context, as explained in [Chapter V] of this Written Statement.

F. The duty to co-operate

308. The duty to co-operate is enshrined in the UN Charter as both a purpose of the United Nations Organisation (Article 1(3)) and a principle governing the relations between State Members and the Organisation itself (Article 2(5)). The duty to co-

⁵²⁵ The Court considered that the adoption of resolution 1514(XV) was a “*defining moment*” and that it had a “*declaratory*” and “*normative*” character, which was affirmed by common art. 1(3) of the ICCPR and ICESCR (adopted by the General Assembly on 16 December 1966) and the *Friendly Relations Declaration* (adopted in 1970) ([link](#) and [link](#)): *Chagos Archipelago, Advisory Opinion*, I.C.J. Rep. 2019, pp. 132-133, paras. 150-155.

⁵²⁶ *Chagos Archipelago, Advisory Opinion*, I.C.J. Rep. 2019, p. 131, para. 144 (emphasis added).

⁵²⁷ Vanuatu, gaining independence in 1980, emerged as a particularly strong voice in these efforts. In the late 1980s Vanuatu served as the first Chair of the Alliance of Small Island States (AOSIS) which, since its inception, has been a critical player in advocating for action to avert the threats of climate change. AOSIS was instrumental in the negotiations that led to the UNFCCC, with an ultimate objective of preventing “dangerous” human interference with the climate system. In the ensuing decades, leaders from Vanuatu and other Pacific Island States have articulated their peoples’ desire to remain on their ancestral homelands at dozens of meetings under the auspices of the UN and other regional and international organisations.

operate is also generally recognized as a rule arising from general international law, most fully articulated in the 1970 Friendly Relations Declaration,⁵²⁸ but also referred to in the Rio Declaration,⁵²⁹ the ILC Articles on Transboundary Harm,⁵³⁰ and emanating from numerous decisions of this and other courts and tribunals.⁵³¹ The duty entails three components: it is (1) a duty of States, (2) with general and specific purposes, which (3) arises in various spheres of international relations.

309. As a duty of States, international cooperation involves an obligation of conduct (a primary rule),⁵³² requiring specifically, at the very least, notification, consultation and exchange of information with other affected States when an activity or an accident may have significant consequences on those States.⁵³³ The duty to cooperate also involves not precluding the outcome of a cooperative process by unilateral action taken while the process is ongoing.⁵³⁴ The latter is important in the context of the present proceedings because the continued display of the Relevant

⁵²⁸ UN General Assembly Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970, Annex, ([link](#)).

⁵²⁹ Rio Declaration on Environment and Development, 13 June 1992, UN Doc A/CONF.151/26, principle 7 (States must “*cooperate in the spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem*”) ([link](#)).

⁵³⁰ Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, with commentaries, 12 December 2001, UNGA Res 56/82, UN Doc. A/RES/56/82, art. 4, para. 1 (“*States concerned shall cooperate in good faith and, as necessary, seek the assistance of one or more competent international organizations in preventing significant transboundary harm or at any event in minimizing the risk thereof.*”) ([link](#)).

⁵³¹ *Corfu Channel Case, Judgment of 9 April 1949*, I.C.J. Reports 1949, p. 4, pp. 22-23; *North Sea Continental Shelf, Judgment*, I.C.J. Reports 1969, p. 3, paras. 83-87; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 98-103; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, I.C.J. Reports 2010, p.14, para. 77 (“by co-operating . . . the States concerned can manage the risks of damage to the environment that might be created by the plans initiated by one or [the] other of them, so as to prevent the damage in question.”), see also para. 281; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Judgment*, I.C.J. Reports 2015, p. 665, para. 104; *The MOX Plant Case, Ireland v. United Kingdom of Great Britain and Northern Ireland*, Provisional Measures, ITLOS Case no. 10, Order of 3 December 2001, para. 82 ([link](#)); *Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore)*, ITLOS Case no. 12, Order of 10 September 2003, para. 92 ([link](#)); *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)*, ITLOS Case no. 23, Order of 25 April 2015, para. 73 ([link](#)); *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion of 2 April 2015, ITLOS Case No 21, para. 140 ([link](#)); *In the matter of the South China Sea Arbitration before and Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea (Republic of the Philippines v. People’s Republic of China)*, PCA Case No. 2013-19, Award (12 July 2016), para. 946, see paras. 984-985 ([link](#)); *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, *Judgment*, I.C.J. Reports 2018, p. 507, paras. 86-87.

⁵³² *North Sea Continental Shelf, Judgment*, I.C.J. Reports 1969, p. 3, para. 85; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, *Judgment*, I.C.J. Reports 2002, p. 303, para. 244; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *Judgment*, I.C.J. Reports 1997, p. 7, para. 141.

⁵³³ *Corfu Channel Case, Judgment of 9 April 1949*, I.C.J. Reports 1949, p. 4, p. 22; Rio Declaration on Environment and Development, 13 June 1992, UN Doc. A/CONF.151/26, principles 18 and 19 ([link](#)); *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Judgment*, I.C.J. Reports 2015, p. 665, paras. 104, 108, 168; *Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore)*, Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003, p. 10, paras. 92, 106(1) ([link](#)). See *Advisory Opinion OC-23/17* (“The Environment and Human Rights”), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, paras. 187, 205-208 ([link](#)).

⁵³⁴ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, I.C.J. Reports 2010, p.14, para. 144.

Conduct both locks-in a pathway with excessive GHG emissions⁵³⁵ and increases “[t]he likelihood of abrupt and/or irreversible changes” as well as “the probability of low-likelihood outcomes associated with potentially very large adverse impacts”.⁵³⁶

310. The duty to co-operate can pursue a general purpose (as an obligation of conduct), e.g. the avoidance of military conflict, but also a very specific purpose (as an obligation of result), e.g. disarmament,⁵³⁷ or – as a secondary rule – cessation of a conduct amounting to a serious breach of an obligation owed *erga omnes* or to the international community as a whole (see [Chapter V, Section ---]). In its Advisory Opinion on the *Legality of Nuclear Weapons*, the Court made a distinction between the duty to cooperate as an obligation of conduct and a duty to cooperate “to achieve a precise result”.⁵³⁸ In that case, the duty in question arose from Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons, but what determines the nature of the duty to cooperate is the specific purpose itself. But even as an obligation of conduct (a primary rule), the duty to co-operate requires, specifically, notification and consultation when an activity or an accident may have significant consequences on other States⁵³⁹ and the duty not to preclude the outcome of a cooperative process by unilateral action taken while the process is ongoing.⁵⁴⁰ The latter is important in the context of the present proceedings because the continued display of the Relevant Conduct both locks-in a pathway with excessive GHG emissions⁵⁴¹ and increases “*the likelihood of abrupt and/or irreversible changes*” as well as of “*the probability of low-likelihood outcomes associated with potentially very large adverse impacts*”.⁵⁴²

⁵³⁵ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement C.2 (“Delayed mitigation and adaptation action would lock-in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages (*high confidence*)”) ([link](#)).

⁵³⁶ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.3 (with “*high confidence*”) ([link](#)).

⁵³⁷ *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion*, I.C.J. Reports 1996, p. 226, paras. 99-100.

⁵³⁸ *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 99.

⁵³⁹ *Corfu Channel Case*, *Judgment of 9 April 1949*, I.C.J. Reports 1949, p. 4, p. 22; Rio Declaration on Environment and Development, 13 June 1992, UN Doc. A/CONF.151/26, principles 18 and 19 ([link](#)); *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Judgment*, I.C.J. Reports 2015, p. 665, paras. 104, 108, 168.

⁵⁴⁰ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, I.C.J. Reports 2010, p.14, para. 144.

⁵⁴¹ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement C.2 (“Delayed mitigation and adaptation action would lock-in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages”) ([link](#)).

⁵⁴² Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.3 ([link](#)).

311. The spheres of international relations where the duty operates are numerous.

- (a) Historically, the duty to co-operate has been of particular importance in connection with shared watercourses, which constitute a “community of interests” among riparian States.⁵⁴³
- (b) Since the 1970s, a major sphere of international co-operation has been the protection of the environment, including that of the marine environment, species, ecosystems and biodiversity, the atmosphere, the climate system, and other sub-parts of the environment. The 1992 Rio Declaration on Environment and Development,⁵⁴⁴ which is referred to in preambular paragraph 5 of Resolution 77/276, specifically recalls the duty to co-operate in both a transboundary (Principles 18 and 19) and a global (Principles 7 and 27) context. In the environmental sphere, the duty of cooperation has been construed as also requiring the exchange of information⁵⁴⁵ and the joint evaluation of the environmental impacts of certain activities.⁵⁴⁶ In relation to the marine environment, ITLOS has said that the duty to cooperate is “a fundamental principle” in the prevention of pollution of the marine environment under both UNCLOS and general international law.⁵⁴⁷ In the specific field of climate change, the UNFCCC notes that “the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate response”.⁵⁴⁸
- (c) The duty to cooperate also manifests in the context of international human rights law. By Article 56, UN members pledge themselves to take joint and separate action in cooperation with the UN to achieve the objective in Article 55, namely, to promote, amongst other things, “universal respect

⁵⁴³ *Case Relating to the Territorial Jurisdiction of the International Commission of the River Oder* (1929), P.C.I.J. Series A No. 23, p. 27 (for navigational uses); *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7, para. 85 (for non-navigational uses)

⁵⁴⁴ Rio Declaration on Environment and Development, 13 June 1992, UN Doc. A/CONF.151/26 ([link](#)).

⁵⁴⁵ *The MOX Plant Case, Ireland v. United Kingdom of Great Britain and Northern Ireland*, Provisional Measures, ITLOS Case no. 10, Order of 3 December 2001, para. 89(a) ([link](#)).

⁵⁴⁶ *Fisheries Jurisdiction case (UK v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 3, para. 72; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 281; *The MOX Plant Case, Ireland v. United Kingdom of Great Britain and Northern Ireland*, Provisional Measures, ITLOS Case no. 10, Order of 3 December 2001, para. 89(b) ([link](#)).

⁵⁴⁷ *The MOX Plant Case, Ireland v. United Kingdom of Great Britain and Northern Ireland*, Provisional Measures, ITLOS Case no. 10, Order of 3 December 2001, para. 82 ([link](#)). See *Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore)*, ITLOS Case no. 12, Order of 10 September 2003, para. 92 ([link](#)); *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, ITLOS Case no. 23, Order of 25 April 2015, para. 73 ([link](#)); *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion of 2 April 2015, ITLOS Case No 21, para. 140 ([link](#)).

⁵⁴⁸ UNFCCC, preamble ([link](#)).

for, and observance of, human rights and fundamental freedoms for all”⁵⁴⁹. Core human rights instruments, including the UDHR⁵⁵⁰ and the ICESCR,⁵⁵¹ among others,⁵⁵² also make reference to and impose obligations regarding international cooperation. According to the Committee on Economic, Social and Cultural Rights:

“[I]n accordance with Articles 55 and 56 of the [UN Charter], with well-established principles of international law, and with the provisions of the Covenant itself, **international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States**. It is particularly incumbent upon those States which are in a position to assist others in this regard.”⁵⁵³ (emphasis added)

Further, the right to self-determination contained in Article 1 of the 1966 Covenants imposes specific obligations of international cooperation.⁵⁵⁴

312. These obligations gain particular importance in the context of climate change.⁵⁵⁵ The Human Rights Council urged States to “*strengthen and implement policies aimed at enhancing international cooperation based on human rights . . . despite the adverse effects of climate change*”.⁵⁵⁶ Importantly, there is differentiation in the

⁵⁴⁹ See also Vienna Declaration and Program of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, UN Doc A/CONF.157/23, paras. 4, 10, 11, 13, 18, 21, 47, 48, see preamble; UN General Assembly, “High Commissioner for the promotion and protection of all human rights” (UNGA Res 48/141, 7 January 1994), A/RES/48/141, preambular para. 7 ([link](#)).

⁵⁵⁰ UDHR, art. 22 (everyone is entitled to the “realization, through national effort and international cooperation (...) of the economic, social and cultural rights indispensable for [their] dignity and the free development of [their] personality”) ([link](#)).

⁵⁵¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, art 2(1) (binds all State parties to take steps “*individually and through international assistance and co-operation, especially economic and technical*”, towards the full realisation of the rights recognised in the Covenant); see also art 11(1) (noting the essential importance of international cooperation for the realisation of the right to an adequate standard of living) and art 15(4) (recognising benefits of co-operation in the scientific and cultural fields) ([link](#)). By virtue of these provisions, the ICESCR imposes international cooperation obligations on States in connection with all Covenant rights.

⁵⁵² See Convention on the Rights of Persons with Disabilities (opened for signature on 13 December 2006, entered into force 3 May 2008) U.N.T.S. 2515, p. 3, art 32, see also arts. 4(2), 37-38 ([link](#)); Convention on the Rights of the Child (opened for signature on 20 November 1989, entered into force 2 September 1990) U.N.T.S. 1577, p. 3, art 4, 17, 22(2), 23(4), 24(4), 28(3), 45 ([link](#)).

⁵⁵³ Committee on Economic, Social and Cultural Rights, *General Comment No. 3 (1990) on article 12(1) of the International Covenant on Economic, Social and Cultural Rights, on the nature of States Parties’ obligations* (14 December 1990) UN Doc E/1991/23, para. 14 ([link](#)).

⁵⁵⁴ ICCPR and ICESCR, common article 1(2), (3) ([link](#) and [link](#)). See also Human Rights Committee, *General Comment No. 12: Article 1 (Right to Self-determination)* (13 March 1984), HRI/GEN/1/Rev.9, para. 6 (“common article 1(3) “*is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination.*”) ([link](#)).

⁵⁵⁵ See John H. Knox, ‘Climate Change and Human Rights Law’ (2009) 50(1) Virginia Journal of International Law; Wake Forest Univ. Legal Studies Paper No. 1480120, pp. 42-43, 49-50 ([link](#)).

⁵⁵⁶ Human Rights Council, Resolution 50/9, Human Rights and Climate Change, UN Doc. A/HRC/RES/50/9 (14 July 2022), para. 11 ([link](#)). See, further, David Boyd, *Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (Report of the Special Rapporteur on the Issue of Human

content of States' international cooperation obligations, in line with the principles of equity and CBDRRD. This differentiation aims at correcting historical inequities and, in the context of human rights, ensuring the realisation of human rights everywhere.⁵⁵⁷ At the same time, there is an overarching obligation on all States to cooperate in good faith to prevent significant harm to the climate system and other parts of the environment. [something on the temporal factor is missing here]

313. As regards the Relevant Conduct at the heart of the present proceedings, States have been, and remain, under a duty to co-operate, given that the Relevant Conduct concerns activities causing significant harm to the environment of other States.⁵⁵⁸ In their performance of their duty to co-operate, States are required not to preclude the outcome of a cooperative process by unilateral action taken while the process is ongoing.⁵⁵⁹ As noted earlier in this Chapter, UNEP's Production Gap Report 2023 shows that major GHG emitters are, in fact, aiming to increase their production of fossil fuels to levels that, in 2030, "are 460%, 29%, and 82% higher for coal, oil, and gas, respectively, than the median 1.5°C-consistent pathways".⁵⁶⁰ **Such unilateral action would clearly preclude the outcome of cooperative efforts to reduce GHG emissions consistent with the best available science.** This unilateral conduct is a blatant breach of the duty to co-operate as well as of good faith (see next, [Section 4.4.3.G]), given contradiction between what such States are pledging in the NDCs and what they are actually doing. As noted by the UNEP Production

Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), 8 January 2019, A/HRC/40/55, para. 75 ([link](#)); David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 15 July 2019, UN Doc A/74/161, para. 68 ([link](#)); John H Knox, *Framework principles on human rights and the environment* ("Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean healthy and sustainable environment") (24 January 2018) A/HRC/37/59 annex, para. 36, 37, 39 ([link](#)); David Boyd, "Healthy Biosphere", *Report of the Special Rapporteur on Human Rights and the Environment*, A/75/161, para. 74 ([link](#)); 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, *Statement on human rights and climate change*, HRI/2019/1 (14 May 2020), para. 17 ([link](#)).

⁵⁵⁷ Committee on Economic, Social and Cultural Rights, *General Comment No. 3 (1990) on article 12(1) of the International Covenant on Economic, Social and Cultural Rights, on the nature of States Parties' obligations* (14 December 1990) UN Doc E/1991/23, para. 13 ([link](#)); see David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 15 July 2019, UN Doc A/74/161, para. 68 ([link](#)); see Boyd, "Healthy Biosphere", *Report of the Special Rapporteur on Human Rights and the Environment*, A/75/161, para. 74 ([link](#)). See also Margaretha Wewerinke-Singh, "Pandemics, Planetary Health and Human Rights: Rethinking the Duty to Cooperate in the Face of Compound Global Crises" (2021) 24(1) *Max Planck Yearbook of United Nations Law* (Online) 399, pp. 413, 419 ([link](#)).

⁵⁵⁸ *Corfu Channel Case, Judgment of 9 April 1949*, I.C.J. Reports 1949, p. 4, p. 22; Rio Declaration on Environment and Development, 13 June 1992, UN Doc. A/CONF.151/26, principles 18 and 19 ([link](#)); *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Judgment*, I.C.J. Reports 2015, p. 665, paras. 104, 108, 168.

⁵⁵⁹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, I.C.J. Reports 2010, p. 14, para.144.

⁵⁶⁰ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up ? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)).

Gap Report, “*the disconnect between governments’ fossil fuel production plans and their climate pledges is also apparent across all three fuels.*”⁵⁶¹

G. Obligations arising from the principle of good faith

314. The principle of good faith is well established in general international law.⁵⁶² In addition to its restatement in Article 2(2) of the UN Charter,⁵⁶³ its fuller articulation in the 1970 Friendly Relations Declaration encompasses “*the duty to fulfil in good faith obligations under the generally recognised principles and rules of international law*” and “*under international agreements valid*” under these principles and rules.⁵⁶⁴
315. The Court has recalled in several occasions that, while the principle governs “*the creation and performance of legal obligations [...] it is not in itself a source of obligation where none would otherwise exist*”.⁵⁶⁵ With respect to the Relevant Conduct, the principle of good faith governs directly four aspects.
316. The *first* concerns the duty to co-operate in good faith and the implications of not doing so. This has been examined in ([Section 4.4.3.F]) of this Chapter.
317. The *second* relates to the fundamental principle stated in Article 26 of the Vienna Convention on the Law of Treaties that “[e]very treaty in force is binding upon the parties to it and **must be performed by them in good faith**” (emphasis added).⁵⁶⁶ This self-standing expression of good faith, which is part of international customary law,⁵⁶⁷ governs all types of agreements, including those between States and international organizations or between international organizations.⁵⁶⁸ Performing an agreement such as the Paris Agreement in good faith requires a State not to contradict, in its actual conduct, the commitments and pledges it has made to implement them.

⁵⁶¹ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up ? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)).

⁵⁶² *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Preliminary objections, Judgment*, I.C.J. Reports 1998, p. 275, para. 38

⁵⁶³ UN Charter, art. 2(2): “[a]ll members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter” ([link](#)).

⁵⁶⁴ UN General Assembly Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970, Annex, ([link](#)).

⁵⁶⁵ *Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 1988, p. 105, para. 94; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Preliminary objections, Judgment*, I.C.J. Reports 1998, p. 275, para. 39.

⁵⁶⁶ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, art. 26 ([link](#)).

⁵⁶⁷ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment*, I.C.J. Reports 1997, p. 7, paras. 42, 109.

⁵⁶⁸ Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 21 March 1986 (not yet in force), states in the preamble that “*the principles of free consent and of good faith and the pacta sunt servanda rule are universally recognised*” and then restates the rule in art. 26 ([link](#)).

318. *Third*, this is particularly the case when these commitments and pledges constitute, in and of themselves, unilateral acts binding by virtue of considerations of good faith.⁵⁶⁹ The Republic of Vanuatu submits that such is the case of the commitments made in the nationally-determined contributions of States having displayed the Relevant Conduct, as well as in declarations relating, for example, to the provision of climate finance.
319. *Fourth*, good faith must be specifically taken into account in the interpretation of treaties. Article 31(1) of the Vienna Convention on the Law of Treaties codifies the rule of general international law according to which treaties “*shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*”⁵⁷⁰ For example, the expectation in Article 4(3) of the Paris Agreement that subsequent NDCs “*reflect [a State’s] highest possible ambition*” cannot in good faith be interpreted to allow a State to pledge in its NDC to reduce its GHG emissions while, in practice, it adopts policies leading to the opposite result.
320. Thus, States having displayed the Relevant Conduct have acted contrary to good faith both in their under-performance of their other international obligations, including those arising from the UNFCCC and the Paris Agreement, and in their disingenuous negotiations and pledges to reduce GHG emissions while, in fact, their policies lead to a massive increase in the production and use of fossil fuels. Even as states continue to license new fossil fuel exploration and expansion, they came together in the 2023 UAE consensus call on Parties to “*transition away from fossil fuels in energy systems...*”⁵⁷¹

4.4.4. *Obligations arising from the applicable treaties*

A. Obligations arising from the Charter of the United Nations

321. Some of the obligations in the previous sections concerning general international law are also anchored in the UN Charter.
322. It is widely recognized that the UDHR serves as the authoritative interpretation of the UN Charter’s human rights provisions.⁵⁷² As such, the UDHR’s catalogue of

⁵⁶⁹ *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 253, para. 46.

⁵⁷⁰ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, art. 31(1) ([link](#)).

⁵⁷¹ Decision_/CMA.5, Outcome of the first global stocktake, 13 December 2023, para. 28 (d) ([link](#)).

⁵⁷² Bruno Simma and Philip Alston, “The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles” (1992) 12 *Australian Yearbook of International Law* 82, pp. 100-101 ([link](#)); Manfred Nowak, *Introduction to the International Human Rights Regime* (Martinus Nijhoff, 2003), p. 76 (**Exhibit ZL**). See also *South West Africa, Second Phase, Dissenting Opinion of Judge Tanaka*, I.C.J. Reports 1966, p.293 and pp. 289-90; *South West Africa, Second Phase, Dissenting Opinion of Judge Padilla Nervo*, I.C.J. Reports 1966, pp. 467-68.

rights forms an integral part of the framework of international law to be upheld by all UN Member States.⁵⁷³

323. The same applies to the principles formulated in the Friendly Relations Declaration, including the obligation to respect to right of peoples to self-determination,⁵⁷⁴ the duty to co-operate⁵⁷⁵ and the obligations arising from the principle of good faith.⁵⁷⁶
324. The direct application of these obligations to the Relevant Conduct has been shown in the previous sections of this Chapter. “*Emphasizing the importance*” of the UN Charter as well as of other rules and instruments, as it is done in preambular paragraph 5 of Resolution 77/276, is significant for three main reasons.
325. First, the obligations arising from general international law and those arising from the UN Charter, continue to exist and apply concurrently and autonomously, even when their context is similar or identical. The Court has made this clear in the *Nicaragua v. United States* case, in the following terms:

“even if the customary norm and the treaty norm were to have exactly the same content, this would not be a reason for the Court to hold that the incorporation of the customary norm into treaty-law must deprive the customary norm of its applicability as distinct from that of the treaty norm”⁵⁷⁷

326. Second, and **importantly, in accordance with Article 103 of the UN Charter:**

“[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail”.

This rule gives obligations under the UN Charter a normative hierarchy over those arising under other agreements. Thus, another agreement cannot be given priority

⁵⁷³ This understanding dates back to the adoption of the UDHR in UN General Assembly Resolution 217A (III), A/Res/217(III), 10 December 1948, which signaled the UDHR’s role in elaborating and giving substance to the Charter’s human rights provisions. It is further reflected in numerous UN General Assembly resolutions that rely on its provisions, requiring that “*All States shall observe faithfully and strictly the provisions of the ... Universal Declaration of Human Rights*”: see, e.g., UN General Assembly, *Declaration on the Granting of Independence to the Colonial Countries and Peoples*, UNGA Res. 1514 (XV), 14 December 1960, para. 7 ([link](#)).

⁵⁷⁴ UN Charter, art. 1(2) (referring to “*the principle of equal rights and self-determination of peoples*” as a purpose of the organisation) and 55 (referring inter alia to the “*principle of equal rights and self-determination of peoples*”) ([link](#)).

⁵⁷⁵ UN Charter, art. 1(3) (referring to “*international cooperation*” inter alia “*in promotion respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*”, as a purpose of the organisation) ([link](#)).

⁵⁷⁶ UN Charter, art. 2(2) (stating the requirement to “*fulfil in good faith*” the obligations assumed under the Charter) ([link](#)).

⁵⁷⁷ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, I.C.J. Reports 1986, p. 14, para. 177. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, *Judgment*, I.C.J. Reports 2015, p. 3, para. 88 (“*Where a treaty states an obligation which also exists under customary international law, the treaty obligation and the customary law obligation remain separate and distinct*”).

on grounds of speciality (*lex specialis*) or temporality (*lex posterior*) over the obligations arising from the Charter which govern the Relevant Conduct. The UN General Assembly specifically recalled this when requesting the Court, in the chapeau of the operative part of Resolution 77/276, to “[h]av[e] particular regard to the Charter of the United Nations”.

327. Third, the interpretation of the UN Charter in relation to these and other obligations must take into account a range of important instruments which articulate the content of the relevant obligations, including *inter alia* the 1948 UDHR,⁵⁷⁸ the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples⁵⁷⁹ and the 1970 Friendly Relations Declaration.⁵⁸⁰
328. For the reasons explained in the context of each specific obligation, the obligations arising from the UN Charter are directly applicable to the Relevant Conduct. Given the quasi-universal character of the Charter, they apply alongside the obligations of general international law with the same content. Also, for the reasons explained for each specific obligation, the Relevant Conduct amounts to a breach, in principle, of the UN Charter.

B. Obligations arising from the rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

(1) Scope of application

329. States’ human rights obligations are derived from the catalogue of rights contained in the UDHR, which apply with binding force on all States as an authoritative interpretation of the UN Charter, customary international law and general principles of law (see Obligations arising from the rights recognized in the Universal Declaration of Human Rights of this Chapter). These same rights and obligations also have a basis in treaty law; they have been codified in the two International Covenants adopted in 1966,⁵⁸¹ amongst other human rights treaties. These obligations bind States parties to the respective treaties, in parallel to the human rights obligations derived from other sources.

⁵⁷⁸ Resolution 217 A(III): Universal Declaration of Human Rights, 10 December 1948 ([link](#)).

⁵⁷⁹ UN General Assembly Resolution 1514 (XV), ‘Declaration on the Granting of Independence to Colonial Countries and Peoples’, 14 December 1960 ([link](#)). See also the UN General Assembly Resolution 1541 (XV), ‘Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter’, 15 December 1960 ([link](#)); Permanent Sovereignty over Natural Resources, UNGA Res 1803 (XVII), UN GAOR, 17th sess, 1194th plen mtg, UN Doc A/RES/1803(XVII), 14 December 1962 ([link](#)).

⁵⁸⁰ UN General Assembly Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the UN Charter, 24 October 1970, Annex, ([link](#)).

⁵⁸¹ These Covenants, together with the UDHR, form the “International Bill of Human Rights”.

330. The International Covenant on Civil and Political Rights (ICCPR) has 173 States Parties.⁵⁸² The UN Human Rights Committee is the body of independent experts expressly mandated under the ICCPR to interpret its provisions, monitor its implementation, and hear and resolve individual communications.⁵⁸³ As to the authoritative weight to ascribe to the views and comments of the Human Rights Committee, this Court has said that: it “*should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty.*”⁵⁸⁴
331. The ICESCR has 171 States Parties. The compliance of States parties with the ICESCR is monitored by the Committee on Economic, Social and Cultural Rights (CESCR). This is a body of independent experts established under ECOSOC Resolution 1985/17 of 28 May 1985,⁵⁸⁵ charged with carrying out the monitoring functions assigned to the UN Economic and Social Council (ECOSOC) in Part IV of the ICESCR.⁵⁸⁶ The authoritative weight of the Committee’s General Comments as interpretations of the Covenant provisions is supported by the fact that these General Comments are included in its annual reports to ECOSOC, which are in turn considered by the General Assembly.⁵⁸⁷
332. The ICCPR and ICESCR must be interpreted in a manner that gives primacy to their “*object and purpose*” — namely, the protection of the rights set out in the treaties.⁵⁸⁸ Further, a teleological method of interpretation is apt because of the special character of human rights treaties, as “*living instruments,*”⁵⁸⁹ which contain

⁵⁸² *International Covenant on Civil and Political Rights*, 16 December 1966, UNTS vol. 999, p. 171 ([link](#)).

⁵⁸³ See *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts. 28-45 ([link](#)). *Optional Protocol to the International Covenant on Civil and Political Rights*, 19 December 1966, UNTS, vol. 999, p. 171 ([link](#)).

⁵⁸⁴ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010, p. 639, p. 664.

⁵⁸⁵ *Review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, ECOSOC Res. 1985/17, 28 May 1985, UN Doc E/1985/85, para. (a) ([link](#)).

⁵⁸⁶ *Review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, ECOSOC Res. 1985/17, 28 May 1985, UN Doc E/1985/85, para. (f) ([link](#)); see *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, arts. 19-22 ([link](#)).

⁵⁸⁷ *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, arts. 19- 22 ([link](#))

⁵⁸⁸ Nowak, *Introduction to the International Human Rights Regime* (Brill, 2004) 65 (“*naturally the main object is for states parties to protect the rights set out in the treaties*”) (**Exhibit ZL**). See, generally, Vienna Convention on the Law of Treaties (23 May 1969, entry into force 27 January 1980), 1155 UNTS 331, art. 31(1) ([link](#)).

⁵⁸⁹ See *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 15, Dissenting Opinion of Judge Álvarez, p. 51 (stated that human rights treaties are “*multilateral conventions of a special character*” that must be interpreted “*with regard to the future*”). See, in the context of European human rights law, *Tyrer v. United Kingdom*, European Court of Human Rights Application No. 5856/72 Series A, No. 26, Judgment, 25 April 1978, para. 31 (“*the [ECHR] is a living instrument which [...] must be interpreted in the light of present-day conditions*”) ([link](#)); and in the Inter-American context, *Mapiripan Massacre v. Colombia* (Merits Costs, Reparations) Inter-American Court of Human Rights Series C No 134 (5 September 2005), para. 106 (“*human rights treaties are live instruments,*

obligations that are distinctive as they are owed to individuals and are not reciprocal.⁵⁹⁰ A corollary of this is that human rights treaties are to be interpreted and applied in a practical and effective way (“principle of effectiveness”).⁵⁹¹

333. There is no restriction to the personal scope of the ICCPR or the ICESCR. The beneficiaries of human rights obligations are — as per the UDHR, “*all human beings*”, save for certain rights of political participation that are confined to “*citizens*” and the rights that specifically protect “*peoples*” and “*minorities*”.
334. As to the territorial scope of the ICCPR, Article 2(1) requires that States respect and ensure the Covenant rights: (a) to all persons who may be within their territory; **and** (b) to all persons subject to their jurisdiction. The Human Rights Committee has stressed that “*and*” must be read disjunctively.⁵⁹² This Court adopted a consistent view in its *Wall* advisory opinion.⁵⁹³ This disjunctive reading is significant because the jurisdiction of States that have engaged in the Relevant Conduct may extend to persons located outside their territory, including those located in Small Island Developing States such as Vanuatu. It is Vanuatu’s submission that this jurisdictional link is indeed established by virtue of the human rights implications of the Relevant Conduct.

whose interpretation must go hand in hand with evolving times and current living conditions”) ([link](#)). UN treaty bodies have also taken this approach: UN Human Rights Committee, UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 829/1998: Judge v. Canada*, CCPR/C/78/D/829/1998 (13 August 2003), para. 10.3 ([link](#)); UNCERD, *Hagan v. Australia*, Communication No 26/2002 (20 March 2003) UN Doc CERD/C/62/D/26/2002, para.7.3 ([link](#)).

⁵⁹⁰ This has been observed by this Court and by regional human rights courts: see *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, I.C.J. Reports 1951, p. 15, para. 23 (“*the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the raison d’être of the convention.*”); *The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights (Arts. 74 and 75), Advisory Opinion OC-2/82*, 24 September 1982, Inter-American Court of Human Rights Ser. A No. 2, para. 29 (“*Modern human rights treaties in general [...] are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States.*”) ([link](#)); *Austria v. Italy (Pfunders Case)* (1961) 4 YB 116, para. 138 (European Commission on Human Rights held that obligations under the European Convention on Human Rights are “*essentially of an objective character, being designed rather to protect the fundamental rights of individual human beings from infringements by any of the High Contracting Parties than to create subjective and reciprocal rights for the High Contracting Parties themselves*”) ([link](#)).

⁵⁹¹ *Loizidou v. Turkey (Preliminary Objections)* (App. No. 15318/89), Judgment (23 March 1995), para. 72 ([link](#)); *Airey v. Republic of Ireland* Series A no 32 (1979) 2 EHRR, 305, para. 24 ([link](#)); *Soering v. UK* (1989) Series A No 161, App No 14038/88 11 EHRR 439, para. 87 ([link](#)). See Manfred Nowak, *Introduction to the International Human Rights Regime* (Brill, 2003) 66 (referring to the same rule, but referring to it as “*effet utile*”) (**Exhibit ZL**). This principle of interpretation has also been applied by this Court in other contexts: see e.g., *Corfu Channel Case (United Kingdom v. Albania) (Merits)* I.C.J. Reports 1949, p. 24; *Interpretation of the Peace Treaties with Bulgaria, Hungary, and Romania, Advisory Opinion (Second Phase)* I.C.J. Reports 1950, p. 229 (referring to “*the maxim: Ut res magis valeat quam pereat, often referred to as the rule of effectiveness*”).

⁵⁹² UN Human Rights Committee, *General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add. 13, para. 5 ([link](#)).

⁵⁹³ *Wall (Advisory Opinion)* I.C.J. Reports 2004, para. 111. See also Theodor Meron, ‘Extraterritoriality of Human Rights Treaties’ (1995) 89 *American Journal of International Law* 78, p. 79 (**Exhibit ZX**).

335. The Republic of Vanuatu’s submission aligns with a plain reading of Article 2(1) and is supported by the interpretative practice of the Human Rights Committee and other human rights treaty bodies. Specifically, “*jurisdiction*” has been interpreted by the Human Rights Committee as requiring that States parties respect and ensure the rights of anyone “*within the power or effective control of that State Party*”.⁵⁹⁴ Establishing “*power*” or “*effective control*” involves a factual inquiry into the link between a State’s acts and omissions and potential human rights violations.⁵⁹⁵ The first (and so far only) such inquiry in the context of climate change was carried out by the Committee on the Rights of the Child in *Chiara Sacchi et al.*⁵⁹⁶ In this case, the Committee confirmed that the child complainants (including complainants located in Palau and the Marshall Islands) fell within the jurisdiction of the respondent States based on the latter States’ ability “*to regulate activities that are the source of [carbon] emissions and to enforce such regulations*”; meaning that “*the State party has effective control over the emissions*”.⁵⁹⁷ This interpretation confirms that persons located in Vanuatu and others whose rights are implicated as a result of the Relevant Conduct fall within the jurisdiction of the States engaging in this conduct, no matter where they are located geographically.⁵⁹⁸

⁵⁹⁴ UN Human Rights Committee, *General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add. 13, para. 10 ([link](#)).

⁵⁹⁵ As Professor Scheinin puts it, jurisdiction merely “*serves as a shorthand expression for the required factual link between a State and an individual (human rights accountability), or between a State’s conduct and certain grievances (State responsibility)*”: Martin Scheinin, ‘Just Another Word? Jurisdiction in the Roadmaps of State Responsibility and Human Rights’ in Malcolm Langford et al. (eds), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (Cambridge University Press, 2013) ([link](#)). See Marko Milanovic, ‘From Compromise to Principle: Clarifying the Concept of State Jurisdiction in Human Rights Treaties’ (2008) 8 *Human Rights Law Review* 411, pp. 417 (arguing that “*jurisdiction*” denotes “*a sort of factual power that a State exercises over persons or territory*”) ([link](#)).

⁵⁹⁶ In connection with the similarly worded jurisdictional clause of the Convention on the Rights of the Child, art. 2(1) (referring to “*each child within [States parties] jurisdiction*”) ([link](#)).

⁵⁹⁷ Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, para. 10.10, see also para. 10.7 ([link](#)) (where the Committee sought to adapt the relevant approach to jurisdiction taken by the Inter-American Court of Human Rights in its advisory opinion on human rights and the environment); see *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, paras. 95, 101-102 ([link](#)).

⁵⁹⁸ Further, in *Chiara Sacchi et al.*, the Committee relied on the principle of common but differentiated responsibilities when stating that the “*collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location*”: Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, para. 10.10 ([link](#)). See Expert Report of Professor Martin Scheinin on International Human Rights Law Obligations of States in Respect of Climate Change (dated 31 December 2023) (**Exhibit C**), para. 14.

336. Significantly, there is no jurisdictional clause in the ICESCR. Although this omission is not conclusive,⁵⁹⁹ when considered alongside certain features of the treaty, it emerges with force that obligations of States under the ICESCR can apply extraterritorially. Those features are: (a) the fact that the undertaking in Article 2(1) – “to take steps” both individually and through international assistance and cooperation to achieve progressively the full realisation of the rights — is not qualified or otherwise limited by other considerations; (b) the numerous references to international action or international coordination for the purposes of achieving the rights recognized in the ICESCR;⁶⁰⁰ (c) that, according to the CESCR, “the phrase ‘to the maximum of its available resources’ was intended by the drafters of the [ICESCR] to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance”;⁶⁰¹ and (d) that the CESCR has consistently interpreted specific rights obligations as having an extraterritorial scope, e.g., for rights to health⁶⁰² and food.⁶⁰³

337. As for the nature of States’ obligations, States must, in relation to the ICCPR:

- *respect the rights* — a negative obligation, requiring that States refrain from conduct causing a violation of the rights; and
- *ensure the rights* — positive obligations, requiring that States protect against of acts committed by private persons or entities that would impair the enjoyment of the rights; and to adopt legislative,

⁵⁹⁹ See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136; c.f., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43 (State responsibility could arise for acts committed by one State on the territory of another because the obligation of States to prevent and to punish the crime of genocide was “not territorially limited by the [Genocide] Convention” in light of the absence of a jurisdiction clause).

⁶⁰⁰ See International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, arts. 2(1), 11, 15, 22, 23. ([link](#)).

⁶⁰¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 3 (1990) on article 12(1) of the International Covenant on Economic, Social and Cultural Rights, on the nature of States Parties’ obligations*, 14 December 1990), E/1991/23, para. 13 ([link](#)).

⁶⁰² Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, para. 39 (State parties must respect enjoyment of the right to health in other countries and “prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means in accordance with the UN Charter and other applicable international law” and, depending on the availability of resources, to assist other countries to respect and fulfil the right to health) ([link](#)).

⁶⁰³ Committee on Economic, Social and Cultural Rights, *General Comment No. 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food (article 11)*, 12 May 1999, E/C12/1999/5, paras. 36–37 (“States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required. ... States parties should refrain at all times from food embargoes or similar measures which endanger conditions for food production and access to food in other countries. Food should never be used as an instrument of political and economic pressure.”) ([link](#)).

judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations.⁶⁰⁴

And in relation to the ICESCR:

- *progressively realize*, and *ensure the minimum essential levels* of, each of the rights;⁶⁰⁵ and
- further, according to the CESCR:⁶⁰⁶
 - *respect the rights* — a negative obligation, requiring that States refrain from conduct causing a violation of the rights;
 - *protect the rights* — a positive obligation, requiring that States protect the rights from being violated by private persons and entities; and
 - *fulfil the rights* — a positive obligation, requiring that States establish, implement and enforce laws, policies and programmes which are directed towards promoting and fulfilling the rights.

338. Under common Article 1 of the ICCPR and ICESCR, States must *respect* and *ensure* the right to self-determination.⁶⁰⁷ In terms of territorial scope, this right imposes transnational obligations *per se*, as “peoples” may comprise the entire population of a State—in which case their protection necessarily depends on the conduct of other States.⁶⁰⁸ Intricately connected to common Article 1 is the right of minorities (ethnic, religious or linguistic) to enjoy their culture and protect their minority identity per Article 27 of the ICCPR.⁶⁰⁹ The Human Rights Committee has

⁶⁰⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art. 2(1) ([link](#)); UN Human Rights Committee, *General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add. 13, paras. 6-8 ([link](#)).

⁶⁰⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 3 (1990) on article 12(1) of the International Covenant on Economic, Social and Cultural Rights, on the nature of States Parties’ obligations* (14 December 1990) UN Doc E/1991/23, paras. 9-10 ([link](#)).

⁶⁰⁶ See e.g., Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, para. 33 ([link](#)); Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, 21 December 2009, para. 48, see paras. 49-54 ([link](#)).

⁶⁰⁷ Discussed in section Obligations arising from the right to self-determination).

⁶⁰⁸ The Human Rights Committee has said that States’ obligations under art. 1 exist “*not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination*”: UN Human Rights Committee, *General Comment No. 12: Article 1 (Right to Self-determination)* (13 March 1984), HRI/GEN/1/Rev.9, para. 6 ([link](#)). See John H. Knox, ‘Climate Change and Human Rights Law’ (2009) 50(1) *Virginia Journal of International Law*; Wake Forest Univ. Legal Studies Paper No. 1480120, p. 37 ([link](#)).

⁶⁰⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art. 27 ([link](#)).

recognized that indigenous communities enjoy protection under Article 27 of the ICCPR.⁶¹⁰

339. Importantly, in the light of the Relevant Conduct, Vanuatu submits that all States are obligated *to respect* the human rights addressed in the following paragraphs by refraining from any conduct that causes or allows significant harm to the climate system and other parts of the environment and to *ensure, protect* and *fulfil* the below rights (as applicable) by exercising due diligence, adopting and implementing laws, policies and programmes, and engaging in international cooperation with other States, to address and avert the threats posed by the Relevant Conduct to the climate system and other parts of the environment. This is because significant harm to the climate system and to other parts of the environment will impair the content of the rights discussed below in at least the ways discussed below).
340. Before turning to a discussion of specific rights, Vanuatu emphasises **two important points**.
341. First, the human rights obligations discussed below — although framed foremost as obligations arising under the ICCPR and ICESCR for pedagogical purposes — are recognized across several human rights law treaties, in the UDHR, under customary international law and under general principles of law.⁶¹¹ Accordingly, these obligations are reflective of universal human rights obligations which **are applicable to all States in relation to the Relevant Conduct over time, irrespective of whether and when they have ratified the ICCPR or ICESCR**. Put another way, these obligations are **not** personally or temporally limited to only those States who have signed and ratified the ICCPR or ICESCR from the time of doing so. Overall, Vanuatu submits that the sources of human rights obligations across the corpus of international human rights law are many and varied; and, in combination, produce a cumulative set of norms which govern all States in respect of the Relevant Conduct.

⁶¹⁰ See e.g., UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 760/1997: J G A Diergaardt (late Captain of the Rehoboth Boster Community) et al. v. Namibia*, CCPR/C/69/D/760/1997 (25 July 2000), para. 10.6 ([link](#)); UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. R.6/24, Supp. No. 40: Sandra Lovelace v. Canada*, A/36/40, 30 July 1981, paras. 14-19 ([link](#)); UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 167/1984: Chief Ominayak and the Lubicon Lake Band v. Canada*, CCPR/C/38/D/167/1984, 26 March 1990, paras. 13.4, 32.2 ([link](#)); UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 1457/2006: Ángela Poma Poma v. Peru*, CPR/C/95/D/1457/2006, 27 March 2009, paras. 6.3-6.5, 7.7 ([link](#)).

⁶¹¹ See Section 4.4.3.B of this Chapter (Obligations arising from the rights recognized in the Universal Declaration of Human Rights). See also the Expert Report of Professor Martin Scheinin on International Human Rights Law Obligations of States in Respect of Climate Change (dated 31 December 2023) (**Exhibit C**), para. 2, where Professor Scheinin notes the general overlap and consistency between the catalogues of human rights across the Covenants and the UDHR and adopts the view that the latter “*should be understood as a reflection of how the scope of international human rights, as enshrined in customary international law and as referred to in the Charter was understood in 1948*”.

342. Second, climate change affects essentially **all** human rights. Human rights are universal, indivisible, interdependent and interrelated; and the range of implications which flow from the adverse effects of climate change can impair the enjoyment of rights in necessarily overlapping and layered ways. This is consistent with statements which have been made by the UN Special Rapporteur on Human Rights and Climate Change,⁶¹² and also with resolutions of the UN Human Rights Council.⁶¹³ Professor Scheinin confirms in his Expert Report that “[m]any, if not all substantive human rights are affected by climate change”.⁶¹⁴ The discussion which follows, which focuses on a discrete set of rights, is therefore necessarily limited and should not be taken to be an exhaustive statement of how human rights are impaired by climate change. Rather, the paragraphs which follow seek to provide an *illustration* of how certain rights are engaged by climate change; how the Relevant Conduct is governed by the State obligations arising under those rights; and how those obligations have been breached. This analysis should not detract from Vanuatu’s ultimate submission in this regard, namely that **the Relevant Conduct violates a wide range of internationally protected human rights.**

(2) *The right to life (ICCPR, Article 6; UDHR, Article 3)*

343. Article 6 of the ICCPR provides that “[e]very human being has the inherent right to life”. The right to life is recognized in many other human rights treaties⁶¹⁵ and declarations,⁶¹⁶ including in Article 3 of the UDHR, which simply states: “*Everyone*

⁶¹² Ian Fry, *Promotion and protection of human rights in the context of climate change*, “Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change”, 26 July 2022, U.N.Doc A/77/226, para.88 (“Throughout the world, the rights of people are being denied as a consequence of climate change. This includes a denial of the rights to, inter alia, life, health, food development, self-determination, water and sanitation, work, adequate housing and freedom from violence, sexual exploitation, trafficking and slavery.”) ([link](#))

⁶¹³ See e.g., Human Rights Council, Res 50/9 (Human rights and climate change), adopted on 7 July 2022, UN Doc A/HRC/Res/50/9, pmbl para. 15 (“Emphasizing that the adverse effects of climate change have a range of implications, both direct and indirect, that can increase with greater global warming, for the effective enjoyment of human rights, including, inter alia, the right to life, the right to adequate food, the right to the enjoyment of the highest attainable standard of physical and mental health, the right to adequate housing, the right to self-determination, the rights to safe drinking water and sanitation, the right to work and the right to development, and recalling that in no case may a people be deprived of its own means of subsistence”) ([link](#)).

⁶¹⁴ Expert Report of Professor Martin Scheinin on International Human Rights Law Obligations of States in Respect of Climate Change (dated 31 December 2023) (**Exhibit C**), para. 11, see also para. 37.

⁶¹⁵ Convention on the Rights of the Child (opened for signature on 20 November 1989, entered into force 2 September 1990) U.N.T.S. 1577, art. 6(1) ([link](#)); Convention on the Rights of Persons with Disabilities (opened for signature on 13 December 2006, entered into force 3 May 2008) U.N.T.S. 2515, art. 10 ([link](#)); European Convention on Human Rights, art. 2(1) ([link](#)); Charter of Fundamental Rights of the European Union, Official Journal of the European Communities, C 364/1, 8 December 2000 (EU Charter), art. 2(1) ([link](#)); American Convention on Human Rights: “Pact of San José, Costa Rica” (adopted 22 November 1969, entered into force 18 July 1978) 1144 U.N.T.S. 123, art. 4(1) ([link](#)); Arab Charter on Human Rights (2004), art. 5 ([link](#)); African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) CAB/LEG/67/3 rev. 5, ILM 58 (Banjul Charter), art. 4 ([link](#)); African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), art. 5(1) ([link](#)); Maputo Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (adopted 1 July 2003, entry into force 25 November 2005), art. 4(1) ([link](#)).

⁶¹⁶ UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10 December 1948, art. 3 ([link](#)); American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International

has the right to life”. The widespread ratification of the ICCPR, the limited number of reservations to the right to life,⁶¹⁷ and State practice have led eminent publicists to conclude that the right to life is protected under customary international law and creates obligations *erga omnes*.⁶¹⁸ The right is also considered to have attained the character of a *jus cogens* norm.⁶¹⁹

344. The right to life is a “supreme right from which no derogation is permitted”, which is “most precious for its own sake” but also because its protection “is the prerequisite for the enjoyment of all other human rights”.⁶²⁰ The right “should not be interpreted narrowly” and “concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity”.⁶²¹ The right

Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the InterAmerican System OEA/Ser L V/II.82 Doc 6 Rev 1 at 17 (1992), art. 1 ([link](#)); United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295, 2 October 2007, UN Doc A/RES/61/295, art. 7(1) ([link](#)); ASEAN Human Rights Declaration, Association of Southeast Asian Nations (ASEAN), 18 November 2012, art. 11 ([link](#)); Cairo Declaration on Human Rights in Islam, Islamic Conference of Foreign Ministers, Organization of the Islamic Conference (OIC), 5 August 1990, art. 2(a) ([link](#)). See also on its non-derogable nature: African Commission on Human and Peoples’ Rights, *General Comment No. 3 on the African Charter of Human and Peoples’ Rights: The Right to Life (Article 4)*, African Commission on Human and Peoples’ Rights, 12 December 2015, para. 1 ([link](#)).

⁶¹⁷ There remains only one reservation (the USA): see William A. Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021) (**Exhibit ZY**), p. 110 (“The [US] reserved the right, ‘subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman)’”).

⁶¹⁸ See William A. Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021), pp 111-112; *Mario Alfredo Lares- Reyes et al. v. United States*, Inter-American Court of Human Rights Case 12.379, Report No. 19/ 02, 27 February 2002 (**Exhibit ZY**), para. 46, fn. 23 (“It is beyond question that the core rights protected under the American Declaration, including the right to life ... have attained the status of customary, and indeed peremptory, norms of international law”); *Victims of the Tugboat ‘13 de Marzo’ v. Cuba*, Inter-American Court of Human Rights Case 11.436, Report 47/ 96, 16 October 1996, paras. 77-79 (referring to *erga omnes* obligations) ([link](#)); *Noah Kazingachire, John Chitsenga, Elias Chemvura, and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v. Zimbabwe*, African Charter established the African Commission on Human and Peoples’ Rights, No. 295/ 04, 12 October 2013, para. 137 (“[t]he right to life constitutes a norm of customary international law”) ([link](#)); African Commission on Human and Peoples’ Rights, *General Comment No. 3 on the African Charter of Human and Peoples’ Rights: The Right to Life (Article 4)*, African Commission on Human and Peoples’ Rights, 12 December 2015, paras. 5, 14 ([link](#)); see also *Prosecutor v. Blaškić* (IT- 94/ 14- A), *Judgment*, 29 July 2004, para. 143 ([link](#)); *Prosecutor v. Kordić and Čerkez* (IT- 95- 14/ 2- A), *Judgment*, 17 December 2004, para. 106 (“the inherent right to life ... is recognized in customary international law”) ([link](#)).

⁶¹⁹ William A. Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021) (**Exhibit ZY**), p. 112; see African Commission on Human and Peoples’ Rights, *General Comment No. 3 on the African Charter of Human and Peoples’ Rights: The Right to Life (Article 4)*, African Commission on Human and Peoples’ Rights, 12 December 2015, para. 5 ([link](#)); *Mario Alfredo Lares- Reyes et al. v. United States*, Case 12.379, Report No. 19/ 02, 27 February 2002, para. 46, fn. 23.

⁶²⁰ Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36 (GC 36), para. 2. See also Human Rights Committee, *General Comment No. 6 (Article 6)*, 30 April 1982, para. 1 ([link](#)). See also *Advisory Opinion OC-23/17* (“The Environment and Human Rights”), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 108 ([link](#)); African Commission on Human and Peoples’ Rights, *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Communication No. 279/03-296/05, 27 May 2009, para. 146; *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*, Merits, Series C No. 63, 9 November 1999, para. 144.

⁶²¹ Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36, para. 3 ([link](#)). See African Commission on Human and Peoples’ Rights, *General Comment No. 3 on the African Charter of Human and Peoples’ Rights: The Right to Life (Article 4)*, African Commission on Human and Peoples’ Rights, 12 December 2015, paras. 3, 6 ([link](#)); see UN Human Rights Committee, *Views adopted by*

can be violated by a life-threatening situation, without the loss of life occurring, so States must take positive measures and exercise obligations of due diligence *before the right is threatened*.⁶²²

345. The right to life (including to enjoy life with dignity) is clearly impaired by climate change. The Human Rights Committee has stated that climate change is one of “*the most pressing and serious threats to the ability of present and future generations to enjoy the right to life*”.⁶²³ The Inter-American Court of Human Rights has stated that the right is “*particularly vulnerable to environmental impact*”.⁶²⁴ In *Teitiota v. New Zealand* and *Daniel Billy et al. v. Australia*, the Human Rights Committee confirmed that States’ failure to take adequate mitigation and adaptation measures “*may expose individuals to a violation of their rights under article 6*”.⁶²⁵ Numerous rulings from domestic courts confirm this understanding.⁶²⁶
346. Given the foregoing considerations, the acts and omission of States encompassed by the Relevant Conduct clearly engage the right to life and are governed the obligations imposed on States by the right. Those obligations are to *respect* and *ensure* the right, as set out in paragraphs [337]-[338] above.⁶²⁷ These obligations

the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.3 ([link](#)).

⁶²² Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36, para. 7 ([link](#)).

⁶²³ Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36, para. 62 ([link](#)); UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.3 ([link](#)).

⁶²⁴ *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 66 ([link](#)).

⁶²⁵ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.7 ([link](#)); Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016: Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, 23 September 2020, para. 9.9 ([link](#)). See further, the Expert Report of Professor Martin Scheinin on International Human Rights Law Obligations of States in Respect of Climate Change (dated 31 December 2023) (**Exhibit C**), paras. 14-16.

⁶²⁶ See *Urgenda Foundation v. State of the Netherlands*, Supreme Court of the Netherlands, ECLI:NL:HR, 20 December 2019 (Netherlands), para. 5.3.2, see also paras. 5.6.2, 5.8 ([link](#)); *VZW Klimaatzaak v. Kingdom of Belgium*, Decision of 30 November 2023, Cour d’appel Bruxelles, 2021/AR/1589, para. 139; *Neubauer v. Germany*, 1 BvR 2656/18 2020, Decision of 24 March 2021, (Germany), para. 144 ([link](#)), see also paras. 120, 177-181; see also *Generaciones Futuras v. Ministerios de Ambiente y Desarrollo Sostenible*, República de Colombia Corte Suprema de Justicia STC4360-2018 (Apr. 5, 2018), para. 11; *Kula Oil Palm Ltd v. Tieba* [2021] PGNC 611, N9559, para. 26.

⁶²⁷ See further, in the context of the right to life: Human Rights Committee, GC 37, paras. 7, 18; see also African Commission on Human and Peoples’ Rights, *General Comment No. 3 on the African Charter of Human and Peoples’ Rights: The Right to Life (Article 4)*, African Commission on Human and Peoples’ Rights, 12 December 2015, paras. 7, 38, 41 ([link](#)); *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, paras. 117-118, 121 ([link](#)); *Budayeva and others v. Russia*, Application No. 15339/02, European Court of Human Rights (First Section), 20 March 2008, paras. 128, 133, 137 ([link](#)); *Brincat and others v. Malta*, Application No. 60908/11, ECtHR (Fifth Section), 24 July 2014, paras. 101-102 ([link](#)). The duty to protect the right to life also entails that States take appropriate measures to address the general conditions in society that may give rise to foreseeable threats

extend to “reasonably foreseeable threats and life-threatening situations that can result in loss of life.”⁶²⁸

347. Vanuatu submits that the Relevant Conduct is in breach of the right to life. That is because, by reason of the Relevant Conduct, significant harm has been inflicted upon the climate system and other parts of the environment which in turn presents life-threatening harms to the people of Vanuatu as well as other people in vulnerable situations. The evidence of this is clear.

(a) The IPCC has concluded that “[c]limate-related illnesses, premature deaths, malnutrition in all its forms, and threats to mental health and well-being are increasing.”⁶²⁹ Further, unpredictable rainfall patterns and extreme changes in precipitation resulting from climate change causes dangerous natural disasters, such as storms, floods and droughts, are leading to loss of life.⁶³⁰ Such events also create fertile conditions for potentially fatal vector-borne diseases, such as dengue fever, malaria and chikungunya.⁶³¹

(b) Tropical cyclones are more severe due to climate change and this causes more losses of human life across the Pacific, including in Vanuatu. For example, Cyclone Pam that struck Vanuatu in 2015 killed at least 11 people, displaced 65,000 and destroyed crops and food sources across the country such that the livelihoods of 80% of Vanuatu’s rural population were compromised.⁶³² Severe tropical cyclone Harold in 2020 destroyed

to life or prevent individuals from enjoying their right to life with dignity, including “degradation of the environment,” and “deprivation of indigenous peoples’ land, territories and resources”: Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36, para. 26, see also para. 3 ([link](#)); see further, African Commission on Human and Peoples’ Rights, *General Comment No. 3 on the African Charter of Human and Peoples’ Rights: The Right to Life (Article 4)*, African Commission on Human and Peoples’ Rights, 12 December 2015, para. 11 ([link](#)); David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 15 July 2019, UN Doc A/74/161, para. 28 ([link](#)).

⁶²⁸ Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36, para. 26, see also para. 7 ([link](#)).

⁶²⁹ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), p. 1044 ([link](#)).

⁶³⁰ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), pp. 18, 50 ([link](#)).

⁶³¹ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), p. 2064 ([link](#)); Adam Roth, Damian Hoy, Paul F. Horwood, Berry Ropa, Thane Hancock, Laurent Guillaumot, Keith Rickart, Pascal Frison, Boris Pavlin, & Yvan Souares., ‘Preparedness for Threat of Chikungunya in the Pacific’ (2014) 20(8) *Emerging Infectious Diseases* ([link](#)).

⁶³² Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 3; Leanne Webb, Krishneel Sharma, Savin Chand, Hamish Ramsay, Kevin Hennessy & Soubhik Biswas, ‘Tropical cyclone observations, trends and projections for Vanuatu’ (CSIRO, SPREP & VMGD, 2023), p. 6 ([link](#)), see also Government of Vanuatu, *Vanuatu Post-Disaster Needs Assessment*.

the natural environment in parts of northern Vanuatu, directly affecting 37% of households' access to traditional sources of food, medicine, and shelter.⁶³³ Twin severe cyclones Judy and Kevin in 2023 devastated agricultural and forest stands, affecting the food and agricultural sources for 84% of households.⁶³⁴

- (c) Loss of life also results from extreme heat caused by climate change, particularly affecting those engaging in outdoor labour and traditional activities such as subsistence farming and fishing.⁶³⁵
- (d) The changing sea surface temperature is posing challenges for temperature-sensitive marine ecosystems including coral reefs, seagrass beds, and fish,⁶³⁶ and thus to coastal communities that rely on them for their livelihood.
- (e) Droughts have caused significant impacts in Vanuatu affecting water security and agricultural production.⁶³⁷ For example, the drought that occurred during the 2016 El Niño led to shortages of drinking water, hindered the regrowth of crops damaged by Tropical Cyclone Pam the previous year, and required emergency food distribution targeting 90,000 people.⁶³⁸

348. The obligations to respect and ensure the right to life have applied to States engaged in the Relevant Conduct over time; and, as discussed in Chapter III, Section 3.2.4, the adverse effects of the Relevant Conduct have been known by States engaged in

Tropical Cyclone Pam, March 2015. 2015, Government of Vanuatu: Port Vila, Vanuatu ([link](#)); Alex Chapman, William Davies, Ciaran Downey, & MacKenzie Dove, *Climate Risk Country Profile: Vanuatu* (World Bank Group 2021) ([link](#)).

⁶³³ Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 35. See Leanne Webb, Krishneel Sharma, Savin Chand, Hamish Ramsay, Kevin Hennessy & Soubhik Biswas, 'Tropical cyclone observations, trends and projections for Vanuatu' (CSIRO, SPREP & VMGD, 2023), p. 6 ([link](#)), see also Government of Vanuatu, *Vanuatu Recovery Strategy 2020-2023: TC Harold and COVID-19* (2020) ([link](#)); Government of Vanuatu, *Post-Disaster Needs Assessment: TC Harold & COVID-19, Vanuatu* (Oct 2020), Part A, pp. vi, 1 ([link](#)).

⁶³⁴ Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 35. See Republic of Vanuatu, *Post Disaster Needs Assessment – Vanuatu Tropical Cyclones Judy and Kevin* (22 June 2023), pp. xiii, xv ([link](#)).

⁶³⁵ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), p. 2066 ([link](#)).

⁶³⁶ Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu's Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 10 ([link](#)).

⁶³⁷ In Vanuatu, major droughts occurred in 1982–1983, 1997–1998, and 2015–2016, with their frequency and intensity differing over space and time. See Viliamu Iese, Anthony S. Kiem, Azarel Mariner, Philip Malsale, Tile Tofaeono, Dewi G.C. Kirono, Vanessa Round, Craig Heady, Robson Tigona, Filipe Veisa, Kisolel Posaunau, Faapisa Aiono, Alick Haruhiru, Arieta Daphne, Vaiola Vainikolo & Nikotemo Iona, 'Historical and future drought impacts in the Pacific islands and atolls' (2021) 166(1) *Climatic Change* 1-24 ([link](#)).

⁶³⁸ United Nations Capital Development Fund, *Economic Impacts of Natural Hazards on Vulnerable Populations in Vanuatu* (2020), p. 8 ([link](#)). See also Eriksson et al., 2017, p. 52; OCHA [United Nations Office for the Coordination of Humanitarian Affairs], 2015, p. 4.

the Relevant Conduct. Put another way, there has been a reasonably foreseeable threat to life (and life with dignity) in relation to which States have owed obligations over time. Yet the Relevant Conduct continued, such that reasonably foreseeable life-threatening situations have now materialized and more intense and frequent life-threatening situations will materialise in future. Accordingly, the Republic of Vanuatu submits that the Relevant Conduct is in breach of the right to life, and such breach will increase in scale, intensity and frequency as the climate crisis worsens.

(3) *The right to privacy, family and home life (ICCPR, Article 17; UDHR, Article 12)*

349. Article 17 of the ICCPR guarantees that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”. The right is embedded in general principles of human rights law and in treaty law, with recognition in the UDHR,⁶³⁹ the ICESCR,⁶⁴⁰ and in other human rights treaties.⁶⁴¹ This, together with very limited reservations and extensive State practice confirm that it is also a customary norm.⁶⁴²
350. The notions of “family” and “home” are strongly linked to the right to culture. Subsistence ways of life, which depend on crops, livestock, fruit trees, hunting, foraging, fishing and water resources, all are elements of a relationship with territory which fall within the scope of this right.⁶⁴³

⁶³⁹ UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10 December 1948, art. 12 (“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”) ([link](#))

⁶⁴⁰ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, art. 10(1) (provides that “[t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society...”) ([link](#))

⁶⁴¹ See Convention on the Rights of the Child (opened for signature on 20 November 1989, entered into force 2 September 1990) U.N.T.S. 1577, preamble, para. 5 ([link](#)); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, U.N.T.S. 2220, para. 44(1) ([link](#)); European Convention on Human Rights, art. 8 ([link](#)); American Convention on Human Rights: “Pact of San José, Costa Rica” (adopted 22 November 1969, entered into force 18 July 1978) 1144 U.N.T.S. 123, art. 17 ([link](#)); American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the InterAmerican System OEA/Ser L V/II.82 Doc 6 Rev 1 at 17 (1992), art. VI ([link](#)); African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) CAB/LEG/67/3 rev. 5, ILM 58 (Banjul Charter), art. 18 ([link](#)).

⁶⁴² See William A. Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021) (**Exhibit ZY**), p. 220.

⁶⁴³ See UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.10 ([link](#)). See UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 549/1993: Francis Hopu and Tepoaitu Bessert v. France*, CCPR/C/60/D/549/1993/Rev.1, 29 December 1997, para. 10.3 ([link](#)); see UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 2751/2016: Portillo Cáceres and Others v. Paraguay*, CCPR/C/126/D/2751/2016, 20 September 2019, para. 7.8. The same link has been identified in the Inter-American system of human rights law: *Maya indigenous community of the Toledo District v. Belize*, Case 12.053, Report No. 40/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 727 (2004), para. 155 ([link](#)).

351. This right, in all its relevant aspects, is clearly impaired by climate change. The Human Rights Committee has confirmed that climate change impacts will interfere with the right to private, and home life. In *Daniel Billy et al. v. Australia*, having considered that various examples of climate impacts on a group of Torres Strait islanders, damage that had already occurred (such as the destruction of one of the author's homes due to flooding) as well as foreseeable and serious risks of further damage,⁶⁴⁴ the Committee reasoned that disruption to the ecosystem would impact the livelihoods and traditional lifestyles of the authors, who enjoy a special relationship with their territory, thus violating Article 17 of the ICCPR.⁶⁴⁵
352. Given the foregoing considerations, the acts and omission of States encompassed by the Relevant Conduct clearly engage the right to privacy, family and home life and are governed by the obligations imposed on States by the right. Those obligations are to *respect* and *ensure* the right, as set out in paragraph 337-338 above.⁶⁴⁶
353. Vanuatu submits that the right to privacy, family and home life has been violated by States engaging in the Relevant Conduct. As established in *Daniel Billy et al. v. Australia*, small island nations and communities are already experiencing flooding and inundation of their villages and ancestral burial lands; destruction or withering of their traditional gardens through salinification caused by flooding or seawater ingress; decline of nutritionally and culturally important marine species and associated coral bleaching and ocean acidification.⁶⁴⁷ Similar impacts are arising in Vanuatu, and are resulting in significant harm to Vanuatu's climate and environment, subsistence ways of life and its cultural and natural heritage.
- (a) The impact of climate change on cyclone intensity, frequency and seasonality is thus a cause for considerable anxiety, as it calls into question not just the traditional knowledge relating to cyclone management, but also the entire cultural edifice that is woven through with a familiarity with cyclones as a natural and partly predictable occurrence.⁶⁴⁸

⁶⁴⁴ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.9 ([link](#)).

⁶⁴⁵ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.10-8.12 ([link](#)).

⁶⁴⁶ See further, in the context of the right to private, family and home life: UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 2751/2016: Portillo Cáceres and Others v. Paraguay*, CCPR/C/126/D/2751/2016, 20 September 2019, para. 7.8; Committee on the Rights of the Child, *General Comment No. 16 on State Obligations regarding the impact of the business sector on Children's right* UN Doc. CRC/C/GC/16 (17 April 2013), para. 1 ([link](#)). See *Cordella and Others v. Italy*, ECtHR, Judgment of 24 January 2019, para. 158 ([link](#)).

⁶⁴⁷ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.12 ([link](#)).

⁶⁴⁸ Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), paras. 21.

- (b) Droughts also impair subsistence ways of living (as discussed in Chapter II, Section 2.6), which further impairs the right to private and family life for Ni-Vanuatu people who rely on subsistence and agricultural ways of living (which, as established above, is the vast majority of the people of Vanuatu).
- (c) The displacement of Ni-Vanuatu communities (discussed in Chapter II, Section 2.6), by forcing them to leave ancestral homelands, also impairs the right to home life for members of those communities (in addition to the right to self-determination at a group level).

354. An example of how damage to Vanuatu’s coral reefs results in significant harm to Ni-Vanuatu people, and give rise to a breach of the right to private, family and home life, is supplied by a government case study on non-economic loss and damage to Vanuatu’s coastal ecosystems and community livelihoods from slow onset events.⁶⁴⁹ That case study featured the following important statements made by Susan Naomi Balmert, a 33 year-old woman from Molboi Village Western Santo Jarai Alo Kolo Indigenous Tribe, which in Vanuatu’s submission clearly articulates how this right has been impaired.

“I am a mother and an executive committee member of the Santo Sunset Environment Network, living in a remote indigenous village on Santo Island in Vanuatu.”

“I have spent my whole life with our coral reef, we fish on it, use it for recreation, have sacred totems of marine animals, and it protects my village from big ocean swells. The reef is a part of who I am.

“In mid-2022, during what is normally our dry season, it began to rain. It kept raining and raining for more than 2 weeks, until all the soils were waterlogged and the mountain sides above the village became soft and heavy. Then my village felt the shaking of a large earthquake. Due to the unseasonal and prolonged rainfall the forest could no longer hold the soil in place, and it all came crashing down the mountain, through our food gardens, burying our water source and river, and completely buried our coral reef with more than 5 meters of rocks, mud and debris.”

“Today my reef is dead. It has been wiped out because of climate change. It is lost, along with our identity. This will never come back to the way it was in my lifetime. My kids and grandkids will never see the coral reef that made me who I am. There is no money available to help us remember, document, write the stories of the marine totem, or even set up new lives somewhere else. The rainfall-driven landslide didn't just damage my reef, it buried my village. We no longer have plantations, a water source or a school, or our reef. We now have to

⁶⁴⁹ Mike Waiwai, Pauliane Basil, Stephanie Stephens, Leana William, Florence Iautu, George Koran, Willy Missack, Christopher Bartlett, Priyanka Gurung, Purnima Banjade, Basundhara Bhattarai, Hemant Ojha & Saleemul Huq, *Case Study on Non-Economic Loss & Damage to Vanuatu’s Coastal Ecosystems and Community Livelihoods from Slow Onset Events to support the design and operationalization of the Loss & Damage Fund* (2023), pp. 3-4 ([link](#)).

leave. Who will pay for this loss and damage to my villages lives and livelihoods?”

Another middle-aged woman featured in the Case Study (Wanita Kalpoi, 40 years old, Pango Village, Efate Island) said: ⁶⁵⁰

“Climate Change is causing sea level rise and high temperature that damages and destroys our beloved coral reef. I have a great passion for fishing. Every day I catch fish for my children and my family. Like most women in my village, I also love to collect seashells to eat but also for making handicrafts like necklaces and bracelets to sell and earn a small income for our household.”

“Sea level rise is degrading the reef flats where I collect shells. The sea is moving inland, making it harder to get to the places we collect shells. The worst is when flooding from the land brings mud onto the reef, completely killing some species of seashells.”

“I need to feed and clothe my family, and with the declining health of the reef, I have to spend many extra hours fishing and collecting shells. I am already experiencing the loss from sea level rise, which makes me afraid for the future of my children and my grandchildren.”

“My grandparents and my parents taught me fishing, the methods, the right weather, the spots where fishes are abundant and the names of the reefs, fishes, seashells, and seaweed/seagrass. But I wonder if climate damage to the reef continues, will my children and grandchildren still be able to identify a particular fish, a special reef, and the seasons to fish?”

355. These two statements illustrate the connection and distinctive interrelationship between the reef, culture, home, and the next generation; it neatly shows how the impacts to the reef ultimately undermine all of these values. All of these are relevantly protected under the right.

356. A further example can be found in Anna Naupa and Dr Chris Ballard’s Expert Report:

“[B]etween early 2022 and January 2023, the villages of western Santo Island experienced a combination of extreme rainfall events from a rare multi-year La Nina event and a series of earthquakes of over M4.6, which destabilised the mountainside eventually causing the entire village and gardens of Molpoi community to be submerged on two occasions by devastating landslides. The immediate destruction of homes and livelihoods extended to the 600+ hectare Molpoi Conservation Area, managed under customary governance and home to endangered and endemic bird species such as the Santo Mountain Starling (*Aplonis santovestris*) and the Santa Cruz Ground Dove

⁶⁵⁰ Mike Waiwai, Pauliane Basil, Stephanie Stephens, Leana William, Florence Iautu, George Koran, Willy Missack, Christopher Bartlett, Priyanka Gurung, Purnima Banjade, Basundhara Bhattarai, Hemant Ojha & Saleemul Huq, *Case Study on Non-Economic Loss & Damage to Vanuatu’s Coastal Ecosystems and Community Livelihoods from Slow Onset Events to support the design and operationalization of the Loss & Damage Fund* (2023), p. 5 ([link](#)).

(Pampusana sanctaerucis); as well as other previously undescribed flora and fauna which hold much spiritual and cultural value for the Molpoi villagers. The climate-fuelled landslides also destroyed ancestral burial sites and the sacred Su Stones, the latter being critical to the transmission of chiefly titles and customary land rights but now lost forever.”⁶⁵¹

Here, the destruction of homes and livelihoods, endangered and endemic bird species and culturally- and spiritually significant flora and fauna, and ancestral burial sites and sacred artefacts, are all overlapping and amount to significant harm to the protected elements of private, home and family life.

357. States have owed obligations over time in relation to the Relevant Conduct as it interferes with home, private and family matters. Yet the Relevant Conduct has continued, resulting in violations of the right.

(4) *Cultural rights (ICCPR, Article 27; ICESCR, Article 15; UDHR, Article 27)*

358. Cultural rights are expressed in the UDHR,⁶⁵² human rights treaties,⁶⁵³ and several declarations.⁶⁵⁴ The right to culture is also protected under customary international law.⁶⁵⁵

359. Cultural rights take overlapping but distinct forms. Article 27 of the ICCPR confers a right in relation to “*ethnic, religious or linguistic minorities*”, namely that

⁶⁵¹ Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 33 (citations omitted).

⁶⁵² See also UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10 December 1948, art. 27(1) (“*Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits.*”).

⁶⁵³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art. 27 ([link](#)); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, art. 15 ([link](#)); International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 U.N.T.S. 195, art. 5(e)(iv) ([link](#)); Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, art. 13(c) ([link](#)); Convention on the Rights of the Child (opened for signature on 20 November 1989, entered into force 2 September 1990) U.N.T.S. 1577, art. 31(2) ([link](#)); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, U.N.T.S. 2220, art. 43(1)(g) ([link](#)); Convention on the Rights of Persons with Disabilities (opened for signature on 13 December 2006, entered into force 3 May 2008) U.N.T.S. 2515, art. 30(1) ([link](#)); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: Protocol of San Salvador (adopted 17 Nov. 1988; entered into force on 16 Nov. 1999), art. 14 ([link](#)); African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) CAB/LEG/67/3 rev. 5, ILM 58 (Banjul Charter), art. 17(2) ([link](#)); *ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries*, 27 June 1989 (No. 169), art. 2(2)(b) ([link](#)).

⁶⁵⁴ See e.g. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 18 Dec. 1992, UNGA Res. 47/135, arts. 1(1), 2(1), 4(2) ([link](#)); United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295, 2 October 2007, UN Doc A/RES/61/295, arts. 1, 8(1) ([link](#)); American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the InterAmerican System OEA/Ser L V/II.82 Doc 6 Rev 1 at 17 (1992), art. 13 ([link](#)); ASEAN Human Rights Declaration, Association of Southeast Asian Nations (ASEAN), 18 November 2012, art. 32 ([link](#)).

⁶⁵⁵ William A. Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021) (**Exhibit ZY**), p. 321-323 (and the materials relied on therein).

“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”. The right is conferred on individuals “belonging to minority groups” and “depend[s] in turn on the ability of the minority group to maintain its culture”.⁶⁵⁶ It protects the right of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong.⁶⁵⁷ The Human Rights Committee has stated that, in the case of Indigenous peoples, “the enjoyment of culture may relate to a way of life which is closely associated with territory and the use of its resources, including such traditional activities as fishing or hunting”. Thus, the protection of this right is directed towards ensuring the survival and continued development of cultural identity”.⁶⁵⁸

360. Article 15(1)(a) of the ICESCR protects the right of everyone to “take part in cultural life”. The CESCR has interpreted “culture” broadly.⁶⁵⁹ The right protects participation, access, and contribution to cultural life.⁶⁶⁰ Relevantly, a necessary condition for the protection of the right to culture is *availability*, in the sense of the presence of cultural goods and services that are open for everyone to enjoy and benefit from, including: “nature’s gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there, which give nations their character and biodiversity; intangible cultural goods, such as

⁶⁵⁶ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.13 ([link](#)). See also UN Human Rights Committee, *General Comment No. 23: Article 27 (Rights of Minorities)*, 8 April 1994, CCPR/C/21/Rev.1/ Add.5, paras. 1 and 6.1.

⁶⁵⁷ Human Rights Committee, *Views in Communication No. 167/1984 (‘Lubicon Lake Band v. Canada’)*, 26 March 1990, U.N. Doc. Supp. No. 40 (A/45/40), para. 32.2 ([link](#)).

⁶⁵⁸ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.13 ([link](#)). See further, in relation to the special significance afforded to Indigenous peoples: Human Rights Committee, *Views in Communication No. 3585/2019 (‘Roy v. Australia’)*, 10 July 2023, CCPR/C/137/D/3585/2019 (advanced unedited version), para. 8.3; Human Rights Committee, *Views in Communication No. 2552/2015 (‘Benito Oliveira Pereira v. Paraguay’)*, 21 September 2022, CCPR/C/132/D/2552/2015, para. 8.6, citing *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment of 31 August 2001, Inter-American Court of Human Rights 2001 Series C, No. 79, para. 149 ([link](#)).

⁶⁵⁹ Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, 21 December 2009, para. 13 ([link](#)) (culture, for the purposes of art. 15 of the International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, encompasses “ways of life, language, oral and written literature, music and song, non-verbal communication, religion or beliefs, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence”) ([link](#)).

⁶⁶⁰ Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, 21 December 2009, para. 15 ([link](#)) (“participation” refers to the right of everyone to act freely to choose their own identity and to identify (or not) with one of several communities or to change that choice; “access” includes “the right of everyone — alone, in association with others or as a community — to know and understand his or her own culture” and “to follow a way of life associated with the use of cultural goods and resources such as land, water, biodiversity, language or specific institutions, and to benefit from the cultural heritage”; “contribution” refers to the right to contribute to community culture, which includes taking part in the development of policies and decisions that impact cultural life).

languages, customs, traditions, beliefs, knowledge and history, as well as values, which make up identity and contribute to the cultural diversity of individuals and communities”.⁶⁶¹ The CESCR has also recognized that cultural rights are critical for Indigenous peoples.⁶⁶²

361. Cultural rights are clearly impaired by climate change. That is because culture is intertwined with the natural environment and its landscapes, wildlife and climate. The Special Rapporteur in the field of cultural rights observed that climate change is already having and will continue to have “a grave impact on the cultures and cultural heritages of all humankind” and “could wipe out centuries of human cultural achievement and render ongoing cultural practices virtually impossible in the future”.⁶⁶³ Indigenous peoples are acutely affected by climate change, due to the “tangible and intangible manifestations of their ways of life” and “their spiritual and physical relationships with their lands, territories and resources”.⁶⁶⁴ In *Daniel Billy et al. v. Australia*, the Human Rights Committee found that Australia’s failure to adopt timely adequate climate adaptation measures to protect the (Indigenous) complainants’ 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” disclosed a violation of Article 27.⁶⁶⁵ Further, losses of land due to sea-level rise and other climate impacts threaten the distinctive relationship with land enjoyed by Indigenous peoples and traditional communities; and unpredictable weather and changing seasons cause a loss of traditional knowledge.⁶⁶⁶
362. Further, in their Expert Report, Anna Naupa and Dr Chris Ballard observe that cultural loss and damage occurs through both rapid onset events (cyclones, extreme rainfall events and flooding, drought) and longer term or slow onset events (increasing temperatures; loss of biodiversity; land and forest degradation; ocean

⁶⁶¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, 21 December 2009, para. 16(a) ([link](#)) (note also that other necessary conditions include accessibility, acceptability, adaptability, and appropriateness).

⁶⁶² Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, 21 December 2009, para. 36 ([link](#)).

⁶⁶³ Special Rapporteur in the field of cultural rights, Report on climate change, culture and cultural rights, 10 August 2020, A/75/298, paras. 2, 24 ([link](#)).

⁶⁶⁴ UN Human Rights Council, *Promotion and Protection of the Rights of Indigenous Peoples with Respect to their Cultural Heritage*, 30th Sess, UN Doc A/HRC/30/53 (19 August 2015), para. 6, ([link](#)). See also UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.13 ([link](#)).

⁶⁶⁵ UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22 September 2022, para. 8.14 ([link](#)).

⁶⁶⁶ Special Rapporteur in the field of cultural rights, Report on climate change, culture and cultural rights, 10 August 2020, A/75/298, para. 45 ([link](#)) (“due to unpredictable weather and changing seasons which impair and may render increasingly obsolete such things as knowledge around navigation, calendars, meteorology, wind patterns, movements of sand, planting and harvests, fishing and food”). It is this very “traditional knowledge” and “indigenous understanding” about “how to interact with and care for natural systems is indispensable” that “will be pivotal to stabilizing the climate”: para. 16.

acidification; sea level rise; and salinization) associated with climate change.⁶⁶⁷ They identify the following forms of climate-related cultural loss and damage:⁶⁶⁸

- Loss of culturally significant reef and pelagic species
- Losses to culturally significant crops from climatic events and invasive pests.
- Impacts of climatic hazard events on material cultural heritage, including traditional houses and other structures, and spaces for cultural performance and practice, as well as loss of the natural resources (such as timber, roofing, ropes and weaving materials) required to repair or replace these structures
- Cascading impacts of climate change on community livelihoods, leading to out-migration of youth, and thus loss of the human resources required for cultural practice and performance, as well as interruption to the transmission of culture.

363. Given the above, the acts and omission of States encompassed by the Relevant Conduct clearly engage cultural rights and are governed by the corresponding obligations under the ICCPR and ICESCR respectively, as set out in paragraphs 337-338 above.⁶⁶⁹

364. Vanuatu submits that a State breaches its obligations arising from cultural rights where they cause significant harm to the climate system and other parts of the environment. That is because the impact of that harm on culture is “*immeasurable*” and “*profound*”,⁶⁷⁰ impairing the essence of these rights. In this context, Vanuatu

⁶⁶⁷ Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 29.

⁶⁶⁸ Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 28, see also p. 1.

⁶⁶⁹ See further, in the context of cultural rights: Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, 21 December 2009, paras. 6, 54-55 ([link](#)); Human Rights Committee, *General Comment No. 23: Article 27 (Rights of Minorities)*, 8 April 1994, CCPR/C/21/Rev.1/ Add.5, paras. 6.1, 6.2, 7, 9 ([link](#)). The obligations are particularly stringent in the context of Indigenous peoples, given “*their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life*”: Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, 21 December 2009, para. 49, see para. 50; see also, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, African Commission on Human and Peoples Rights, Case No. 276/2003, 4 February 2010, para. 241 ([link](#)).

⁶⁷⁰ Simpson, N.P., Orr, S.A., Sabour, S., Clarke, J., Ishizawa, M., Feener, M., Ballard, C., Mascarenhas, P.V., Pinho, P., Bosson, J.B., Morrison, T., Zvobogo, L, International Co-Sponsored Meeting on Culture, Heritage and Climate Change White Paper II: Impacts, vulnerability, and understanding risks of climate change for culture and heritage: Contribution of Impacts Group II to the International Co-Sponsored Meeting on Culture, Heritage and Climate Change (Charenton-le-Pont & Paris, France: ICOMOS & ICSM CHC, 2022), p. 16 (the loss is “*immeasurable, such as loss of identity associated with attachment to place, memory, ancestry, and memorialisation. This is particularly acute for small islands. The past is used by members of a group in forging identity. Social memory toggles between the past and present, relying on material mnemonics and ritualised traditions to reinforce and re-establish a sense of belonging to a place and to a group. The loss of a homeland is not simply a loss of tangible and intangible heritage, it is the loss of all of the physical, social, ideological, sacred, and treasured elements that come together and encapsulate who we are. This cannot be measured but the loss will be profound.*”) ([link](#)).

submits that there has been a clear violation of cultural rights by reason of the Relevant Conduct.

- (a) The impacts of climate change involve reduced access to traditional grounds for hunting, fishing, and harvesting, activities which are the primary sources of livelihood for many people and are linked to culture and tradition, including ceremonies, stories and practices passed on for generations.⁶⁷¹ Traditional landmarks that have been culturally significant for generations have been affected, lost or displaced by severe weather events.⁶⁷² Loss from regular coastal flooding is degrading coastal cultural sites in many of Vanuatu's islands.⁶⁷³ Ancestral burial sites and sacred artefacts are being destroyed or degraded by climate-fuelled events, such as landslides and cyclones.⁶⁷⁴
- (b) As is noted by the Pacific Community in its Expert Report, "rainfall variability, soil nutrient loss, high wind exposure, and excessive temperatures" in Vanuatu has "forced many communities to abandon their ancestral lands and important traditional food sources and relocate to safer areas, often resulting in the loss of cultural heritage, cultural identity, cultural practices, social cohesion, and economic stability, causing insecurity".⁶⁷⁵
- (c) Food security is inextricably linked to culture and tradition. Accordingly, in a study about the impacts of Tropical Cyclone Pam, it was found that people in villages under study lamented the loss of traditions arising from

⁶⁷¹ An example can be found in the impacts of climate change on the yam, a traditional root crop and staple food widely used in Vanuatu and elsewhere in the Pacific Islands region, which is of immense cultural significance and is impacted negatively by climate change: see Karen E McNamara, Rachel Clissold, Ross Westoby, Stephanie Stephens, George Koran, Willy Missack and Christopher Y Bartlett, "Using a human rights lens to understand and address loss and damage" (2022) 13 *Nature Climate Change* 1334 (**Exhibit ZC**), p. 1335.

⁶⁷² Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 31.

⁶⁷³ For example, degradation of coastal rock art, which provides some of the earliest records of human habitation and local cosmologies: see Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 34.

⁶⁷⁴ Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 33; Statement of Jimmy Namile, Iautapunga Village, Tanna, 9 January 2024 (**Exhibit L**), paras. 16-18 ("*All of the rain from Cyclone Pam caused graves to be washed away. ... By washing away the graves, the cyclone disturbed the spirits. In our kastom we believe disturbed spirits bring sickness and disease. In kastom, after the graves were washed away, I had to go get new soil and put it back where the graves were. I then had to go get a kava and a pig, and kill the pig at the Nakamal to stop the spirits from walking around, to put them back at peace. I wasn't able to do that until the water dried out and the soil was really dry.*")

⁶⁷⁵ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 8.

changing ways of life, which were exacerbated by climate extremes.⁶⁷⁶ It was further recognised in that study that:⁶⁷⁷

Land and gardens are also deeply rooted in Vanuatu culture and ways of life, and, as such, the effects of climate extremes on gardens was not solely an issue of food production but one of profound cultural change and loss. This sentiment was apparent in how villagers expressed changes to gardens and the challenges caused by climate extremes. In one storian, a villager explained: “graon hemi laef” (“land is life”). The loss of links to the land, driven by social changes, and exacerbated by the impact of climate extremes, threatens the spirituality and ways of life of these villages.

- (d) Traditional knowledge and practises in connection with crops,⁶⁷⁸ weather, the environment and climate, are changing by reason of climate change and this makes it difficult to partake in essential aspects of Ni-Vanuatu culture and to transmit this culture to future generations.⁶⁷⁹ The traditional

⁶⁷⁶ Amy Savage, Hilary Bambrick & Danielle Gallegos, “Climate extremes constrain agency and long-term health: A qualitative case study in a Pacific Small Island Developing State” (2021) 31 *Weather and Climate Extremes*, pp. 6-7 (“FNS is inextricably linked to culture and tradition, and food is an integral component of cultural celebrations and social cohesion. People in both villages lamented the loss of traditions arising from changing ways of life, which were exacerbated by climate extremes. For example, climate extremes altered the availability of particular foods used for celebrations and ceremonies. The losses of many varieties of yam, culturally-important produce, following TC Pam were described in Village A. Yams were destroyed in the cyclone and were too expensive to replant. It appeared that trading and kin networks were no longer able to provide rhizomes for replanting, as participants discussed the prohibitively high cost of purchasing new roots. Furthermore, the threat of future climate extremes was described as a deterrent to investing the significant time and labour required for yam gardens. Villagers also discussed difficulties in the preparation of traditional dishes such as laplap (grated root vegetables wrapped in a specific leaf and baked in a stone oven: see Fig. 4), and nalot (roasted breadfruit pounded into a gelatinous mass, covered with coconut milk and eaten communally), due to loss of key ingredients, laplap leaf and breadfruit, after TC Pam and the El Niño event [...] Most people in both villages preferred island food and displayed a sense of pride in local dishes. Climate extremes exacerbate ongoing social changes and, in Village A, women described the loss of traditional knowledge as methods were no longer passed down to their daughters. In discussions, the loss of traditional knowledge encompassed the erosion of social aspects of food preparation: spending hours together preparing the hot stones, grating manioc, ‘scratching’ coconuts for milk, gathering banana and laplap leaves, and finally, sharing food from the communal ‘plate’; all while talking, laughing and sharing stories. These social practices are waning as traditional, slower cooking methods become less routine, and as necessary produce becomes less available” (citations omitted)) ([link](#)).

⁶⁷⁷ Amy Savage, Hilary Bambrick & Danielle Gallegos, “Climate extremes constrain agency and long-term health: A qualitative case study in a Pacific Small Island Developing State” (2021) 31 *Weather and Climate Extremes*, pp. 6-7 ([link](#)).

⁶⁷⁸ Traditional planting of yam, for example, is unable to keep up with the rapid climate changes: “The cultural ways of planting are not adaptive to these fast changes caused by the climate which is now leading to a loss of cultural practices and knowledge”. Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 36 (referring to “participant 59, quoted in McNamara et al. 2023”).

⁶⁷⁹ Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 37 (referring to “participant 73, quoted in McNamara et al. 2023”: “Before climate change it was easier to teach children about how to predict weather... however it has become harder to do so with unpredictable weather patterns meaning that cultural/traditional practices and knowledge sometimes lose their value because people can no longer rely on such knowledge”). See further Statement of Werry Narua dated 12 January 2024 (**Exhibit G**), paras. 81-83, Statement of Sera Nawahta dated 12 January 2024, Exhibit **X**, para. 8,

knowledge systems for environmental managements are not working on their own anymore.⁶⁸⁰ As Anna Naupa and Dr Chris Ballard observe in their Expert Report:

“The transmission of culture in Vanuatu is being affected by the cascading effects of climate change on all aspects of life in Vanuatu. Compounding climate impacts are pushing the limits of cultural resilience in the longer term, leading to further severe erosion and loss of tangible and intangible heritage across Vanuatu, and undermining local capacity for cultural adaptation to climate change.”⁶⁸¹

- (e) The loss of languages due to climate-induced displacement (as discussed above in connection with the right to private, family and home life – see paragraphs 349 - 357 above) is also of significance in this regard.

365. The evidence of this violation is thus overwhelming, especially for small island States like Vanuatu, “*with pronounced cultural connections to land, sea, natural resources and ecosystems, including indigenous, rural and fisher peoples,*” who face “*disproportionate devastation of their individual and collective cultural lives*”.⁶⁸² The Republic of Vanuatu submits that the impacts on culture were foreseeable and that further impacts are foreseeable. Yet, the Relevant Conduct was displayed and is continuing. Accordingly, the Republic of Vanuatu submits that the Relevant Conduct has violated, is violating, and will continue to violate with increasing scale, intensity and frequency as the climate crisis worsens, cultural rights.

(5) *The right to an adequate standard of living (food, water, housing) (ICESCR, Article 11; UDHR, Article 25)*

366. The right to an adequate standard of living appears in the UDHR,⁶⁸³ as well as in numerous other human rights treaties,⁶⁸⁴ and is codified in Article 11 of the

⁶⁸⁰ Impact Statement of Peter Korisa Kamil, Head of the National Disaster Recovery Coordination Unit within the Department of Strategic, Policy, Planning and Aid Coordination (DSPPAC), the Republic of Vanuatu, 14 March 2024 (**Exhibit Q**), para. 33.

⁶⁸¹ Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), p. 1.

⁶⁸² Special Rapporteur in the field of cultural rights, Report on climate change, culture and cultural rights, 10 August 2020, A/75/298, para. 7, see para. 37 ([link](#)) (“*Small-island States and low-lying areas face catastrophic climate-induced destruction of their natural and cultural heritage which is often closely tied to broader destruction. The cultural identities and traces of entire nations may be at risk, facing the threat of cultural extinction, including through the total disappearance of human settlements and related ancestral cultures.*”)

⁶⁸³ UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10 December 1948, art. 25 (“*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*”) ([link](#)).

⁶⁸⁴ See, e.g., Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, art. 14; Convention on the Rights of the Child (opened for signature on 20 November 1989, entered into force 2 September 1990) U.N.T.S. 1577, art. 27(1) ([link](#)); Convention on the Rights of Persons

ICESCR as follows: “*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.*” This right is interdependent with, and overlaps in terms of substantive content with what is protected by, other fundamental rights, such as the right to life and to a healthy environment.⁶⁸⁵

367. The right relevantly comprises rights to food, water and housing. Each finds expression as a standalone right in other human rights law treaties and instruments,⁶⁸⁶ or is implied by other rights enshrined in such treaties.⁶⁸⁷ As to their scope:

with Disabilities (opened for signature on 13 December 2006, entered into force 3 May 2008) U.N.T.S. 2515 ([link](#)), art. 28.

⁶⁸⁵ See Section 4.4.4.C (Obligations arising from the right to clean, healthy and sustainable environment as it relates to other rights and existing international law).

⁶⁸⁶ In relation to the right to food, see UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10 December 1948, art. 25 ([link](#)); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, arts. 11, 12 ([link](#)); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art. 6 ([link](#)); Convention on the Rights of the Child (opened for signature on 20 November 1989, entered into force 2 September 1990) U.N.T.S. 1577, arts. 24(2)(c), 27(3) ([link](#)); International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 U.N.T.S. 195, art. 12 ([link](#)); Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, art. 12(2); Convention on the Rights of Persons with Disabilities (opened for signature on 13 December 2006, entered into force 3 May 2008) U.N.T.S. 2515, arts. 24(f), 28(1) ([link](#)); American Convention on Human Rights: “Pact of San José, Costa Rica” (adopted 22 November 1969, entered into force 18 July 1978) 1144 U.N.T.S. 123, art. 9 ([link](#)); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: Protocol of San Salvador (adopted 17 Nov. 1988; entered into force on 16 Nov. 1999), art. 12 ([link](#)). In relation to the right to water, see International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, arts. 11, 12 ([link](#)); Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, paras. 1, 3 ([link](#)); Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, art. 14; Convention on the Rights of the Child (opened for signature on 20 November 1989, entered into force 2 September 1990) U.N.T.S. 1577, art. 24 ([link](#)). In relation to adequate housing, see Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, art. 14(2)(h) ([link](#)); Convention on the Rights of the Child (opened for signature on 20 November 1989, entered into force 2 September 1990) U.N.T.S. 1577, art. 27(3) ([link](#)); American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the InterAmerican System OEA/Ser L V/II.82 Doc 6 Rev 1 at 17 (1992), arts. 9 and 11 ([link](#)); Charter of the Organization of American States ([link](#)), art. 34(k); Arab Charter on Human Rights (2004), art. 38 ([link](#)); Council of Europe, *European Convention on the Legal Status of Migrant Workers*, ETS 93, 24 November 1977, art. 13 ([link](#)); African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), art. 20(2)(a) ([link](#)); European Social Charter (Revised), ETS 163, 3 May 1996, art. 31 ([link](#)). See also International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art. 17(1) (guarantees the right not to be “*subjected to arbitrary or unlawful interference with [...] home.*”) ([link](#)).

⁶⁸⁷ *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgement, Inter-American Court of Human Rights (ser. C), 6 February 2020, paras. 222-223 ([link](#)), see also *Case of the Yakye Axa Indigenous Community v. Paraguay*, para. 167 (“health is directly related to access to food and water”); *Hudorovic et al. v. Slovenia* (App. nos. 24816/14 and 25140/14), 7 September 2020, para. 116 (“A persistent and long-standing lack of access to safe drinking water can therefore, by its very nature, have adverse consequences for health and human dignity, effectively eroding the core of private life and the enjoyment of a home”) ([link](#)); *Social and Economic Rights Action Center (SERAC) & the Center for Economic and Social Rights (CESCR) v. Nigeria*, African Commission on Human and Peoples’ Rights, Communication No. 155/96 (27 May 2002), paras. 64-67 ([link](#)).

- (a) Right to food: requires that food be available, adequate, sustainable (i.e., accessible for both present and future generations) and physically and economically accessible.⁶⁸⁸
- (b) Right to water: this is “everyone’s right to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.”⁶⁸⁹ The right has minimum components including availability, quality (safe, clean drinking water), and accessibility (including physical and economic accessibility and access without discrimination).⁶⁹⁰
- (c) Right to housing: ensures the right to live somewhere in security, peace and dignity.⁶⁹¹ The realization of the right requires, at a minimum: security of tenure, availability of services, affordability, habitability, accessibility, appropriate location and cultural adequacy.⁶⁹²

368. These rights are clearly impacted by climate change. Climate change is increasingly becoming an obstacle to the full and effective realization of all aspects of the right to food.⁶⁹³ The IPCC has documented the impact of climate change on fisheries and fishing communities, linking climate change and food insecurity in this context.⁶⁹⁴ Further, according to the IPCC, many small island States are already water-stressed,

⁶⁸⁸ Committee on Economic, Social and Cultural Rights, *General Comment No. 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food (article 11)*, 12 May 1999, E/C12/1999/5, paras. 7, 17 ([link](#)).

⁶⁸⁹ Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, para. 12(b) ([link](#)).

⁶⁹⁰ Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, para. 12 ([link](#)); see *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 111 ([link](#)).

⁶⁹¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, para. 7 ([link](#)); *Social and Economic Rights Action Center (SERAC) & the Center for Economic and Social Rights (CESCR) v. Nigeria*, African Commission on Human and Peoples’ Rights, Communication No. 155/96 (27 May 2002), paras. 61 ([link](#)).

⁶⁹² Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing* (art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, para. 8 ([link](#)). In the context of indigenous communities, the right to housing must be read against the background of art. 26 of the United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295, 2 October 2007, UN Doc A/RES/61/295 ([link](#)), which guarantees the right to traditional lands, resources and territories, and art. 21(1), which recognizes the right, without discrimination, to improve social and economic conditions, including housing. By reason of being traditional custodians of the lands to which they belong, indigenous peoples have the right to permanently and effectively control their territory without outside interference. See *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, African Commission on Human and Peoples Rights, Case No. 276/2003, 4 February 2010, para. 204-206 ([link](#)).

⁶⁹³ Committee on Economic, Social and Cultural Rights, *General Comment No. 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food (article 11)*, 12 May 1999, E/C12/1999/5, para. 7, 28 (acknowledgment that climate conditions can cause severe resource constraints preventing states parties from meeting their obligations to fulfil the right to adequate food) ([link](#)).

⁶⁹⁴ Intergovernmental Panel on Climate Change, “Chapter 4: Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities” in *Special Report on the Ocean and Cryosphere in a Changing Climate* (2018) ([link](#)); see also Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022) ([link](#)).

and sea-level rise will increase saltwater intrusion into precious sources of groundwater, which impacts water quality and therefore reduces the availability of freshwater.⁶⁹⁵ The IPCC has also said that small island developing States in the Pacific are especially vulnerable to housing risks because 57% of build infrastructure is located in risk-prone coastal areas.⁶⁹⁶

369. Given this, the Relevant Conduct is to be assessed against the obligations of States under these ICESCR rights, as set out in paragraph [337]-[338] above.⁶⁹⁷ As a result of the Relevant Conduct, significant harm has been inflicted upon the climate system and other parts of the environment, jeopardising the enjoyment of these rights. In relation to its specific situation, Vanuatu makes the following observations:

- (a) **Food:** Agriculture is the mainstay of livelihoods for the vast majority of Vanuatu's population.⁶⁹⁸ Climate change impairs the productivity of Vanuatu's agricultural sector, which will affect approximately 80% of the population, who depend on subsistence agriculture.⁶⁹⁹ Rising temperatures and humidity have negatively affected crop development,⁷⁰⁰ including by

⁶⁹⁵ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), p. 623 ([link](#)).

⁶⁹⁶ Intergovernmental Panel on Climate Change, "Chapter 4: Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities" in *Special Report on the Ocean and Cryosphere in a Changing Climate* (2018) ([link](#)). Also, the Special Rapporteur on Adequate Housing explained the severe impacts climate change has on the realization of the right to adequate housing, due to both extreme weather events as well as slow-onset events: Balakrishnan Rajagopal, "Towards a just transformation: climate crisis and the right to housing", *Report of the Special Rapporteur on the right to adequate housing*, December 2022, A/HRC/52/28, paras. 12-19 ([link](#)).

⁶⁹⁷ See further, in the context of the right to an adequate standard of living and associated rights to food, water and housing: Committee on Economic, Social and Cultural Rights, *General Comment No. 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food (article 11)*, 12 May 1999, E/C12/1999/5, para. 15, 21 ([link](#)); Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, para. 23-25 ([link](#)); African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Center (SERAC) & the Center for Economic and Social Rights (CESCR) v. Nigeria*, African Commission on Human and Peoples' Rights, Communication No. 155/96 (27 May 2002), paras. 46 ([link](#)). Committee on Economic, Social and Cultural Rights, Views on Communication No. 5/2015 (*Ben Djazia and Bellili v. Spain*), UN Doc. 21 July 2017, E/C.12/61/D/5/2015, para. 15.3 ([link](#)); Guidelines for the Implementation of the Right to Adequate Housing (Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context), 26 Nov, 2019, UN Doc. A/HRC/43/43, para. 19 ([link](#)).

⁶⁹⁸ Impact Statement of Antoine Ravo, Director of the Department of Agriculture in the Republic of Vanuatu, 15 March 2024 (**Exhibit R**), para. 7. See Mary Taylor, Andrew McGregor & Brian Dawson, *Vulnerability of Pacific Island agriculture and forestry to climate change* (SPC, 2016), p. 28 ([link](#)).

⁶⁹⁹ For both their daily sustenance and well-being and collectively the sector accounting for at least 20% of GDP: Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity (MALFFB), Vanuatu Agriculture Sector Policy, 2014-2024 (2014). See Impact Statement of Antoine Ravo, Director of the Department of Agriculture in the Republic of Vanuatu, 15 March 2024 (**Exhibit R**), para. 7. Further, see Statement of Alpi Nangia dated 12 January 2024 (**Exhibit F**), paras. 21-22 (re changing weather and impact on crops); Statement of Jimmy Namile dated 9 January 2024 (**Exhibit L**), para. 10 (re more intense rain and thunder, sun, earthquakes and impact on crops).

⁷⁰⁰ Impact Statement of Antoine Ravo, Director of the Department of Agriculture in the Republic of Vanuatu, 15 March 2024 (**Exhibit R**), paras. 13-14.

reason of increased (and new) pests and diseases affecting crops.⁷⁰¹ Saltwater intrusion has been observed to cause reduced crop efficiency and lead to crop failure.⁷⁰² Drought conditions cause crops to wilt, reduce the yield of most crops, and increase the risk of wildfire.⁷⁰³ Vanuatu has experienced extreme rainfall with increased frequency and intensity, which can cause increased flooding events and river overflow, which in turn causes soil erosion and negatively affects crops.⁷⁰⁴ Cyclones are one of the biggest threats.⁷⁰⁵ For example, Tropical Cyclone Pam devastated up to 96% of Vanuatu's crops, wiping out entire agricultural plots across the archipelago. The storm also contaminated water sources, heavily impacted livestock, and disrupted fisheries on which communities depend for sustenance. In its aftermath, an estimated 166,000 people were in need of immediate food aid.⁷⁰⁶ Ocean acidification and warming also cause distinct damage to ecosystems, further reducing fish stocks and harming food supply.⁷⁰⁷ In addition to these immediate impacts on the right to food, cyclones and other climate impacts also undermine food *sovereignty*, by prompting and accelerating a transition away from traditional diets

⁷⁰¹ Impact Statement of Antoine Ravo, Director of the Department of Agriculture in the Republic of Vanuatu, 15 March 2024 (**Exhibit R**), para. 18, see also para. 19 (“*A serious concern is the coconut rhinoceros beetle (CRB), which is destroying our coconut trees. ... They eat more food under hotter conditions, and we’ve even seen them beginning to infect other crops like sugar cane and taro. We’ve been working with the department of biosecurity to control the CRB, with cultural control, biological control, and chemical control, but with the increased temperatures and increased rainfall it has been difficult. We still haven’t been able to come up with a proper solution.*”)

⁷⁰² Nhung, T. T., Le Vo, P., Van Nghi, V., & Bang, H. Q. (2019). See, in relation to Vanuatu: Impact Statement of Antoine Ravo, Director of the Department of Agriculture in the Republic of Vanuatu, 15 March 2024 (**Exhibit R**), paras. 20-23.

⁷⁰³ Impact Statement of Antoine Ravo, Director of the Department of Agriculture in the Republic of Vanuatu, 15 March 2024 (**Exhibit R**), para. 15.

⁷⁰⁴ Impact Statement of Antoine Ravo, Director of the Department of Agriculture in the Republic of Vanuatu, 15 March 2024 (**Exhibit R**), paras. 17.

⁷⁰⁵ Impact Statement of Antoine Ravo, Director of the Department of Agriculture in the Republic of Vanuatu, 15 March 2024 (**Exhibit R**), para. 25.

⁷⁰⁶ Cyclone Pam, Encyclopedia Britannica, <https://www.britannica.com/topic/Cyclone-Pam>; Vanuatu: Tropical Cyclone Pam Situation Report No. 9 (as of 23 March 2015), RELIEFWEB (23 March 2015). Impact Statement of Antoine Ravo, Director of the Department of Agriculture in the Republic of Vanuatu, 15 March 2024 (**Exhibit R**), paras. 24-30. See also Republic of Vanuatu, Post-Disaster Needs Assessment, TC, Cyclone Pam, p. xii ([link](#)). A further example is Cyclones Judy and Kevin, which caused significant damage to crops, livestock and fisheries: Republic of Vanuatu, Post-Disaster Needs Assessment, TC Judy and Kevin, p. xvi ([link](#)); See Statement of Jenny Toata dated 12 January 2024, (**Exhibit J**), para. 19 (“*After Cyclone Pam, we had a lot of hunger.*”)

⁷⁰⁷ Scientists predict that our coral reefs will be completely eviscerated by the end of the century. This collapse of coral reef ecosystems will not only eliminate Vanuatu's ocean biodiversity altogether, but it will also create widespread food and job insecurity, with 66% of the population engaged in subsistence fishing: Rene M. van der Zande, Michelle Achlatis, Dorothea Bender-Champ, Andreas Kubicek, Sophie Dove & Ove Hoegh-Guldberg, ‘Paradise Lost: End-of-century warming and acidification under business-as-usual emissions have severe consequences for symbiotic corals’ (2020) 26(4) Global Change Biology 2203-2219 ([link](#)). See also Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 6 (“*Nearly three-quarters (71%) of the population enjoy free access to marine resources including fish, shellfish, and more. Just under one-third (31%) of households in Vanuatu have members actively engaged in fishing and 29% of households consume free fish from home production at least once a week.*”)

based on fresh, local food to a more “Western” diet comprised mostly of processed and imported food.⁷⁰⁸

- (b) Water: Vanuatu, like other small island States, is already water-stressed; sea-level rise will increase saltwater intrusion into precious sources of groundwater, which impacts water quality and therefore reduces the availability of freshwater.⁷⁰⁹ As noted in SPC’s Expert Report, in the latest major drought occurring after Cyclone Pam, most water tanks were empty or severely depleted and villages in 20% of households walked more than 30 minutes to collect water for cooking and washing.⁷¹⁰ Similarly, Cyclones Judy and Kevin saw damage to household community-based water systems and household rainwater systems, as well as to under 34,000 sanitation facilities.⁷¹¹
- (c) Housing: Cyclone Pam damaged 50-90% of the country’s infrastructure and destroyed the homes of 75,000 people.⁷¹² Cyclone Harold damaged about 16,000 dwellings and destroyed more than 5,000, temporarily displaced over 18,000.⁷¹³ Cyclones Judy and Kevin led to 6,384 houses

⁷⁰⁸ Amy Savage, Hilary Bambrick & Danielle Gallegos, “Climate extremes constrain agency and long-term health: A qualitative case study in a Pacific Small Island Developing State” (2021) 31 *Weather and Climate Extremes*, p. 4 (“*The most apparent impact of climate extremes on FNS was the physical stresses on gardens and the coping and adaptation strategies employed by villagers in response to these effects. Climate extremes also affected FNS by constraining agency to make food choices, eroding cultural practices and traditional knowledge, and exacerbating the very structural vulnerabilities that undermine the ability to cope with climate extremes, adapt to climate change, and manage food and nutrition insecurity.*”), see further pp. 5-6. ([link](#)) Note that the magnitude and extent of these impacts, however, are influenced by structural vulnerabilities and local resiliencies.

⁷⁰⁹ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), p. 623 ([link](#)). In relation to Vanuatu specifically, see Impact Statement of Antoine Ravo, Director of the Department of Agriculture in the Republic of Vanuatu, 15 March 2024 (**Exhibit R**), para. 12.

⁷¹⁰ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 5. See Statement of Jimmy Namile dated 9 January 2024 (**Exhibit L**), para. 24 (“*It was also hard to get fresh water. All of the flood water was stinking because of the rotten leaves. To get drinking water we used plastic water bottles to collect water from our water catchments. But we had to wait for the rain to come. While we were waiting for clean water to come, we had to drink from the flood water. I didn’t get sick from the water, but the children did. They got sick and experienced flu-like symptoms.*”).

⁷¹¹ Government of Vanuatu, Post-Disaster Needs Assessment, TC Judy and Kevin, p. xvii., available at https://dsppac.gov.vu/index.php?option=com_content&view=article&id=135&Itemid=615.

⁷¹² Cyclone Pam, Encyclopedia Britannica, <https://www.britannica.com/topic/Cyclone-Pam>. See Government of Vanuatu, Post-Disaster Needs Assessment, TC, Cyclone Pam, p. xii, available at: https://dsppac.gov.vu/index.php?option=com_content&view=article&id=135&Itemid=615; Statement of Jimmy Namile dated 9 January 2024 (**Exhibit L**), para. 15 (“*After the cyclone passed, everything was destroyed. We had nowhere else to go so we continued living under that banyan tree for about two weeks while we built back our house. We built a traditional house using local materials. We built the roof out of coconut leaves that had fallen. We had to use them quickly before they rotted. We made the wall out of bamboo that had been knocked over by the storm, and held the house together using nalaus, which is a rope made out of a local plant.*”); Statement of Mangau Iokai dated 12 January 2024 (**Exhibit H**), para. 66 (“*During Cyclone Pam, my house fell down. All of the houses in the village fell down.*”).

⁷¹³ Government of Vanuatu, Post-Disaster Needs Assessment, TC Harold and COVID-19, p. 31, available at https://dsppac.gov.vu/images/roc/pmo001-post-disaster-needs-assessment-volume-a_hr-single-pages__p41044.pdf

destroyed and an additional 12, 768 partially damaged.⁷¹⁴ Consistent flooding of the Lateu settlement in Vanuatu required more than 100 residents to forcibly abandon their settlement for higher ground.⁷¹⁵

370. By reason of these impacts, Vanuatu submits that the Relevant Conduct is in breach of the right to an adequate standard of living, including in relation to its components guaranteeing adequate food, water and shelter.

(6) *The right to health (ICESCR, Article 12; UDHR, Article 25)*

371. The right to health is recognized in art. 12(1) of the ICESCR, as: “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.⁷¹⁶ The right also appears in the UDHR,⁷¹⁷ numerous treaties⁷¹⁸ and declarations,⁷¹⁹ and is a customary norm.⁷²⁰

372. This right extends to protect the underlying determinants of health, such as safe and potable water and adequate sanitation, adequate supply of safe food, nutrition and housing, and healthy environmental conditions, as well as participation in “all

⁷¹⁴ See Government of Vanuatu, Post-Disaster Needs Assessment, TC Cyclone Pam, p. xii, available at https://dsppac.gov.vu/index.php?option=com_content&view=article&id=135&Itemid=615

⁷¹⁵ Their original settlement was being flooded up to five times a year due to tropical cyclones: Alison Caldwell, ‘Vanuatu Village relocated due to rising sea level’ (6 December 2005), <https://www.abc.net.au/listen/programs/worldtoday/vanuatu-village-relocates-because-of-rising/755992>.

⁷¹⁶ See also International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, art. 12(2) ([link](#)).

⁷¹⁷ UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10 December 1948, art. 25(1) ([link](#)).

⁷¹⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3, art. 12(1) ([link](#)); International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 U.N.T.S. 195, art. 5(e)(iv) ([link](#)); Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 U.N.T.S. 13, art. 12(1) ([link](#)); Convention on the Rights of the Child (opened for signature on 20 November 1989, entered into force 2 September 1990) U.N.T.S. 1577, art. 24 ([link](#)); Convention on the Rights of Persons with Disabilities (opened for signature on 13 December 2006, entered into force 3 May 2008) U.N.T.S. 2515, art. 25 ([link](#)); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, U.N.T.S. 2220, art. 28 ([link](#)); Maputo Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (adopted 1 July 2003, entry into force 25 November 2005), art. 14(2) ([link](#)); European Social Charter (Revised), ETS 163, 3 May 1996, art. 11 ([link](#)); EU Charter), art. 35 ([link](#)); American Convention on Human Rights: “Pact of San José, Costa Rica” (adopted 22 November 1969, entered into force 18 July 1978) 1144 U.N.T.S. 123, art. 26 ([link](#)); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights : Protocol of San Salvador (adopted 17 Nov. 1988; entered into force on 16 Nov. 1999), art. 10(1) ([link](#)); Arab Charter on Human Rights (2004), art. 39(1) ([link](#)); African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) CAB/LEG/67/3 rev. 5, ILM 58 (Banjul Charter), art. 16(1) ([link](#)); Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa (adopted 31 January 2016, entry into force 17 June 2020), art. 15(1) ([link](#)).

⁷¹⁹ American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the InterAmerican System OEA/Ser L V/II.82 Doc 6 Rev 1 at 17 (1992), art. 11 ([link](#)); Rio Declaration on Environment and Development, 13 June 1992, UN Doc A/CONF.151/26, principle 1 ([link](#)); Declaration of Alma-Ata, International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978, art. 1 ([link](#)); Vienna Declaration and Programme of Action (note by the Secretariat, World Conference on Human Rights, 1993, A/CONF.157/23, section II, para. 41 ([link](#))).

⁷²⁰ The right to health is one of the rights catalogued in the UDHR and is of customary status: see Section 4.4.3.B.

health-related decision-making at the community, national and international levels”.⁷²¹ Thus, the right to health must be understood as guaranteeing a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity.⁷²²

373. The right to health is clearly impaired by climate change. The OHCHR, after consulting with stakeholders such as States, the UN special procedures, the WHO and the IPCC, in 2016 reported that the stakeholders overwhelmingly agreed that climate change posed a grave threat to human health.⁷²³ The Special Rapporteur on the Environment has said that the climate emergency threatens the right to health.⁷²⁴ The Human Rights Council’s 2021 resolution on human rights and climate change highlighted the “*particular challenges faced by people in vulnerable situations posed by climate change, including their increased susceptibility to diseases, heat stress, water scarcity, [and] reduced mobility*”.⁷²⁵ Climate change is a “*threat multiplier and undermines the underlying determinants of health*”.⁷²⁶
374. In *Chiara Sacchi et al.*, the children applicants alleged that Argentina had violated their right to health under Article 24 of the Convention on the Rights of the Child (CRC),⁷²⁷ “*by recklessly causing and perpetuating life-threatening climate change*”.⁷²⁸ The children, from various parts of the world, provided evidence that they were suffering health effects.⁷²⁹ Although the complaint was inadmissible due

⁷²¹ Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, paras. 11, 15 ([link](#)).

⁷²² *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 110 ([link](#)).

⁷²³ Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/32/23, 6 May 2016 ([link](#)). The report included findings that climate change caused heat-related deaths and disease (para. 12) malnourishment (para. 20) mental health risks, including “*higher risks of developing stress and anxiety-related conditions, including post-traumatic stress disorder and depression*” (para. 21) and exacerbated health implications for vulnerable groups, including small island states (para. 23). See HRC Resolution 29/15 on Human rights and climate change, adopted 2 July 2015, A/HRC/RES/29/15, paras. 4-5.

⁷²⁴ David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 15 July 2019, UN Doc A/74/161, paras. 31-32 ([link](#)).

⁷²⁵ Human Rights Council Resolution 47/24 on Human rights and climate change adopted 14 July 2021, A/HRC/RES/47/24, preambular para. 20.

⁷²⁶ Analytical study on relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 May 2016, A/HRC/32/23, para. 22 ([link](#)).

⁷²⁷ Convention on the Rights of the Child (opened for signature on 20 November 1989, entered into force 2 September 1990) U.N.T.S. 1577 (CRC) ([link](#)).

⁷²⁸ Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, para. 3.1 ([link](#)).

⁷²⁹ Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, para. 3.5 ([link](#)) (health impacts included hospitalisation with asthma due to climate-induced fires and heat-related pollution;

to non-exhaustion of domestic remedies, the Committee considered that States could be held responsible for their contribution to climate change as a violation of, *inter alia*, the right to health.⁷³⁰

375. The Relevant Conduct is therefore governed by the obligations under the right to health, including under the ICESCR, as set out in paragraph 337-338 above.⁷³¹ By the Relevant Conduct, significant harm has been inflicted upon the climate system and other parts of the environment, resulting in negative impacts on health outcomes, undermining the right to health. In support of this submission:

(a) In Vanuatu (as is the case in many other countries and communities), climate change acts as an “amplifier” or “multiplier” of existing health problems.⁷³² The health effects of extreme heat include death, heat stroke, heat cramps, hyperthermia, and exacerbation of existing illnesses.⁷³³ As

increased vector-borne diseases such as malaria, dengue fever and chikungunya; various health impacts from heat waves, including “*heat cramps, heatstroke, hyperthermia, and exhaustion, and quickly worsen existing health conditions*”; and water security issues arising from drought).

⁷³⁰ Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, paras. 10.12-10.14 ([link](#)).

⁷³¹ See further, in the context of the right to health: Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, para. 33, 34, 39, 48, 49 51 ([link](#)); *Brincat and others v. Malta*, Application No. 60908/11, ECtHR (Fifth Section), 24 July 2014, para. 105 ([link](#)); Commission on Human and Peoples’ *SERAC & CESCRC v. Nigeria*, ACtHPR, Communication No. 155/96, para. 58 ([link](#)); *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 111 ([link](#)). The words “*highest attainable standard of health*” mean the extent of the right turn on “a State’s available resources”: Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, para. 9 ([link](#)). See *Cuscul Pivarel et al. v. Guatemala*, Preliminary objections, merits, reparations and costs, Ser C No. 359, 23 August 2018, para. 106(a). Although the right is to be progressively realised, States also “*have a specific and continuing obligation to move expeditiously and effectively as possible towards the full realization*”: Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, 11 August 2000, E/C.12/2000/4, para. 31 ([link](#)). The right to health also imposes on States’ various obligations which are of immediate effect, and which are core, non-derogable obligations, such as that the right be exercised without discrimination of any kind and that there be access to safe and potable water: Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, paras. 30, 43 ([link](#)); see *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 111 ([link](#)).

⁷³² Jeffery T Spicket, Dianne Katscherian & Lachlan McIver, ‘Health Impacts of Climate Change in Vanuatu: An Assessment and Adaptation Action Plan’ (2013) 5(3) *Global Journal of Health Science*, p. 50 ([link](#)).

⁷³³ Emma E. Ramsay, Genie M. Fleming, Peter A. Faber, S. Fiona Barker, Rohan Sweeney, Ruzka R. Taruc, Steven L. Chown, Grant A. Duffy, *Chronic Heat Stress in Tropical Urban Informal Settlements*, *iScience*, vol. 24 (November 2021), pp. 3-4 ([link](#)); WHO, *Information and Public Health Advice: Heat and Health* ([link](#)). These effects are exacerbated by the high humidity on Pacific islands: Yi Zhang, Isaac Held & Stephan Fueglistaler, ‘Projections of Tropical Heat Stress Constrained by Atmospheric Dynamics (2021) 14 *Nature Geoscience* (**Exhibit ZB**), pp. 133-137.

stated above in connection with the right to life,⁷³⁴ rainfall patterns and humidity will create conditions for increase vector-borne diseases.⁷³⁵

- (b) The issues raised above with respect to food security have ramifications for the health issues facing the population.⁷³⁶ Food production is dependent on availability and accessibility to land and root crops. Climate change and its impacts are posing challenges to such availability and accessibility, and thus to food security and production, which is leading to both over and under-malnutrition.⁷³⁷
- (c) Moreover, climate change is linked to both acute and chronic psychological problems. Tropical cyclones and other such extreme weather events also contribute to the burden of mental illness and mental health issues within Vanuatu.⁷³⁸ The impact of food shortages and deterioration of significant crops on culture and Kastom is also causing mental health problems.⁷³⁹
- (d) Tropical cyclones and other extreme weather events destroy medicinal plants.⁷⁴⁰ There are examples of where custodians of knowledge pertaining to traditional medicine have not been able to rely on this knowledge and provide traditional medicine to people because tropical cyclones, changes in weather and other climate impacts are damaging plants and crops with medicinal properties.⁷⁴¹ (Further, this is also a breach of cultural rights, because the making of the medicine may be a traditional

⁷³⁴ See Section 4.4.4.B(2) (The right to life (ICCPR, Article 6; UDHR, Article 3))

⁷³⁵ See Javad Babaie, Ali Ardalani, Hasan Vatandoost, Mohammad Mehdi Goya & Ali Akbarisari., *Performance Assessment of Communicable Disease Surveillance in Disasters: A Systematic Review* (PLoS Currents, 24 Feb 2015) ([link](#)); Najmeh Jafari, Armindokht Shahsanai, Mehrdad Memarzadeh & Amir Loghmani, *Prevention of Communicable Diseases After Disaster: A Review* (2011) *Journal of Research in Medical Sciences* ([link](#)).

⁷³⁶ See Votausi Lucyann Mackenzie-Reur & Keith Kulakit Galgal, 'Building the Evidence Base on the Agriculture Nutrition Nexus: Vanuatu' (March 2018) CTA Working Paper 18/04, p. 6 ([link](#)).

⁷³⁷ See Statement of Alpi Nangia dated 12 January 2024 (**Exhibit F**), para. 25 ("When we do not have the Yam and other crops, our body will grow weak and if we have a good garden, our bodies will be strong. Now our bodies are growing weak.") See also Votausi Lucyann Mackenzie-Reur & Keith Kulakit Galgal, 'Building the Evidence Base on the Agriculture Nutrition Nexus: Vanuatu' (March 2018) CTA Working Paper 18/04, p. 6 ([link](#)).

⁷³⁸ See, generally, Nathan Dawes et al. "General and post-disaster mental health servicing in Vanuatu: A qualitative analysis (2019) *International Journal of Disaster Risk Reduction* 40 (2019) ([link](#)); Walter Leal Filho et al., "Climate change, extreme events and mental health in the Pacific region" (2022) *International Journal of Climate Change Strategies and Management* (online) ([link](#)).

⁷³⁹ See e.g. Statement of Nine Women (Linet Iawain, Yalitea Iakaho, Sera Nawahta, Nelly Pilia, Naus Iaho, Nancy Iacitan, Sera Naburam, Yoba Merarangi, Jenny Toata) dated 12 January 2024 (**Exhibit I**), paras. 29-30 ("We are feeling very depressed and worried. Some women in the community have become so worried about the Kastom ceremony they are supposed to be doing that they are having strokes. When we are not able to do the Kastom ceremony, we feel shame. We feel like we are isolated from the rest of the community. We feel wrong. But we can't help it.")

⁷⁴⁰ See Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 36.

⁷⁴¹ See Statement of Naus Iaho dated 12 January 2024, (**Exhibit M**), paras. 5-8, see also 9-11; Statement of Sera Nawahta dated 12 January 2024, Exhibit X, paras. 2-6; Statement of Werry Narua dated 12 January 2024 (**Exhibit G**), paras. 36-38.

sacred duty of some members of the community, which is to be transmitted as culture to the next generation.⁷⁴²)

- (e) Tropical cyclones and other extreme weather have interfered with the provision of health and medical services, in Vanuatu.⁷⁴³

376. By reason of these impacts, Vanuatu submits that the Relevant Conduct is in breach of the right to health.

(7) *Concluding submission*

377. Relying on the foregoing demonstration, Vanuatu submits that the Relevant Conduct is in breach of the obligations resulting from the human rights analyzed in this Section. In addition to harm to Vanuatu and its population, similar harm is being experienced across the Pacific and in other climate-vulnerable States. The harms to peoples and individuals of present and future generations located in these States “*are magnified by the close relationship that [they] have with the environment and their traditional lands, resources and territories*”.⁷⁴⁴ Accordingly, Vanuatu submits that the Relevant Conduct has violated, is violating, and will continue to violate with increasing scale, intensity and frequency as the climate crisis worsens, a wide array of human rights recognized under international law, including as a minimum the rights to life; private, family and home life; culture; an adequate standard of living, encompassing food, health and housing; and health. The breach of these obligations carries legal consequences, which are analyzed in Chapter V.

C. Obligations arising from the right to clean, healthy and sustainable environment as it relates to other rights and existing international law

378. All life depends on a safe, clean, healthy and sustainable environment. The right to a clean, healthy and sustainable environment seeks to ensure and protect an environment of such a quality. The right was first recognized in the 1972 Stockholm Declaration,⁷⁴⁵ and it was re-affirmed in the 1992 Rio Declaration.⁷⁴⁶ More recently,

⁷⁴² See, e.g., Statement of Naus Iaho dated 12 January 2024, (**Exhibit M**), para. 13; Statement of Sera Nawahta dated 12 January 2024 (**Exhibit N**), para. 8.

⁷⁴³ For example, by reason of twin tropical cyclones Judy and Kevin, about 185,000 people had their healthcare services disrupted in Vanuatu, including 26,000 children aged under 5 that were deprived of maternal and child healthcare, immunization, and health and nutrition promotion: see Government of Vanuatu, Post-Disaster Needs Assessment, TC Judy and Kevin, p. xv ([link](#)).

⁷⁴⁴ *The impacts of climate change on the human rights of people in vulnerable situations (Report of the Secretary-General)*, 6 May 2022, UN Doc. A/HRC/50/57 ([link](#)).

⁷⁴⁵ *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972, A/CONF.48/14/Rev.1* (Stockholm Declaration), principle 1: “[Humanity] has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and...bears a solemn responsibility to protect and improve the environment for present and future generations.” (emphasis added) ([link](#)).

⁷⁴⁶ *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, vol. I, Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum) (Rio Declaration), principle 1: “[Human beings] are entitled to a healthy and productive life in harmony with

the UN General Assembly⁷⁴⁷ and the UN Human Rights Council⁷⁴⁸ have recognized the right to a clean, healthy and sustainable environment as a universal human right. Reference has been made to the right by judges of this Court.⁷⁴⁹

379. In Vanuatu’s submission, the right to a clean, healthy and sustainable environment rests on a treaty basis and is crystallizing in customary international law.⁷⁵⁰
380. The latter is evidenced by: (a) the adoption of the UN General Assembly and UN Human Rights Council resolutions recognizing the right to a clean, healthy and sustainable environment, with overwhelming support (and with no States voting against either resolution);⁷⁵¹ (b) statements made by numerous States during the Universal Periodic Review (“UPR”) process speaking explicitly of a right to a healthy environment;⁷⁵² (c) the inclusion of the right to a healthy environment in several major human rights treaties;⁷⁵³ (d) the over 110 States who have recognized

nature” (emphasis added), see also the Preamble (which reaffirms the Stockholm Declaration and recognizes “the integral and interdependent nature of the Earth, our home”) ([link](#)).

⁷⁴⁷ *The human right to a clean, healthy and sustainable environment*, UN General Assembly Resolution 76/300, adopted 28 July 2022, A/RES/76/300 ([link](#)).

⁷⁴⁸ *The human right to a clean, healthy and sustainable environment*, Human Rights Council Resolution 48/13, adopted 8 October 2021, A/HRC/RES/48/13 ([link](#)).

⁷⁴⁹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Separate Opinion of Judge Cañado Trindade*, I.C.J. Reports 2010, pp. 178, 184, 194, paras. 117, 132, 159 (references to “right to a healthy environment”); see *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *Separate Opinion of Vice-President Weeramantry*, I.C.J. Reports 1997, pp. 89-90 (references to “right to environmental protection” and “right to the protection of the environment”).

⁷⁵⁰ William Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021) (**Exhibit ZY**), p. 335 (“there is compelling evidence for a human right to a safe, clean, healthy, and sustainable environment under customary international law”).

⁷⁵¹ *The human right to a clean, healthy and sustainable environment*, Human Rights Council Resolution 48/13, adopted 8 October 2021, A/HRC/RES/48/13 ([link](#)) (adopted with 43 votes in favour, 4 abstentions, 0 votes against); *The human right to a clean, healthy and sustainable environment*, UN General Assembly Resolution 76/300, adopted 28 July 2022, A/RES/76/300 ([link](#)) (adopted with 161 votes in favour, 8 abstentions, 0 votes against).

⁷⁵² William Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021) (**Exhibit ZY**), 333-334, fn. 35.

⁷⁵³ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights : Protocol of San Salvador (adopted 17 Nov. 1988; entered into force on 16 Nov. 1999), art. 11 ([link](#)) (“*Everyone shall have the right to live in a healthy environment and to have access to basic public services.*”), which has been held by the Inter-American Court of Human Rights to form part of the economic, social and cultural rights protected by art. 26 of the American Convention of Human Rights and creates obligations for States parties to respect, ensure and prevent violations of the right: *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 57 ([link](#)); African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) CAB/LEG/67/3 rev. 5, ILM 58 (Banjul Charter), art. 24 (“[a]ll peoples shall have the right to a general satisfactory environment favourable to their development”) ([link](#)); Arab Charter on Human Rights (2004), art. 38 (guarantees the right of an adequate standard of living, including “*the right to a healthy environment*”) ([link](#)); see also ASEAN Human Rights Declaration, Association of Southeast Asian Nations (ASEAN), 18 November 2012, art. 28(f) (“*right to a safe, clean and sustainable environment*”) ([link](#)); and American Declaration on the Rights of Indigenous Peoples, 15 June 2016, AG/RES.2888 (XLVI-O/16), art. 19(1) (“*Indigenous peoples have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the right to life, to their spirituality, worldview and to collective well-being*”, see further arts. 19(2)-(4) ([link](#)). See also Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, UN Doc CRC/C/GC/26 (22 August 2023), paras. 23, 31, 37, 61, 71 ([link](#)).

the right to a clean, healthy and sustainable environment in their constitutions,⁷⁵⁴ and the well over 150 States (more than 80% of UN member States) who have recognized the right in constitutions, legislation, court decisions and regional treaties,⁷⁵⁵ and (e) the increasing number of national courts enforcing the right to a clean, healthy and sustainable environment.⁷⁵⁶

381. Separately, Vanuatu submits that the right to a clean, healthy and sustainable environment can be understood as having a distinct source in other existing human rights, as a necessary derivation from those rights. This necessary derivation arises because what the right to a healthy environment protects — namely, an environment (including a climate system) of a *certain quality* — is a condition precedent for the realization and enjoyment of other rights. This means that any conduct that interferes with the essential minimum quality of the environment will not only violate the right to a clean, healthy and sustainable environment, but also any other rights which cannot be realized or enjoyed without a healthy environment (and vice versa). There is ample support for this submission: the UN General Assembly and the UN Human Rights Council have both noted that the right to a healthy environment “*is related to other rights and existing international law*”;⁷⁵⁷ further,

⁷⁵⁴ John H Knox, “Human Rights” in Lavanya Rajamani and Jacqueline Peel (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2nd ed, 2021) 784, 786-787 (**Exhibit ZZC**); David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Right to a healthy environment: good practices*, UN Doc A/HRC/43/53, 30 December 2019, para. 10 ([link](#)). Some constitutions, laws and policies speak of the right to a healthy environment as an individual guarantee, whereas others provide it as a collective right or general principle; and some use different nomenclature to describe a substantively similar right. In this respect, Vanuatu submits that state practice need not be identical: *Case Concerning Military and Paramilitary Activities In And Against Nicaragua (Nicaragua v. United States of America)* (Merits), Judgment of 27 June 1986, p. 14, para. 186.

⁷⁵⁵ United Nations Environment Programme, “Joint statement of United Nations entities on the right to healthy environment” (*UNEP*, 8 March 2021) ([link](#)); David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Right to a healthy environment: good practices*, UN Doc A/HRC/43/53, 30 December 2019., paras. 10-11, see Annex II ([link](#)); David Boyd, *Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment), 8 January 2019, A/HRC/40/55, para. 16 ([link](#)). States recognizing the right in law since 2020 include Antigua and Barbuda, Belize, Canada, Grenada, and Saint Lucia.

⁷⁵⁶ See, e.g., *Demanda Generaciones Futuras v. Minambiente*, Supreme Court of Colombia, STC4360-2018, Decision of 5 April 2018 (Colombia) ([link](#)); *Leghari v. Federation of Pakistan*, High Court at Lahore, W.P. No. 25501/201, Decision of Apr. 4, 2015 (Pakistan) ([link](#)); *PSB et al. v. Brazil*, Supreme Court of Brazil, ADPF 708, Decision of 1 July 2022 (Brazil) ([link](#)); *National Inquiry on Climate Change Report*, Commission on Human Rights of the Philippines, Case No. CHR-NI-2016-0001, May 2022 (Philippines) ([link](#)); *Held v. Montana* CDV-2020-307, Montana First Judicial District Court, WL 1997864, decision of 14 August 2023 ([link](#)); *In the matter of Hawai’i Electric Light Company*, Supreme Court of the State of Hawai’i, SCOT—22—000041, Decision of 13 Mar. 2023 (US) ([link](#)). Cases involving the constitutional right to a healthy environment have been adjudicated in at least 76 countries: United Nations Environment Programme, “Environmental Rule of Law: Tracking Progress and Charting Future Directions” (2023) ([link](#)). For more examples, see New York University, *Unpacking the Right to a Healthy Environment: How National and Regional Laws and Jurisprudence Clarify the Scope and Content of the Universal Right* (January 2023) Appendix: R2HE Case Chart, pp. 78-93 ([link](#)).

⁷⁵⁷ *The human right to a clean, healthy and sustainable environment*, Human Rights Council Resolution 48/13, adopted 8 October 2021, A/HRC/RES/48/13, para. 2 ([link](#)); UNGA, *The human right to a clean, healthy and sustainable environment*, GA res 76/300, adopted 28 July 2022, A/RES/76/300, para. 2 ([link](#)).

this relationship has been remarked upon by regional human rights courts,⁷⁵⁸ UN treaty bodies⁷⁵⁹ and eminent publicists,⁷⁶⁰ in the context of several rights (including the right to life, the right to health, cultural rights, privacy and home rights, various children’s rights, and rights to an adequate standard of living, including the rights to housing, food, and water).

382. As to its **substantive content**, the right to a clean, healthy and sustainable environment protects rights to clean air, a safe climate, healthy and sustainably produced food, safe water, adequate sanitation, non-toxic environments in which to live, work and play, and healthy ecosystems and biodiversity.⁷⁶¹ As stated by the

⁷⁵⁸ In the Inter-American context, see *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 59 (referring to the rights to health, personal integrity, and life) ([link](#)); *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgement, Inter-American Court of Human Rights (ser. C), 6 February 2020, paras. 243-254 (discussing the interdependence of the right to a healthy environment with the rights to food, water and to take part in cultural life) ([link](#)). In the African context, see *Social and Economic Rights Centre (SERAC) and Centre for Economic and Social Rights (CESR) v. Nigeria*, (African Commission on Human and Peoples’ Rights, No. 155/ 96, Decision) 27 October 2001, para. 51 (“the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual”) ([link](#)). In the European context, the European Court of Human Rights has also recognised the right to a healthy environment based on other rights specifically protected under the European Convention, particularly the right to private, family and home life in art. 8: see e.g. *Case of Di Sarno v. Italy*, European Court of Human Rights, Judgment, Application No. 30765/08 (2012), para. 110 (referring to *Taşkin and Others v. Turkey*, European Court of Human Rights, Judgment, Application No. 46117/99) ([link](#)).

⁷⁵⁹ In relation to the right to health, see Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health (article 12)*, 11 August 2000, E/C.12/2000/4, para. 4 (where the Committee interpreted the right to health to “embrace a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and sanitation ... and a healthy environment”, and para. 11 (the right to health extends to protect the underlying determinants of health, which relevantly includes “healthy ... environmental conditions”) ([link](#)). In relation to the right to life, Human Rights Committee, *General Comment No. 36 (Article 6)*, 3 September 2019, CCPR/C/GC/36, para. 26 (“[t]he duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include ... degradation of the environment”, para. 62 ([i]mplementation of the obligations to respect and ensure the right to life ... with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors”) ([link](#)). In relation to children’s rights, see Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, 22 August 2023, CCPR/C/GC/26, para. 8 (“[a] clean, healthy and sustainable environment is both a human right itself and necessary for the full enjoyment of a broad range of children’s rights”), para. 14 (the right to a healthy environment is “instrumental to children’s right to non-discrimination” because “[t]he impact of environmental harm has a discriminatory effect on certain groups of children, especially Indigenous children, children belonging to minority groups, children with disabilities and children living in disaster-prone or climate-vulnerable environments”), para. 45 (“[c]hildren have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development. A clean, healthy and sustainable environment is a prerequisite for the realization of this right, including to adequate housing, food security and a safe and clean drinking water and sanitation”) ([link](#)).

⁷⁶⁰ Writing extrajudicially, Judge Cançado Trindade considered the right to a healthy environment as “corollaries” for the right to life and the right to health: AA Cançado Trindade, “The Parallel Evolutions of International Human Rights Protection and Environmental Protection and the Absence of Restrictions upon the Exercise of Recognized Human Rights” (1991) *13 Revista IIDH* 36, p. 54 ([link](#)).

⁷⁶¹ David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Right to a healthy environment: good practices*, UN Doc A/HRC/43/53, 30 December 2019, paras. 8-18 ([link](#)). These substantive elements have been affirmed by the Committee on the Rights of the Child: Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 64 ([link](#)).

UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, “*a safe climate*” dovetails with the objective of the UNFCCC to “*prevent dangerous anthropogenic interference with the climate system.*”⁷⁶² The right to a clean, healthy and sustainable environment also entails **procedural content**, including the right to access to environmental information, public participation in environmental decision-making and access to environmental justice.⁷⁶³

383. Crucially, the right to a healthy environment is an “*autonomous*” right and thus “*protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals*”.⁷⁶⁴ In its collective dimension,⁷⁶⁵ it is protective of an essential quality of the natural environment *per se* that “*constitutes a universal value that is owed to both present and future generations*”.⁷⁶⁶ In this way, the collective dimension of the right operates *temporally* (in respect of present and future generations), *spatially* (as a universal value; as a common concern of humankind⁷⁶⁷), and also *extraterritorially*.⁷⁶⁸ The right also has an individual

⁷⁶² David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 15 July 2019, UN Doc A/74/161, para. 43 ([link](#)).

⁷⁶³ Procedural obligations of this kind have a source at the intersection of both international environmental law and human rights law, see, in the Inter-American context: *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, paras. 211-241 ([link](#)). Such obligations also have a source in treaty law: see Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted in Aarhus Denmark on 25 June 1998 entered into force 30 October 2001), 2161 UNTS 447, art. 1 (“*the right of every person of present and future generations to live in an environment adequate to his or her health and well-being*”) ([link](#)); see also Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazú, Costa Rica, 4 March 2018, art 1, which is not yet in force, but speaks of “*the right of every person of present and future generations to live in a healthy environment and to sustainable development*” ([link](#)).

⁷⁶⁴ *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 62 ([link](#)); *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgement, Inter-American Court of Human Rights (ser. C), 6 February 2020, para. 203 ([link](#)).

⁷⁶⁵ Judge Cançado Trindade also recognised the collective dimension to the right to a healthy environment, in his extrajudicial writings: AA Cançado Trindade, “The Parallel Evolutions of International Human Rights Protection and Environmental Protection and the Absence of Restrictions upon the Exercise of Recognized Human Rights” (1991) 13 *Revista IIDH* 36, pp. 65-66 ([link](#)).

⁷⁶⁶ *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 59 ([link](#)).

⁷⁶⁷ Writing extrajudicially, Judge Trindade observed that “*within the ambit of the droit de l’humanité, the common concern of the human kind finds expression in the exercise of the recognized right to a healthy environment, in all its dimensions (individual, groupal, social or collective, and inter-generational)*”: AAC Trindade, “The Parallel Evolutions of International Human Rights Protection and Environmental Protection and the Absence of Restrictions upon the Exercise of Recognized Human Rights” (1991) 13 *Revista IIDH* 36, p. 54 ([link](#)). Climate change is a common concern of mankind: United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107, preambular para. 1 ([link](#)); Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104, preambular para. 11 ([link](#)).

⁷⁶⁸ See Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019,

dimension, both as an autonomous right and due to its intrinsic relationship with other human rights.⁷⁶⁹

384. The right to a clean, healthy and sustainable environment in all relevant aspects is clearly impaired by the Relevant Conduct. The UN General Assembly recognized this in Resolution 76/300:

“[T]he impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, **the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment** and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights” (emphasis added)⁷⁷⁰

385. Accordingly, the UN Special Rapporteur on Human Rights and the Environment has observed that “[t]he failure of States to take adequate steps to address climate change can constitute a violation of the right to a healthy environment”.⁷⁷¹

386. In light of the foregoing considerations, the acts and omission of States encompassed by the Relevant Conduct clearly engage the right to a clean, healthy and sustainable environment and are governed by certain obligations of conduct imposed on States by virtue of the right. Those obligations are to *respect, protect* and *fulfil* the right.⁷⁷² In that respect, Vanuatu makes the following submissions:

- (a) **Respect:** States must not violate the right to a healthy environment (including a safe climate) through their own acts or omissions. This means they must not cause or allow significant harm to the climate system and other parts of the environment, given that such harm impairs the quality of the environment and climate system required by the right.

CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, paras. 10.5, 10.7 ([link](#)); *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, paras. 101, 103, 104 ([link](#)).

⁷⁶⁹ *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 59 ([link](#)).

⁷⁷⁰ *The human right to a clean, healthy and sustainable environment*, UN General Assembly Resolution 76/300, adopted 28 July 2022, A/RES/76/300, preambular para. 9 ([link](#)).

⁷⁷¹ David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, 15 July 2019, UN Doc A/74/161, see in particular paras. 44; 63 ([link](#)). See also *The human right to a clean, healthy and sustainable environment*, UN General Assembly Resolution 76/300, adopted 28 July 2022, A/RES/76/300 (“the impact of climate change ... the resulting loss of biodiversity and the decline in services provided by ecosystems’ interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights”) ([link](#)).

⁷⁷² David Boyd, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), 15 July 2019, UN Doc A/74/161, para. 65 ([link](#)). See John H Knox, *Framework principles on human rights and the environment* (“Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean healthy and sustainable environment”) (24 January 2018) A/HRC/37/59 annex, paras. 4-6 ([link](#)).

- (b) Protect: States must protect the right from being violated by third parties.⁷⁷³ This means they must actively protect the climate system and other parts of the environment from significant harm caused by others including industry, business and other actors. This obligation dovetails with a range of other obligations, including the requirements of the prevention principle⁷⁷⁴ which, as a matter of customary international law, requires that States regulate, supervise and monitor, require and approve environmental impact assessments, establish contingency plans and mitigate significant environmental damage.⁷⁷⁵
- (c) Fulfil: States must establish, implement and enforce laws, policies and programmes which are directed towards ensuring and maintaining the minimum level of quality of environment (and climate system) required by the right. This also involves States fully implementing multilateral environmental agreements and principles of international environmental law.⁷⁷⁶ A failure to do so spells violation of the right to a healthy environment.⁷⁷⁷

387. Further, States must comply with their procedural obligations under the right to a clean, healthy and sustainable environment.⁷⁷⁸

388. Moreover, States owe **heightened obligations** to Indigenous Peoples and other traditional communities that rely on their ancestral territories for their material and cultural existence,⁷⁷⁹ and are thus particularly susceptible to impairments of environmental quality.⁷⁸⁰ The Inter-American Court of Human Rights has described

⁷⁷³ See, in relation to the obligation to protect the right to a healthy environment in the Inter-American context, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgement, Inter-American Court of Human Rights (ser. C), 6 February 2020, para. 207 ([link](#)).

⁷⁷⁴ See Section 4.4.3.C (The principle of prevention of significant harm to the environment).

⁷⁷⁵ *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgement, Inter-American Court of Human Rights (ser. C), 6 February 2020, para. 208 ([link](#)).

⁷⁷⁶ *The human right to a clean, healthy and sustainable environment*, Human Rights Council Resolution 48/13, adopted 8 October 2021, A/HRC/RES/48/13, para. 3 ([link](#)); *The human right to a clean, healthy and sustainable environment*, UN General Assembly Resolution 76/300, adopted 28 July 2022, A/RES/76/300, para. 3 ([link](#)).

⁷⁷⁷ David Boyd, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), 15 July 2019, UN Doc A/74/161, para. 74 ([link](#)).

⁷⁷⁸ See, in the African context: African Commission on Human and Peoples' Rights, *Social and Economic Rights (SERAC) and Centre for Economic and Social Rights (CESR) v. Nigeria*, Communication No. 155/96, 27 October 2001, para. 52 (State compliance with obligations under the right to a healthy environment (and the right to health) specifically involved: "ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial developments, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.") ([link](#)).

⁷⁷⁹ John H Knox, *Framework principles on human rights and the environment* ("Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean healthy and sustainable environment") (24 January 2018) A/HRC/37/59 annex, para. 41(d) ([link](#)).

⁷⁸⁰ This kind of reasoning has been adopted by the Human Rights Committee and the Inter-American Court of Human Rights: see, UN Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*,

the heightened obligations owed to such groups as involving “*positive measures to ensure that members of these peoples have access to a dignified life – which includes the protection of their close relationship with the land – and to their life project, in both its individual and collective dimension.*”⁷⁸¹ Such groups are owed these heightened obligations because the right to self-determination (enjoyed by such groups) and cultural rights (enjoyed by individuals belonging to such groups) recognize and make legally significant the distinctive relationship and close ties they have to their land and environment as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival; and the need for this to be preserved and transmitted to future generations.⁷⁸² As noted, these heightened obligations arise “*not only due to their special spiritual and cultural relationship with their ancestral territories, but also due to their economic dependence on the environmental resource*”.⁷⁸³

389. The obligations set out in the preceding paragraphs apply to all those parts of the Relevant Conduct which took place from the emergence of the right to a clean, healthy and sustainable environment as a binding rule of international law until the present day. Vanuatu submits that the Relevant Conduct can be assessed against these obligations because: (a) the right in all its relevant aspects exists in customary international law; and (b) in any case, the right is *a necessary derivation* from other existing rights and so can be used as a baseline to assess the legality of the Relevant Conduct against a number of related and interdependent rights over time.
390. States violate the right to a clean, healthy and sustainable environment where, by their Relevant Conduct, they cause or allow *significant* harm to the climate system or other parts of the environment.⁷⁸⁴ This involves a *qualitative* assessment to

CCPR/C/135/D/3624/2019, 22 September 2022, para. 7.10 ([link](#)); *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgement, Inter-American Court of Human Rights (ser. C), 6 February 2020, para. 109 (environmental damage “*can occur with greater intensity in certain groups in vulnerable situations*” among which Indigenous peoples and “*the communities that depend economically or for their survival, fundamentally on environmental resources, [like] the marine environment, forest areas or river basins*” ([link](#)).

⁷⁸¹ *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 48 ([link](#)), citing *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, para. 163 ([link](#)).

⁷⁸² The distinctive relationship of such groups to lands and the environment has been recognised in many cases of international, regional and national courts, and is discussed in more detail in Section 4.4.4.B(4) of this Chapter and Expert Report of Professor Martin Scheinin on International Human Rights Law Obligations of States in Respect of Climate Change (dated 31 December 2023) (**Exhibit C**), paras. 21, 25-26, 29.

⁷⁸³ *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, fn. 121 ([link](#)).

⁷⁸⁴ *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 140, see also paras. 134-136 ([link](#)). The Inter-American Court noted that while the Stockholm Declaration and Rio Declaration do not describe the type of environmental damage that should be prevented, many treaties “*include an obligation to a certain degree of severity of the harm that could be caused*” (all framed using the term “*significant*”). This is also consistent with the jurisprudence in this Court, which has found that the obligation to prevent damage arises when there is a risk of “*significant damage*”: *Case of Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 101; *Certain activities carried out by Nicaragua in the border area (Costa Rica v. Nicaragua)* and *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*. Judgment, I.C.J.

establish whether the threshold of significance has been crossed. In this context, it needs to be considered whether States have, by their acts and omissions, caused a decrease in the *quality* of the environment (including the climate system) such that it no longer meets the essential standards of health required for it to safeguard the enjoyment of other rights (in the individual dimension), or to preserve its inherent value for present and future generations (in the collective).⁷⁸⁵ Crucially, the position of groups such as Indigenous Peoples must be considered in assessing the legality of the Relevant Conduct under the right to a clean, healthy and sustainable environment. This is so because any deterioration in the quality of the environment (including to the climate system) is felt “*most acutely*” by such groups,⁷⁸⁶ and thus violations of the right may materialize at a lower level of harm in respect to those groups.

391. Due to the Relevant Conduct, the quality of the climate system and the environment in Vanuatu no longer meets the essential standards required for it to safeguard the enjoyment of other rights or to preserve its inherent value for present and future generations. According to the World Risk Index 2021, Vanuatu has been classified as *the* country most exposed to the risks of natural disasters.⁷⁸⁷ Since 2015, it has been observed that the frequency and intensity of tropical cyclones, marine weather disturbances and extreme rainfall is much higher than normal; and that droughts last much longer.⁷⁸⁸ Further, the warming of sea surface temperatures has been associated with an increase of marine heatwaves across Vanuatu,⁷⁸⁹ and a related decline in ecological diversity.⁷⁹⁰ The severity of these impacts is most evident in temperature-sensitive marine ecosystems such as coral reefs, seagrass beds, and

Reports 2015, para. 153. See further Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, with commentaries, 12 December 2001, UNGA Res 56/82, UN Doc. A/RES/56/82, art. 1, art. 2, para. 4; see also art. 3, para. 5 ([link](#)).

⁷⁸⁵ In the Inter-American human rights system, healthy has been referred to as a technical quality of the environment, “*because the qualifier ‘healthy’ requires that the constituent elements of the environment (such as water, air or soil) have technical conditions of quality that make them acceptable, in line with international standards. This means that the quality of the elements of the environment must not become an obstacle to persons to live their lives in their vital spaces.*”: *Advisory Opinion OC-23/17* (‘The Environment and Human Rights’), Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 60, fn. 95 (referring to Working Group to examine periodic reports of State Parties in the San Salvador Protocol) ([link](#)).

⁷⁸⁶ See Human Rights Council, *Human rights and the environment*, A/HRC/RES/37/8, 9 April 2018, preambular para. 11 ([link](#)).

⁷⁸⁷ See World Risk Index 2021 ([link](#)). See Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 2.

⁷⁸⁸ Impact Statement of Abraham Nasak, Director of the Vanuatu National Disaster Management Office, Republic of Vanuatu, 15 March 2024 (**Exhibit T**), paras. 8-9.

⁷⁸⁹ Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu’s Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 10 ([link](#)).

⁷⁹⁰ Leanne Webb (CSIRO), Vanessa Hernaman (CSIRO), Kevin Hennessy (Climate Comms) and Nastasia Shing (Vanuatu Department of Fisheries), “Marine heatwave impacts on seagrass in Vanuatu”, Infobyte prepared for the Vanuatu Meteorology and Geo-hazards Department as part of the Van-KIRAP project (CSIRO: Melbourne, Australia) (2023) ([link](#)).

fish.⁷⁹¹ For example, recent monitoring indicates a drastic seagrass decline in the Western Pacific.⁷⁹² Another example is tuna – Vanuatu’s main commodity – declining in numbers due to ocean warming.⁷⁹³

392. The harm to the climate system also leads to the erosion of intangible cultural heritage and traditional knowledge. In Vanuatu, traditional knowledge has been used and refined for centuries to accurately predict weather-related phenomena. Reliance on this knowledge has enabled Ni-Vanuatu across generations to anticipate and respond to tropical cyclones, marine weather disturbances, extreme rainfall, droughts, and transitions between seasons. The harm caused to the climate system and other parts of the environment is now making these predictions less accurate, unreliable or even obsolete.⁷⁹⁴ This erosion of traditional knowledge has severe implications for Ni-Vanuatu communities who rely on such knowledge for their livelihoods and subsistence activities.⁷⁹⁵ Women face particular difficulties in this regard.⁷⁹⁶ In a study on women and climate change in Vanuatu, it is observed that:

“Greenhill women note that cyclones now come at random times in contrast to previous experiences so “*some people are unprepared*” Now the “*cyclone comes almost every year and destroys plant crops in the garden – then after the cyclone there is rain and people don’t have a chance to plant again or rebuild houses.*” They also note that “*the cyclone causes the water to become dirty and then children get diarrhoea ... sickness comes so quickly every time after a disaster*” and that it also affects women’s menstrual cycles. They note that violence against women can escalate after cyclones when houses collapse and

⁷⁹¹ Matthew Widlansky, Leanne Webb & Kevin Hennessy, *Vanuatu’s Climate: Current and future variability and change. A report to the Van-KIRAP project* (University of Hawaii, CSIRO and Climate Comms, 2023), p. 10 ([link](#)).

⁷⁹² Leanne Webb (CSIRO), Vanessa Hernaman (CSIRO), Kevin Hennessy (Climate Comms) and Nastasia Shing (Vanuatu Department of Fisheries), “Marine heatwave impacts on seagrass in Vanuatu”, Infobyte prepared for the Vanuatu Meteorology and Geo-hazards Department as part of the Van-KIRAP project (CSIRO: Melbourne, Australia) (2023), 2 ([link](#)), citing Frederick T Short, Robert Coles, Miguel D Fortes, Steven Victor, Maxwell Salik, Irwan Isnain, Jay Andrew & Aganto Seno, ‘Monitoring in the Western Pacific region shows evidence of seagrass decline in line with global trends’ (2014) 83(2) *Marine Pollution Bulletin* 408-416 (**Exhibit ZA**).

⁷⁹³ Republic of Vanuatu, *Climate Change Impact Case Study: Vanuatu and Migration* (2023), p. 1 ([link](#)); Somino Sengupta, ‘Can Nations be Sued for Weak Climate Action? We’ll Soon Get an Answer’ (*The New York Times*, 29 March 2023) ([link](#)).

⁷⁹⁴ See Expert Report of Anna Naupa and Dr Chris Ballard on Climate Change and Cultural Loss in Vanuatu (dated 2 February 2024) (**Exhibit A**), para. 37.

⁷⁹⁵ See Statement of Alpi Nangia dated 12 January 2024 (**Exhibit F**), paras. 17-18; Statement of Jenny Toata dated 12 January 2024, (**Exhibit J**), paras. 10-14; Statement of Statement of Johnny Loh dated 12 January 2024 (**Exhibit K**), paras. 17-19 (on the changing quality of Banana, Coconut and Taro) and 30-32 (on changing weather); Statement of Mangau Iokai dated 12 January 2024 (**Exhibit H**), paras. 8-15, 34; Statement of Statement of Werry Narua dated 12 January 2024 (**Exhibit G**), paras. 32-35; Statement of Nine Women (Linet Iawain, Yalitea Iakaho, Sera Nawahta, Nelly Pilia, Naus Iaho, Nancy Iacitan, Sera Naburam, Yoba Merarangi, Jenny Toata) dated 12 January 2024 (**Exhibit I**), paras. 9-16.

⁷⁹⁶ Statement of Nine Women (Linet Iawain, Yalitea Iakaho, Sera Nawahta, Nelly Pilia, Naus Iaho, Nancy Iacitan, Sera Naburam, Yoba Merarangi, Jenny Toata) dated 12 January 2024 (**Exhibit I**), paras. 6-8 (in relation to the impacts of changing weather on the duties of women), see also paras. 18-22 (in relation to the impacts of food shortages on community cohesion and gender-based violence). See also Impact Statement of Rothina Ilo Noka, Director for the Department of Women’s Affairs, the Republic of Vanuatu, 15 March 2024 (**Exhibit P**), paras. 28-30 (in relation to socio-economic impacts) and para. 32 (in relation to gender-based violence).

they might have to sleep in the church building. In this environment, women feel unsafe.”⁷⁹⁷

393. Furthermore, it has also been observed that the frequency and intensity of tropical cyclones, marine weather disturbances, extreme rainfall and droughts are increasingly unpredictable and that this is causing difficulties for the Republic of Vanuatu to plan for and manage disasters and emergencies.⁷⁹⁸ In Vanuatu’s submission, this unpredictability for both the people of Vanuatu and the Government is symptomatic of a climate system and environment that is no longer healthy; put another way, it demonstrates that the essential quality of the climate system and environment has been impaired.
394. Observed changes to the climate and environment by Ni-Vanuatu people are telling. In the study about women and climate change in Vanuatu, it was observed that:

“Epau women report declining resources including fish, trees, coral, mangroves, crabs, clam shells, and flying foxes. They observe that sea levels are rising, their fishing is poor, and that their gardens and food crops are attacked by wild pigs leaving little or no produce for markets. Port Resolution women note that sea levels are rising and affecting their beaches – *“the sea will dig it [the beach] up”*. They note that big trees have fallen and that the crossing to Cook Island is harder to navigate because there are deeper and higher tides. They also commented that, because of sea level rises, their school will need to be relocated within 20 years and that landslides have changed the landscape. *“This was paradise”* they state, and now it’s not. They describe the size of yams as smaller with one woman noting she was *“ashamed”* to offer these at her sister’s wedding ceremony. Staples like taro now easily rot, and fire ants and cabbage worm are eating the yams, taro, and cabbage. Bananas, watermelon, cucumber, and corn are now scarce and edible shells are gone. The coral has turned all white and fish are moving out of the coral to deeper waters. The hot springs are affected as they are now covered by rising seas and the path to the sea is harder to navigate. Greenhill women note that wild cane – that used to be a fundamental building material – is now limited or gone, and this has impacted the building of homes and shelters. They also note that there is too much rain and the food crops rot after a very short time. The taro and yam are smaller, and they also note that edible shells have disappeared. Where once fish could easily be caught, they now must *“spend longer hours than before trying to catch something.”*⁷⁹⁹

⁷⁹⁷ Margaret Alston, Sascha Fuller & Niikita Kwarney, ‘Women and climate change in Vanuatu, Pacific Islands Region’ (2023) *Gender, Place & Culture*, p. 6 ([link](#)).

⁷⁹⁸ See, generally, Impact Statement of Abraham Nasak, Director of the Vanuatu National Disaster Management Office, Republic of Vanuatu, 15 March 2024 (**Exhibit T**). See also Statement of Jenny Toata dated 12 January 2024, (**Exhibit J**), para. 14 (*“The weather pattern before was predictable. But now the rain comes when it is expected and same as the sun The sun comes when it is supposed to rain. Before the weather had a pattern. I assumed the weather pattern would be the same as before and now it is different. It is bad for the crops.”*)

⁷⁹⁹ Margaret Alston, Sascha Fuller & Niikita Kwarney, ‘Women and climate change in Vanuatu, Pacific Islands Region’ (2023) *Gender, Place & Culture*, pp. 12-13 ([link](#)).

395. The SPC Expert Report concluded that the “*well-documented harms*” in Vanuatu include but are not limited to “*extreme weather events; sea-level rise; coastal erosion; ocean warming, acidification, and deoxygenation; and adverse effects on pelagic and coastal fisheries; coral reefs and biodiversity; temperature rise; drought and water security; agriculture; and food security*”.⁸⁰⁰ As has been demonstrated in the sections of this Chapter concerning other rights, such harms to the climate system and other parts of the environment are felt intensely in Vanuatu (and other small island developing States across the Pacific); and the risks posed by such harms on the rights of peoples and individuals of Vanuatu (and the Pacific) are serious and “*are magnified by the close relationship that [they] have with the environment and their traditional lands, resources and territories*”.⁸⁰¹
396. Accordingly, the Republic of Vanuatu submits that the Relevant Conduct has violated, is violating, and will continue to violate with increasing scale, intensity and frequency, the right to a clean, healthy and sustainable environment (and more specifically, the right to a safe climate) as the climate crisis worsens. In Vanuatu’s submission, this breach carries legal consequences which are discussed in Chapter V.

D. Obligations arising from the UNFCCC and the Paris Agreement

397. The 1992 United Nations Framework Convention on Climate Change (UNFCCC)⁸⁰² and the 2015 Paris Agreement,⁸⁰³ both of which command near universal participation, and decisions of Parties under each of these instruments, form, *together with the other rules and instruments examined in this Chapter*, an important part of the corpus of international law engaged in addressing the existential threat of climate change.
398. The UNFCCC and the Paris Agreement reflect the international community’s consensus on an ambitious temperature goal that would avoid the worst impacts of climate change, and the necessity of aligning States’ actions with the best available scientific knowledge. These instruments impose binding obligations in relation to greenhouse gas mitigation and set a high standard of due diligence for States in addressing climate harms. The UNFCCC and the Paris Agreement also impose binding obligations on Parties to take measures to adapt to the adverse effects of climate change, and they lay down a framework for the provision of support for developing countries to effectively implement their obligations.

⁸⁰⁰ Expert Report for the Government of Vanuatu prepared by the Pacific Community (SPC) (dated 12 March 2024) (**Exhibit E**), p. 2.

⁸⁰¹ *The impacts of climate change on the human rights of people in vulnerable situations (Report of the Secretary-General)*, 6 May 2022, UN Doc. A/HRC/50/57 ([link](#)).

⁸⁰² United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107 ([link](#)).

⁸⁰³ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex ([link](#)).

399. The UNFCCC and the Paris Agreement, however, do **not**, expressly or by necessary implication, cover the field of international law obligations in respect of climate change and many relevant aspects of the problem. In particular, they do not directly address, among other aspects, the human rights implications of the Relevant Conduct or its implications for the respect of the right of peoples to self-determination, the protection and preservation of the marine environment, and the prevention of significant environmental harm. Moreover, they explicitly decline to address liability and compensation in relation to loss and damage occurring from adverse effects of climate change.

(1) *The UNFCCC and the Paris Agreement reflect the international community's consensus on the 1.5°C temperature goal and reaching "net zero" by mid-century*

400. The UNFCCC identifies its objective as well as that of “any related legal instruments that the Conference of the Parties [...] adopt[s]” as “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”.⁸⁰⁴ The 2015 Paris Agreement is a “related legal instrument” directed at “enhancing the implementation of the Convention, including its objective”.⁸⁰⁵ In Article 2, characterized as the “purpose” of the Agreement,⁸⁰⁶ the Paris Agreement identifies the goal as:

“[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change”.

401. Although the language of Article 2 suggests that Parties need only to “pursue efforts” towards the 1.5°C goal, the 2021 *Glasgow Climate Pact*, a decision of the Parties under the Paris Agreement decisively shifts the focus of the international community’s efforts towards 1.5°C. This decision, arrived at through consensus, represents subsequent agreement of the Parties in relation to the interpretation of the Convention.⁸⁰⁷ Paragraph 21 of the *Glasgow Climate Pact*, states that the Conference of Parties:

⁸⁰⁴ United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107, art. 2 ([link](#)).

⁸⁰⁵ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 2(1) ([link](#)).

⁸⁰⁶ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 3 ([link](#)).

⁸⁰⁷ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331, art. 31(3)(a) ([link](#)).

“Recognizes that the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C and resolves to pursue efforts to limit the temperature increase to 1.5°C”⁸⁰⁸

402. The Paris Agreement further builds on the UNFCCC’s objective by indicating, in terms of avoided temperature rise, the level at which concentrations of GHGs in the atmosphere must be stabilized. This is commonly characterized as the “*net zero*” goal. In order to achieve the long-term temperature goal, Paris Agreement Article 4.1 requires that:

“Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.”

403. The 2021 Glasgow Climate Pact aligns this “*net zero*” goal with the findings of the 2018 IPCC Special Report: Global Warming of 1.5°C,⁸⁰⁹ and notes that the Conference of Parties:

“Recognizes that limiting global warming to 1.5°C requires rapid, deep and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century as well as deep reductions in other greenhouse gases.”⁸¹⁰

404. The UNFCCC and the Paris Agreement require Parties to report on, and to varying degrees be accountable for, taking policies, measures, and actions in line with the objective, purpose, and goals of the United Nations (UN) climate regime. UNFCCC Article 12.1(c) requires Parties to communicate information the Party considers relevant to achieving the objective of the Convention. Paris Agreement Article 14 establishes a Global Stocktake to “*assess the collective progress towards achieving the purpose*” of the Paris Agreement. And Parties are obliged to provide information with their Nationally Determined Contribution (NDC) indicating how it contributes to achieving the objective of the Convention, as well as the temperature goal

⁸⁰⁸ “Glasgow Climate Pact”, Decision 1/CMA.3, 13 November 2021, FCCC/PA/CMA/2021/10/Add.1, para. 21 ([link](#)).

⁸⁰⁹ Intergovernmental Panel on Climate Change, *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 (2018), statement C.1 (“*In model pathways with no or limited overshoot of 1.5°C, global net anthropogenic CO₂ emissions decline by about 45% from 2010 levels by 2030 (40–60% interquartile range), reaching net zero around 2050 (2045–2055 interquartile range).*”) ([link](#)).

⁸¹⁰ “Glasgow Climate Pact”, Decision 1/CMA.3, 13 November 2021, FCCC/PA/CMA/2021/10/Add.1, para. 22 ([link](#)).

(Article 2.1(a)) and net zero goal (Article 4.1) of the Paris Agreement.⁸¹¹ These provisions seek to instil transparency and accountability for aligning national actions, policies, and commitments with the goals of the climate change regime.

405. Notwithstanding this clear consensus among Parties on the 1.5°C temperature goal and on reaching “net zero” by or around mid-century, Parties’ actions are not aligned with pathways towards these goals. The 2023 UNFCCC Synthesis Report of the Technical Dialogue of the First Global Stocktake, identifying a significant gap in ambition, emissions, and implementation, notes that:

“Global emissions to date are not in line with modelled global mitigation pathways consistent with the global temperature goal of the Paris Agreement nor are they aligned with longer-term emission reduction goals.”⁸¹²

The Outcome of the first global stocktake, part of the 2023 UAE Consensus found that:

“despite overall progress on mitigation, adaptation and means of implementation and support, Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long-term goals.”⁸¹³

The 2022 UNFCCC NDCs Synthesis Report estimates, based on an assessment of existing contributions from Parties, that the peak temperature in the twenty-first century is in the range of 2.1–2.9°C.⁸¹⁴ At this temperature rise, there will be serious, pervasive, and irreversible changes, crossing many natural tipping points.

- (2) *The UNFCCC and the Paris Agreement reflect the international community’s consensus that States’ responses must be guided by the best available scientific knowledge*

406. The UNFCCC and the Paris Agreement both stress the importance of being guided by the best available scientific knowledge in addressing climate change. UNFCCC’s preambular recital 16 recognizes that “*steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas*”. The Paris Agreement goes further in preambular recital 4 by:

⁸¹¹ “Further guidance in relation to the mitigation section of decision 1/CP.21”, Decision 4/CMA.1, 15 December 2018, FCCC/PA/CMA/2018/3/Add.1, 6, para. 7 ([link](#)) (Parties are strongly encouraged to provide this information with their first NDC and obliged to do so for subsequent NDCs).

⁸¹² “Technical dialogue of the first global stocktake: Synthesis report by the co-facilitators on the technical dialogue”, 8 September 2023, FCCC/SB/2023/9, 13, para. 80 ([link](#)).

⁸¹³ Decision/CMA.5, Outcome of the first global stocktake, 13 December 2023, para. 2 ([link](#)).

⁸¹⁴ “Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat”, 26 October 2022, FCCC/PA/CMA/2022/4, 7, para. 17 ([link](#)).

“Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge”

407. Article 14 of the Paris Agreement establishes the Global Stocktake to “*assess the collective progress towards achieving the purpose of this Agreement and its long-term goals*” is to be conducted in the light of “*the best available science*”. The Glasgow Climate Pact recognizes that “*accelerated action in this critical decade*” needs to be “*on the basis of the best available scientific knowledge*.”⁸¹⁵ The UAE Consensus goes further and “*commits to accelerate action in this critical decade on the basis of the best available science*.”⁸¹⁶ There is overwhelming support, thus, for the proposition that **Parties have endorsed a response in line with the best available science**, which as the IPCC’s Sixth Assessment Report makes clear requires “*deep, rapid, and sustained reductions in greenhouse gas emissions*”.⁸¹⁷

(3) *The UNFCCC and the Paris Agreement contain binding GHG mitigation obligations for all Parties, including obligations of conduct entailing the exercise of due diligence by States*

408. The UNFCCC and the Paris Agreement contain binding GHG mitigation obligations for Parties. The central GHG mitigation obligations in the UNFCCC are contained in Articles 4.1 and 4.2. UNFCCC Article 4.1 identifies substantive obligations for “*all Parties*”, in particular to formulate and “*implement*” national and regional programmes to mitigate climate change and facilitate adaptation to climate change. It also identifies several procedural obligations for all States. In addition, UNFCCC Article 4.2 contains a substantive obligation, requiring each developed country, listed in Annex I, to take policies and measures on GHG mitigation “*with the aim of returning individually or jointly*” to their 1990 levels of GHGs.⁸¹⁸ This substantive obligation to take policies and measures on GHG mitigation is matched with an obligation of conduct in relation to these policies and measures in that developed countries are required to “*aim*” to return to their 1990 levels of GHG emissions, and thus are obliged to exercise due diligence, and best possible efforts to reach this level.

409. The central GHG mitigation obligation in the Paris Agreement is in Article 4.2. It reads:

“Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties

⁸¹⁵ “Glasgow Climate Pact”, Decision 1/CMA.3, 13 November 2021, FCCC/PA/CMA/2021/10/Add.1, para. 23 ([link](#)).

⁸¹⁶ Decision 1/CMA.5, Outcome of the first global stocktake, 13 December 2023, para. 6 ([link](#)).

⁸¹⁷ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.1 ([link](#)).

⁸¹⁸ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107, arts. 4.2(a), (b) ([link](#)).

shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.”

The obligation to communicate an NDC is a binding procedural obligation. **The obligation to pursue domestic measures with the aim of achieving the objectives of the NDC is a binding substantive obligation in that Parties are obliged (“shall”) to pursue domestic measures.** In so far as Parties are required to “aim” at achieving the objectives of their NDCs through their domestic measures, this is an obligation of conduct, an obligation to exercise best efforts,⁸¹⁹ and is subject to due diligence requirements.

410. Paris Agreement Article 4.2 is set against the backdrop of Article 3, a cross-cutting provision, that requires “all Parties” “to undertake and communicate ambitious efforts” and specifies that Parties’ “efforts” “will represent a progression over time”. These are both substantive (“undertake”) and procedural (“communicate”), and obligations of conduct (“efforts”), leaving discretion to Parties in relation to the nature of these “efforts” and how these will represent a “progression” over time. This too demands due diligence from States.
411. The requisite “progression” is further specified in that NDCs need to reflect a Party’s “highest possible ambition”, their “common but differentiated responsibilities [...] in the light of different national circumstances”,⁸²⁰ and “leadership” from developed countries.⁸²¹ These normative parameters are crucial. In relation to the procedural obligation identified in Article 4.2 to “prepare, communicate and maintain” NDCs, these parameters import substantive and qualitative elements into what on the face of it appears to be a purely procedural obligation. In framing and implementing their NDCs, Parties must factor in these substantive parameters. In relation to the obligation of conduct identified in Article 4.2 to pursue domestic measures with the aim of meeting the objectives of the NDCs, these parameters provide regime-specific markers for due diligence. The domestic measures Parties undertake to meet the objectives of their NDCs must also comply with these parameters, and the extent to which they do so will determine the extent to which they have demonstrated due diligence.

(4) *The UNFCCC and the Paris Agreement contain clearly identifiable regime-specific markers that set a high standard of due diligence for States in relation to their GHG mitigation obligations*

⁸¹⁹ See Daniel Bodanksy, Jutta Brunnée, and Lavanya Rajamani, *International Climate Change Law* (OUP, 2017), 231 (**Exhibit ZG**); Lavanya Rajamani, ‘Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics’ (2016) 65 *International and Comparative Law Quarterly* 493, pp. 497-498 (**Exhibit ZI**); Ralph Bodle and Sebastian Oberthür, ‘The Legal Form of the Paris Agreement and Nature of its Obligations’, in Daniel Klein et al. (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (OUP, 2017), pp. 99, 102-103 (**Exhibit ZR**).

⁸²⁰ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 4.3 ([link](#)).

⁸²¹ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 4.4 ([link](#)).

412. The UNFCCC and the Paris Agreement set a high standard for the due diligence required of States. The standard of due diligence required of States varies across different areas of international law, and in differing contexts.⁸²² As the International Tribunal for the Law of the Sea (ITLOS) noted in the *Seabed Mining Advisory Opinion*, “‘due diligence’ is a variable concept. It may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge. It may also change in relation to the risks involved in the activity.”⁸²³ In relation to climate change, the nature and extent of due diligence required from States is influenced and shaped by several regime-specific factors, that are clearly identifiable in the UNFCCC and the Paris Agreement. These include mainly five considerations.⁸²⁴
413. The *first* is the objective, purpose, and goals of the UNFCCC and the Paris Agreement. These are contained in Article 2 of the UNFCCC, and Articles 2 and 4.1 of the Paris Agreement. The clear consensus among Parties, as demonstrated above, on the 1.5°C temperature goal and on reaching “net zero” by or around mid-century generates a normative expectation that Parties’ actions will be aligned with these goals. The 2021 Glasgow Climate Pact, in line with this interpretation, directs Parties “to revisit and strengthen the 2030 targets in their nationally determined contributions as necessary to align with the Paris Agreement temperature goal.”⁸²⁵
414. The *second* consideration concerns the standard of “highest possible ambition” required from Parties in their NDCs. Article 4.3 of the Paris Agreement states that each Party’s subsequent NDC “will represent a progression beyond the Party’s then current nationally determined contribution” but also that it will “reflect its highest possible ambition”. While the terms “highest possible ambition” are not defined, the use of the superlative adjective “highest” leaves no doubt that Parties must do their utmost to address climate harms. This parameter shapes the requisite due diligence of States in relation to addressing climate harms.⁸²⁶ The rules relating to provision of information with NDCs require Parties to provide information on how their contribution is “fair and ambitious”,⁸²⁷ and addresses Article 4.3

⁸²² International Law Association, Tim Stephens (Rapporteur) and Duncan French (Chair), *Study Group on Due Diligence in International Law*, Second Report, July 2016 ([link](#)).

⁸²³ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area* (Advisory Opinion) ITLOS Rep 2011, 10, para. 117 ([link](#)).

⁸²⁴ See for a full discussion of these regime specific factors, Lavanya Rajamani, ‘Due Diligence in International Climate Change Law’, in Heike Krieger, Anne Peters, Leonhard Kreuzer (eds.), *Due Diligence in the International Legal Order* (Oxford University Press, 2020), pp. 163-180 (**Exhibit ZZB**).

⁸²⁵ “Glasgow Climate Pact”, Decision 1/CMA.3, 13 November 2021, FCCC/PA/CMA/2021/10/Add.1, para. 29 ([link](#)).

⁸²⁶ See Christina Voigt and Felipe Ferreira, ‘Dynamic Differentiation’: The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement’ (2016) 5(2) *Transnational Environmental Law* 285, 297 (**Exhibit ZF**).

⁸²⁷ “Further guidance in relation to the mitigation section of decision 1/CP.21”, Decision 4/CMA.1, 15 December 2018, FCCC/PA/CMA/2018/3/Add.1, 6, Annex I, para. 6 ([link](#)).

(“*progression*”, “*highest possible ambition*”),⁸²⁸ thus instilling transparency and accountability in the delivery of highest possible ambition from Parties. Human Rights treaty bodies have also found that compliance with human rights treaty obligations require States to adopt and implement mitigation policies that reflect the “*highest possible ambition*”.⁸²⁹

415. *Third*, there is an expectation that Parties’ actions will reflect their common but differentiated responsibilities and respective capabilities, in light of different national circumstances. The International Law Commission (ILC) recognizes that one of the factors in determining the standard of due diligence required of a State is its “*economic level*” or capacity, but notes however that “*a State’s economic level cannot be used to dispense the State from obligation under the present Articles*”.⁸³⁰ Differentiation in the climate change regime, however, is based not just on disparities in economic levels but also on differences in relation to responsibilities for causing climate harm. The principle of common but differentiated responsibilities and respective capabilities, the principled basis for differentiation in the climate change regime, differentiates between States both in relation to capacities (“*respective capabilities*”) as well as to contributions to climate harm (“*responsibilities*”). The standard of due diligence in relation to specific obligations of conduct placed on a State is shaped thus both by differences in capacities as well in responsibilities for contributing to climate change (causing significant harm to the climate system and other parts of the environment).

(a) The standard of due diligence in the climate change regime is shaped by the resources and capacities that States have. The climate regime has, since its inception, recognized the vast disparities between developed and developing countries, and differentiated between them with respect to implementation. This takes the form of differentiation in relation to stringency or timing of implementation, such as delayed compliance schedules,⁸³¹ permission to adopt subsequent base years,⁸³² delayed reporting schedules,⁸³³ flexibility in implementation,⁸³⁴ and softer

⁸²⁸ “Further guidance in relation to the mitigation section of decision 1/CP.21”, Decision 4/CMA.1, 15 December 2018, FCCC/PA/CMA/2018/3/Add.1, 6, Annex I, para. 6 ([link](#)).

⁸²⁹ Statement on human rights and climate change: 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, HRI/2019/1, 14 May 2020 ([link](#)).

⁸³⁰ *Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, with commentaries*, 12 December 2001, UNGA Res 56/82, UN Doc. A/RES/56/82, art. 3, para. 13 ([link](#)).

⁸³¹ See, e.g., Kyoto Protocol to the United Nations Framework Convention on Climate Change, 10 December 1997, 2303 U.N.T.S. 162, art. 3.5 ([link](#)).

⁸³² See, e.g., United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107, art. 4(6).

⁸³³ United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107, art. 2(5).

⁸³⁴ See, e.g., “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 13(2) ([link](#)).

approaches to non-compliance,⁸³⁵ and, provisions that differentiate among countries in relation to assistance, i.e., commitments to provide, and eligibility to receive, financial⁸³⁶ and technological assistance.⁸³⁷ Such flexibilities and support for developing countries form a fundamental part of the normative architecture of the climate change regime, and thus shape the standard of due diligence required of States in relation to obligations of conduct in the climate regime.

- (b) The standard of due diligence in the climate change regime is also shaped by the different contributions of States to climate change. Thus, the climate regime contains differentiation between developed and developing countries in relation to the central obligations of the regime. The UNFCCC's GHG stabilization targets,⁸³⁸ and the Kyoto Protocol's GHG mitigation targets,⁸³⁹ apply to developed countries alone. And the Paris Agreement, recognized the importance of the common but differentiated responsibilities and respective capabilities principle, and the “*leadership*” role of developed countries.⁸⁴⁰ Article 2.2, a cross-cutting provision, states that the Paris Agreement “*will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in light of different national circumstances*” (CBDRRC). The qualification of the CBDRRC principle by a reference to “*national circumstances*” introduced in the Paris Agreement, injects a dynamic element to the interpretation of the principle—as national circumstances evolve, so too will the common but differentiated responsibilities of States. However, this clause does not seek to shift the bases for differentiation in the climate change regime. Thus, differentiation based on contributions to climate change, is part of the normative architecture of the climate change regime, and it influences the standard of due diligence in relation to the obligations of conduct it contains. While there are operational challenges in identifying each Party's “*fair share*” of the climate effort there is extensive emerging scholarship on methodologies to determine “*fair*

⁸³⁵ See, e.g., ‘The Marrakesh Accords: Procedures and mechanisms relating to compliance under the Kyoto Protocol’, Decision 24/CP.7, 21 January 2002, FCCC/CP/2001/13/Add.3 ([link](#)).

⁸³⁶ See, e.g., “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, Art.s 9(1), 9(3); UNFCCC, Article 4(3) ([link](#)).

⁸³⁷ See, e.g., “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 10(6) ([link](#)).

⁸³⁸ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, Articles 4.2(a), (b) ([link](#)).

⁸³⁹ Kyoto Protocol to the United Nations Framework Convention on Climate Change, 10 December 1997, 2303 UNTS 162, art. 3 ([link](#)).

⁸⁴⁰ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, Arts. 4(4), 4(1) ([link](#)).

shares”,⁸⁴¹ variously presented by litigants in national⁸⁴² and regional courts.⁸⁴³

416. The *fourth* consideration concerns the nature and degree of harm that would be suffered in the absence of due diligence. In determining the due diligence required of States, the nature and degree of harm that would be suffered in the absence of due diligence by States or the “risks involved in the activity”⁸⁴⁴ are relevant factors. The International Law Commission notes that the standard for due diligence should be “appropriate and proportional to the degree of risk of the transboundary harm”.⁸⁴⁵ This builds on the *Alabama Claims* decision that due diligence ought to be exercised in “exact proportion to the risks”.⁸⁴⁶ The “risks involved in the activity” also engage the precautionary principle, which falls within the scope of due diligence.⁸⁴⁷ The *ITLOS Seabed Mining Advisory Opinion*, found the precautionary approach to be “an integral part of the general obligation of due diligence”.⁸⁴⁸ The duty of due diligence in relation to environmental harm is broader than the prevention principle in that it is not limited to harm of a certain magnitude (material harm or significant harm), rather even harm falling below this threshold of magnitude is governed by the duty of due diligence.⁸⁴⁹ These elements of due diligence in general international law apply to the climate change regime’s obligations of conduct. The risks of climate change far exceed the threshold of significant harm, and there is unequivocal scientific evidence as to the existence of risk of significant harm. The enormous risk of potentially irreversible climate impacts at temperatures above 1.5°C suggests a correspondingly high standard of due diligence.

⁸⁴¹ Climate Action Tracker ([link](#)); see, generally, Lavanya Rajamani et al., ‘National ‘fair shares’ in reducing greenhouse gas emissions within the principled framework of international environmental law’ (2021) 21(8) *Climate Policy* 983.

⁸⁴² *A Sud et al. v. Italy*, Civil Court of Rome (2021) (Italy) (pending) ([link](#)); *Client Earth v. Poland (on behalf of M.G.)* (2021), District Court (pending) ([link](#)).

⁸⁴³ *Cláudia Duarte Agostinho and Others v. Portugal and 33 Other States*, Request No. 39371/20 (2020), European Court of Human Rights (pending) ([link](#)); *KlimaSeniorinnen v. Switzerland*, Application no. 53600/20 (2020) European Court of Human Rights ([link](#)).

⁸⁴⁴ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area* (Advisory Opinion) ITLOS Rep 2011, para. 117 ([link](#)).

⁸⁴⁵ *Report of the International Law Commission (ILC) on the work of its fifty-third session*, ‘Draft articles on prevention of transboundary harm from hazardous activities: Text of the draft articles with commentaries thereto’, A/56/10, 2001, commentary to Article 3, para. 11 ([link](#)).

⁸⁴⁶ *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, Award of 14 September 1872, UNRIAA 29, p. 124–134, 129 ([link](#)); See Jorge E. Viñuales, ‘Due Diligence in International Environmental Law: A Fine-grained Cartography’, in Heike Krieger, Anne Peters, Leonhard Kreuzer (eds.), *Due Diligence in the International Legal Order* (Oxford University Press, 2020) (**Exhibit ZZA**), p. 112.

⁸⁴⁷ See Jorge E. Viñuales, ‘Due Diligence in International Environmental Law: A Fine-grained Cartography’, in Heike Krieger, Anne Peters, Leonhard Kreuzer (eds.), *Due Diligence in the International Legal Order* (Oxford University Press, 2020) (**Exhibit ZZA**), pp. 116–117.

⁸⁴⁸ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area* (Advisory Opinion) ITLOS Rep 2011, para. 131 ([link](#)).

⁸⁴⁹ *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area* (Advisory Opinion) ITLOS Rep 2011, para. 131 ([link](#)).

417. Fifth, there is an overarching requirement of good faith. The International Law Association notes that “[a] *State cannot be considered to have acted diligently when the State has acted in bad faith or has knowingly refused to take any measures whatsoever*”.⁸⁵⁰ Good faith, implicit in all treaties, generates expectations in relation to performance of treaty obligations that permeate through the entire UN climate change regime.⁸⁵¹ Thus, although NDCs under the Paris Agreement are not subject to obligations of result, there is a good faith expectation that Parties, will, nevertheless, take all appropriate steps—given the objective of the Paris Agreement and the risks involved in runaway climate change—to the extent their resources and capacities permit, to achieve their self-selected contributions. This expectation is bolstered by decisions taken by Parties that specify the rules for identifying the information necessary to track the progress made by parties in implementing and achieving their NDCs.⁸⁵²
418. The UNFCCC and the Paris Agreement thus set a high standard for the due diligence required of States. This high standard of due diligence is clearly discernible from the text of the UNFCCC and the Paris Agreement, the consensus-based decisions of Parties taken under it, and the scientific context within which the agreements are located, a context that Parties have agreed to be guided by the duty of due diligence (see above Section 4.4.3.A), the principle of prevention of significant environmental harm (see above Section 4.4.3.C) and the obligations arising from the principle of good faith (see above Section 4.4.3.G).
- (5) *The UNFCCC and the Paris Agreement contain binding obligations requiring Parties to adapt to the adverse effects of climate change*
419. The UNFCCC and the Paris Agreement contain binding obligations for all Parties in relation to adaptation. UNFCCC Article 4.1 provides that:

“All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives, and circumstances, shall: [...]

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change”

⁸⁵⁰ International Law Association (ILA), Tim Stephens (Rapporteur) and Duncan French (Chair), *Study Group on Due Diligence in International Law*, Second Report, July 2016, p. 12 ([link](#)).

⁸⁵¹ See International Law Association, Committee on Legal Principles Relating to Climate Change, *Resolution 2/2014: Declaration of Legal Principles relating to Climate Change*, The 76th Conference of the International Law Association, held in Washington D.C., the United States of America, 7-11 April 2014, arts. 8, 9 ([link](#)).

⁸⁵² “Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement”, Decision 18/CMA.1, 19 March 2019, FCCC/PA/CMA/2018/3/Add.2, 20, Annex, Section III. C ([link](#)).

420. Article 7.9 of the Paris Agreement reinforces Parties' obligation to engage in adaptation planning and implementation, and lists the relevant plans, policies and/or contributions that Parties may take. The chapeau to Article 7.9 reads: "*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*". The phrase "[E]ach Party shall" is to be interpreted as a binding individual obligation, with the clause "*as appropriate*" that follows reflecting an understanding that different adaptation approaches may be appropriate in different settings.⁸⁵³

421. This obligation is set within the context of Article 2(1)(b) of the Paris Agreement which identifies one of the purposes of the Paris Agreement as:

"Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food protection."

422. It is also worth noting that Parties "*recognize*" the direct correlation between mitigation ambition and adaptation needs. Paris Article 7.4 notes that "*greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs*." Such recognition suggests that to the extent that Parties fall short of the high standard of due diligence required of them in relation to GHG mitigation, there may be higher demands on them both in relation to adaptation efforts and costs. These higher costs, further, are not to fall exclusively on the most vulnerable. Both the UNFCCC in Article 4.1.e and the Paris Agreement in Article 7.6 stress the importance of international cooperation on adaptation efforts. UNFCCC Article 4.4 goes further and places an obligation on developed country Parties in the following terms:

"The developed country Parties and other developed Parties shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects."

423. Article 7(6) of the Paris Agreement stresses the importance of "*support for adaptation efforts*", and "*of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change*".⁸⁵⁴ As a "*related legal instrument*" the Paris Agreement provisions need to be read in light of the UNFCCC, and thus these provisions are to be read holistically as generating an obligation on developed country Parties to assist

⁸⁵³ Article 3 of the Paris Agreement leaves open the possibility that NDCs could contain adaptation components, and 80% of the most recent NDCs contain adaptation components. "Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat", 26 October 2022, FCCC/PA/CMA/2022/4, 7, para. 28 ([link](#)).

⁸⁵⁴ This strengthens art. 4(8) of the United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107 ([link](#)).

particularly vulnerable developing country Parties in meeting the costs of adaptation to those adverse effects.

(6) *The UNFCCC and the Paris Agreement contain a framework for the provision of support for Parties to meet their obligations*

424. Article 9(1) of the Paris Agreement obliges developed countries to provide financial resources to assist developing countries with adaptation and mitigation, “*in continuation of their existing obligations under the Convention*”. Existing obligations for developed countries are outlined in UNFCCC Article 4.3. In addition to the provision of “*agreed full costs*” for developing countries to comply with their reporting obligations:

“They shall also provide such financial resources, including for the transfer of technology, needed by developing country Parties to meet the agreed, full, incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 in accordance with that Article.”

425. Although the provision of costs for “*implementing measures*” in relation to mitigation and adaptation is carefully caveated, underpinning these provisions of the UNFCCC and the Paris Agreement is an understanding that there is a direct correlation between the extent of support provided to developing countries and the effective implementation of the UNFCCC and the Paris Agreement. UNFCCC Article 4.7 states:

“The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overwhelming priorities of the developing country Parties.”

426. Article 3 of the Paris Agreement reinforces UNFCCC Article 4.7 with a recognition of the “*need to support developing country Parties for the effective implementation of this Agreement*”. Moreover, Article 4(5) recognizes that “*enhanced support for developing country Parties will allow for higher ambition in their actions.*”

427. It is worth noting in this context that financial support is below promised levels, with the 2021 Glasgow Climate Pact noting “*with deep regret that the goal of developed country Parties to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation has not yet been met.*”⁸⁵⁵ And, the UAE Consensus reiterating such regret as the

⁸⁵⁵ “Glasgow Climate Pact”, Decision 1/CMA.3, 13 November 2021, FCCC/PA/CMA/2021/10/Add.1, para. 44 ([link](#)).

goal was not met in 2021 either.⁸⁵⁶ This is a fraction of the estimated need. The First Determination of Needs Report by the UNFCCC Standing Committee on Finance, based on NDCs submitted until May 2021, identified the need for USD 5.8–5.9 trillion up until 2030.⁸⁵⁷

(7) *The Paris Agreement recognizes the importance but does not contain obligations in relation to the human rights implications of climate change*

428. Although the human rights implications of climate impacts are extensive and well documented (see Chapter II, Section 2.6, and Sections 4.4.3.B, 4.4.3.E, 4.4.4.B and 4.4.4.C of this Chapter), the UNFCCC contains no explicit reference to human rights and the Paris Agreement only contains a preambular recital referring to human rights. After acknowledging that climate change is a common concern of humankind, Paris preambular recital 11 reads:

“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” (emphasis added).

429. This formulation is underpinned by an understanding that climate impacts have implications for the realization of a range of human rights, and signals an enhanced receptivity to rights concerns, but the Paris Agreement consciously cedes ground to other sources of obligations on human rights.⁸⁵⁸ The reference to the Parties’ “*respective obligations on human rights*” suggests that Parties are bound by their existing human rights obligations, of which there are none in the Paris Agreement.

430. There are thus key sources of obligations in relation to addressing climate harms through mitigation and adaptation that interlock with but are outside the UNFCCC and the Paris Agreement.

(8) *The Paris Agreement recognizes the importance of averting, minimizing, and addressing loss and damage*

⁸⁵⁶ Decision/CMA.5, Outcome of the global stocktake, 13 December 2023, para. 80 ([link](#)).

⁸⁵⁷ UNFCCC, Executive summary by the Standing Committee on Finance of the first report on the determination of the needs of developing country Parties related to implementing the Convention and the Paris Agreement ([link](#)). This is highlighted in Decision /CMA.5, Outcome of the global stocktake, 13 December 2023, para. 67 ([link](#)).

⁸⁵⁸ See Sections 4.4.3.B (Obligations arising from the rights recognized in the Universal Declaration of Human Rights), 4.4.3.E (Obligations arising from the right to self-determination, 4.4.4.B (Obligations arising from the rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), 4.4.4.C (Obligations arising from the right to clean, healthy and sustainable environment as it relates to other rights and existing international law), 4.4.4.F (Obligations arising from the Convention on the Rights of the Child) and 4.4.5 (Obligations arising with respect to future generations) of this Chapter.

431. The UNFCCC contains no explicit reference to “*loss and damage*”. The Paris Agreement contains a dedicated free-standing Article on “*loss and damage*” suggesting that “*loss and damage*” is distinct from “*adaptation*”. Paris Article 8.1 notes that:

“Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.”

432. The rest of Article 8 recommends (“*Parties should*”) that Parties enhance “*understanding, action and support*” on a “*cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.*”⁸⁵⁹ It then proceeds to list illustrative areas of cooperation and facilitation.

433. The decision of the Conference of the Parties accompanying the Paris Agreement included a clarifying statement that “*Article 8 does not involve or provide a basis for any liability or compensation*”.⁸⁶⁰ While this contemporaneous consensus-based agreement is relevant for the interpretation of Article 8, it does not and cannot limit the rights of States under general international law. Several small island States, while ratifying the Paris Agreement entered declarations to this effect.⁸⁶¹ The declaration entered by the Government of Vanuatu in pertinent part reads:

“Whereas the Government of the Republic of Vanuatu declares its understanding that ratification of the Paris Agreement shall in no way constitute a renunciation of any rights under any other laws, including international law, and the communication depositing the Republic’s instrument of ratification shall include a declaration to this effect for international record”⁸⁶²

434. On loss and damage too, there are thus key sources of obligations that interlock with but are outside the UNFCCC and the Paris Agreement (see mainly Sections 4.4.3.A, 4.4.3.B, 4.4.3.C, 4.4.3.E, 4.4.4.A, 4.4.4.B, 4.4.4.C and 4.4.4.E of this Chapter and Chapter v. on the law relating to State responsibility for internationally wrongful act). The Paris Agreement occupies a vanishingly small spot in the larger landscape of international law in relation to addressing loss and damage.

(9) *The Relevant Conduct breaches the obligations in the UNFCCC and the Paris Agreement, interpreted in the light of their normative environment*

⁸⁵⁹ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 8(3) ([link](#)).

⁸⁶⁰ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, para. 51 ([link](#)).

⁸⁶¹ See Status of Ratification of the Paris Agreement here: [link](#).

⁸⁶² The text of the Declaration is available at: [link](#).

435. The foregoing paragraphs establish that the UNFCCC and the Paris Agreement, that have near universal participation, contain a clear and increasingly strengthening global temperature goal, and an extensive set of obligations for States to submit and be held to account for their climate commitments, which need to be in line with this ambitious temperature goal. These agreements also set a high standard for the due diligence required of States in relation to climate harms. This standard of due diligence requires States to undertake mitigation measures that are in line with the “*purpose*” of the Paris Agreement – the 1.5°C temperature goal and reaching “*net zero*” by or around mid-century – that reflect their “*highest possible ambition*”, and “*common but differentiated responsibilities and respective capabilities, in light of different national circumstances*”. It also requires States to take into account the consequences of not exercising due diligence in adopting adequate mitigation measures to avert climate harms. This high standard of due diligence is evident from the text of the UNFCCC and the Paris Agreement, the consensus-based decisions of Parties taken under it, and the scientific context within which the agreements are located, a context that Parties have agreed by consensus to be guided by and forms part of the normative environment.
436. The Court could choose to assess the conformity of the Relevant Conduct with these obligations in relation to (a) a specific State (a large emitter of GHG and, hence, a significant contributor to the problem), (b) a specific group of States (the main emitters of GHG, which collectively have caused the problem itself, climate change and its adverse effects) or (c) as a general conduct, whose conformity with international law is assessed in principle. In all three cases the conclusion is the same, and it is supported by extensive empirical evidence and scientific literature. In relation to specific States or groups of States, [Chapter III] as well as the Expert Report from Professor Corinne Le Quéré documents compelling evidence not just on the main contributors to GHG emissions but also on the individual and collective contribution to the observed global warming in the periods 1851-2022 and 1990-2022.

“The top 10 contributors to global warming from historical emissions of GHG during 1851-2022 are the USA (responsible for 17.0% of the global warming in 2022 due to their historical GHG emissions; 0.28°C), China (12.5%; 0.21°C), the EU27 (10.3%; 0.17°C, including Germany 2.9%, France 1.3%, Poland 1.0% and Italy 0.9%), Russia (6.3%; 0.11°C), Brazil (4.9%; 0.081°C), India (4.7%; 0.078°C), Indonesia (3.7%; 0.061°C), the United Kingdom (2.4%; 0.040°C), Canada (2.1%; 0.035°C), and Japan (2.1%; 0.035°C). The GHG emissions from these contributors, together with those from Australia (1.5%; 0.025°C), Mexico (1.4%; 0.023°C), Ukraine (1.4%; 0.022°C), Nigeria (1.2%; 0.019°C), Argentina (1.2%; 0.019°C), and Iran (1.1%; 0.019°C), amount to three quarters of the global warming due to GHG emissions during 1851-2022 [...] **The same countries figure among the largest contributors to global**

**warming from emissions of GHG during the shorter 1990-2022,
with China the largest contributor in that period ”⁸⁶³**

437. The conduct of the major GHG emitting States can be tested against the benchmarks for due diligence. States having displayed the Relevant Conduct and, considered together, having caused not only significant but catastrophic harm to the climate system and other parts of the environment in the form of climate change and its adverse effects, have fallen short of the due diligence required of States in relation to their mitigation obligations. The fact that this conduct is ongoing is evident from the fact that emissions from G-20 States, which currently account for 76% of global emissions, increased by 1.2% in 2022.⁸⁶⁴ While there is some variation across individual States and groups of States in the G-20, even where there are decreases in emissions in 2022, these are not in line with the extent of decreases required of these States. The Relevant Conduct includes the current policies and measures that States are taking to limit climate harms. That these policies are radically insufficient is evident from several scientific reports, the most recent is the 2023 UNEP Gap Report which finds that:

“A continuation of the level of climate change mitigation efforts implied by current policies is estimated to limit global warming to 3°C (range: 1.9–3.8°C) throughout the century with a 66 per cent chance. Warming is expected to increase further after 2100 as CO₂ emissions are not yet projected to reach net-zero levels.”⁸⁶⁵

438. The Relevant Conduct of the major GHGs emitting States is not in line **individually** with pathways consistent with the 1.5°C temperature goal. Although the 2015 Paris Agreement does not provide for the review of adequacy of individual NDCs, there is extensive analysis of the adequacy of individual NDCs by the scientific community. The Climate Action Tracker, a well-respected expert-led source,⁸⁶⁶ finds that the policies and actions of China,⁸⁶⁷ Indonesia,⁸⁶⁸ Brazil⁸⁶⁹ and the Russian Federation are consistent with 4°C warming, the United States of America’s⁸⁷⁰ and India’s⁸⁷¹ in line with 3°C warming, and the European Union (27)

⁸⁶³ Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (**Exhibit B**), paras. 25 and 26 (emphasis original, underlining adding).

⁸⁶⁴ United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), Executive Summary, at page xvii ([link](#)).

⁸⁶⁵ United Nations Environment Programme, *Emissions Gap Report 2023 : Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), Executive Summary, at page xxii, see also pp. 30-31 ([link](#)).

⁸⁶⁶ The Climate Action Tracker is an independent scientific project that tracks government climate action and measures it against the globally agreed Paris Agreement’s goals. The CAT has been providing this independent analysis to policymakers since 2009. Many of its team members have contributed to the IPCC and UNEP GAP reports. See for further information: <https://climateactiontracker.org/> (visited on 15 February 2024).

⁸⁶⁷ Available online at: <https://climateactiontracker.org/countries/china/> (visited on 15 February 2024).

⁸⁶⁸ Available online at: <https://climateactiontracker.org/countries/Indonesia/> (visited on 15 February 2024).

⁸⁶⁹ Available online at: <https://climateactiontracker.org/countries/brazil/> (visited on 15 February 2024).

⁸⁷⁰ Available online at: <https://climateactiontracker.org/countries/usa/> (visited on 15 February 2024).

⁸⁷¹ Available online at: <https://climateactiontracker.org/countries/india/> (visited on 15 February 2024).

with 2°C warming.⁸⁷² While there may be some variation between studies in relation to the extent of insufficiency and inadequacy, based on the specific metrics used for assessment, the fact that the current policies and actions of these States is radically inadequate to meet the 1.5°C temperature goal is not in doubt.

439. Nor is the Relevant Conduct of the major GHGs emitting States in line **collectively** with pathways consistent with the 1.5°C temperature goal identified in the Paris Agreement. The 2022 UNFCCC NDCs Synthesis Report estimates, based on an assessment of existing national contributions from Parties, that the peak temperature in the twenty-first century is in the range of 2.1–2.9°C.⁸⁷³ The UNEP Emissions Gap Report (2023) finds that:

“Even in the most optimistic scenario considered in this report, the chance of limiting global warming to 1.5°C is only 14 per cent, and the various scenarios leave open a large possibility that global warming exceeds 2°C or even 3°C.”⁸⁷⁴

440. The Relevant Conduct of the major GHGs emitting States is not in line with their **fair share**. Given the vast differences between States in relation to both contributions to cumulative GHG emissions, and temperature increase, as well as in capacities, and development needs, States have differing responsibilities to address and avert climate change. A recent “*fair share*” analysis for the major GHG emitting States, anchored in principles of international environmental law, finds that to stay in line with a 1.8°C or 1.5°C consistent emissions level in 2030, some developed countries would need to be around zero (USA, Japan) or net-negative (e.g. Germany, France, UK) by 2030. This means that these States have already used their “*fair share*” of emissions space and should stop emitting GHGs by 2030.⁸⁷⁵ While it is evident that none of these States will be able to do so, they could come closer to discharging their “*fair share*” of the effort in addressing climate change by taking radical action triggering transformative change across their economies, and by providing support to those countries that are disproportionately affected by the impacts of the Relevant Conduct, as well as those that have yet to use up their “*fair share*” and can do so in ways that provides the greatest welfare benefit to the most disadvantaged.

441. The Relevant Conduct of the major GHGs emitting States, individually and collectively, is in breach of the standard of due diligence attached to the obligations

⁸⁷² Available online at: <https://climateactiontracker.org/countries/eu/> (visited on 15 February 2024).

⁸⁷³ ‘Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat’, 26 October 2022, FCCC/PA/CMA/2022/4, 7, para. 17 ([link](#)).

⁸⁷⁴ United Nations Environment Programme, *Emissions Gap Report 2023 : Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), Executive Summary, p. xxii ([link](#)).

⁸⁷⁵ Lavanya Rajamani, Louise Jeffery, Niklas Höhne, Frederic Hans, Alyssa Glass, Gaurav Ganti & Andreas Geiges “National ‘fair shares’ in reducing greenhouse gas emissions within the principled framework of international environmental law” (2021) 21:8 *Climate Policy*, 983, p. 999 ([link](#)). This article has been relied on extensively by the litigants in two climate cases currently pending before the Grand Chamber of the European Court of Human Rights: see *Duarte Agostinho and Others v. Portugal and Others* (Application no. 39371/20); *Verein KlimaSeniorinnen and Others v. Switzerland* (Application no. 53600/20)

– whether substantive (such as for all Parties to take domestic mitigation measures) or obligations of conduct (such as to aim to achieve the objectives of these mitigation measures)⁸⁷⁶ in the Paris Agreement. The radically insufficient NDCs from major GHG emitting States are not in line with their “*highest possible ambition*” and fair share, judged by any standard consistent with the science, and with the temperature goal of the Paris Agreement. Parties are clearly not doing “*their utmost*” to address climate harms and the consequences of such a cavalier attitude, purportedly justified in the name of “*national determination*”, is a dangerously unstable and unsafe climate system that is destroying entire nations, people and ecosystems, and which will bring more devastation in years to come.

E. Obligations arising from the United Nations Convention on the Law of the Sea

442. The UNCLOS contains several obligations specifically governing the Relevant Conduct. In addition to the general obligation to protect and preserve the marine environment, stated, as a matter of treaty law in Article 192 of the UNCLOS, several other obligations are of particular relevance, including the obligations stated in Articles 194 (Measures to prevent, reduce and control pollution of the marine environment), 207 (Pollution from land-based sources), 211 (Pollution from vessels) and 212 (Pollution from or through the atmosphere) of Part XII of the UNCLOS.

443. These obligations protect a common interest of States parties to the UNCLOS, the marine environment. They are therefore owed *erga omnes partes*, although a specific incident of damage or pollution may “*injure*” a State party.⁸⁷⁷

338. Although the interpretation of each of these provisions has to take into account the others,⁸⁷⁸ the obligations formulated in each of them are free-standing obligations which cannot be reduced to or dissolved in any single one of them. This is true even of the most general obligation stated in Article 192, the applicability of which to the Relevant Conduct has already been examined in some detail (see Section 4.4.3.D of this Chapter).

(1) Article 194 of the UNCLOS

444. Article 194 of the UNCLOS contains mainly two distinct obligations, which are stated in paragraphs 1 and 2:

⁸⁷⁶ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex., art. 4(2) ([link](#)).

⁸⁷⁷ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, Article 48, commentary, para. 10 ([link](#)); *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. 180 ([link](#)).

⁸⁷⁸ Vienna Convention on the Law of Treaties (23 May 1969, entry into force 27 January 1980), 1155 U.N.T.S. 331, art. 31 ([link](#)).

“1. **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.

2. **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 activities under their jurisdiction or control does not spread** beyond the areas where they exercise sovereign rights in accordance with this Convention” (emphasis added).

445. The obligation formulated in Article 194(1) requires (the term used is “*shall*”) States to “*take [...] all measures*”, which includes both adopting the appropriate laws, regulations, policies and programmes and the associated implementation and enforcement action. The measures to be adopted are those “*that are necessary to prevent, reduce and control pollution of the marine environment from any source*”. This is a positive obligation which can be articulated by reference to two main components.

446. The first concerns the definition of “*pollution of the marine environment from any source*”. The “*source*” of pollution is unqualified and, therefore, any and all sources are encompassed, including anthropogenic GHG emissions resulting from activities such as “*burning of fossil fuels, deforestation, land use and land use changes (LULUC), livestock production, fertilisation, waste management, and industrial processes*”.⁸⁷⁹ What constitutes “*pollution of the marine environment*” is defined in Article 1(1)(4) of the UNCLOS as follows:

“‘pollution of the marine environment’ means the 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”

447. As explained earlier in this Written Statement (see Section 4.4.3.D of this Chapter), the term “*marine environment*”, although not defined in the UNCLOS, is generally understood as encompassing “*all maritime areas*”, as well as all the dimensions, living and non-living.⁸⁸⁰ The marine environment is, moreover, part of the “*climate*

⁸⁷⁹ IPCC Glossary ([link](#)).

⁸⁸⁰ *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion of 2 April 2015, ITLOS Case No 21, paras. 111, 120 ([link](#)); see *In the matter of the South China Sea Arbitration before and Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea*, PCA Case No. 2013-19, Award (12 July 2016), para. 927 ([link](#)); *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)*, PCA Case No.

system”, as this term is understood scientifically and legally,⁸⁸¹ as well as a part of the environment.

448. Anthropogenic GHG emissions fall squarely under the definition of pollution of the marine environment. First, they are “*introduc[ed] by man*” both “*directly or indirectly*”. Their origin in human activities is the very definition of “*anthropogenic*” emissions,⁸⁸² and there is a scientific consensus on the fact that the marine environment has absorbed vast amounts of carbon dioxide over time. As stated in the Summary for Policymakers of volume 1 of the IPCC’s Sixth Assessment Report “[l]and and ocean have taken up a near-constant proportion (globally about 56% per year) of CO₂ emissions from human activities over the past six decades, with regional differences (high confidence)”.⁸⁸³ The ocean has absorbed a quarter of all carbon dioxide emissions.⁸⁸⁴ Carbon dioxide is a “*substance*” the introduction into the marine environment of which “*results*” and, in all eventualities, is also “*likely to result*” in a wide range of “*deleterious effects*”, including some of those used in Article 1(1)(4) to illustrate this term, i.e. “*harm to living resources and marine life, hazards to human health*”. There is a scientific consensus also on this point. This is recorded in the Summary for Policymakers of the IPCC’s Synthesis Report of its Sixth Assessment Report, which refers inter alia to the following deleterious effects:

“**Climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems (high confidence).** Hundreds of local losses of species have been driven by increases in the magnitude of heat extremes (high confidence) with **mass mortality events recorded on land and in the ocean (very high confidence).**” (emphasis added)⁸⁸⁵

2017-06, Award concerning the preliminary objections of the Russian Federation (21 February 2020), para. 295 ([link](#)).

⁸⁸¹ “The global system consisting of five major components: the *atmosphere*, the *hydrosphere*, the *cryosphere*, the *lithosphere* and the *biosphere* and the interactions between them”: IPCC Glossary, italics original ([link](#)); “‘Climate system’ means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions” (UNFCCC, art. 1(3), emphasis added) (.

⁸⁸² “Emissions of greenhouse gases (GHGs), precursors of GHGs and aerosols caused by human activities”, IPCC Glossary ([link](#)).

⁸⁸³ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1.1 ([link](#)).

⁸⁸⁴ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2021), p. 714 ([link](#)).

⁸⁸⁵ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2.3 ([link](#)).

“Ocean warming and ocean acidification have adversely affected food production from fisheries and shellfish aquaculture in some oceanic regions (*high confidence*)” (emphasis added)⁸⁸⁶

This is a statement of fact, scientifically grounded and — given its inclusion in an IPCC Summary for Policymakers — also politically endorsed. It is therefore clear that the Relevant Conduct has caused significant harm to the marine environment. There is evidence of the significance of this harm in relation to Vanuatu’s marine environment, as discussed above at Chapter II, Section 2.6 of this Written Statement.

449. The second component of the obligation in Article 194(1) is that States are required take all measures “*that are necessary to prevent, reduce and control*” said pollution of the marine environment from any source. The obligation to “*prevent*” requires a State to take all measures to avoid the introduction of carbon dioxide into the marine environment from any and all sources under its jurisdiction or control. The measures to be taken in this respect are those that are “*necessary*” to avoid such introduction. Failing to take adequate measures to prevent anthropogenic GHG emissions from sources under its jurisdiction or control, adopting measures that are inadequate or failing to implement such measures all fall short from complying with this obligation. What qualifies as necessary is clearly different from a mere subjective judgment of political convenience. In its judgment in *Certain Iranian Assets (Iran v. United States)*, this Court clarified, by reference to its previous case law, that whether certain measures are “*necessary*” for a purpose “*not purely a question for the subjective judgment of the party*” and “*may thus be assessed by the Court*”.⁸⁸⁷ Similarly, the obligation “*to reduce and control*” pollution of the marine environment requires each State to take all necessary measures to ensure that such pollution is effectively reduced and controlled. The IPCC has specifically concluded that “[d]elayed mitigation and adaptation action would [...] increase losses and damages (*high confidence*)”⁸⁸⁸ and that:

“Continued emissions will further affect all major climate system components [...] projected changes include further reduced extents and/or volumes of almost all cryospheric elements (high confidence), further global mean sea level rise (virtually certain), and increased ocean acidification (virtually certain) and deoxygenation (high confidence) (emphasis added).”⁸⁸⁹

⁸⁸⁶ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2.4 ([link](#)).

⁸⁸⁷ *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Judgment (30 March 2023), General List No. 164, para. 106.

⁸⁸⁸ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement C.2 ([link](#)).

⁸⁸⁹ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.1.3 ([link](#)).

Thus, States having displayed the Relevant Conduct have failed to take “*all measures ... that are necessary to prevent, reduce and control pollution of the marine environment from any source*”.

450. The standard to assess the observance of the obligation to prevent, reduce and control pollution is one of due diligence, and it is particularly demanding for States which can dispose of the “*best practicable means*” and have substantial “*capabilities*”. Indeed, Article 194(1) expressly refers to such means and capabilities to modulate the obligation it formulates. The conduct of a State falls short of such standard if it has concrete and practicable means of preventing, reducing and/or controlling anthropogenic GHG emissions but it resorts to inadequate or less ambitious means at its disposal for political convenience reasons. It also falls short of such standard if it fails to resort to the best practicable means at its disposal for a certain period of time during which it causes pollution of the marine environment. As noted in relation to the findings of UNEP’s Emissions Gap Report (2023), States having displayed the Relevant Conduct have continued to emit massive amounts GHGs, delaying the necessary mitigation action.⁸⁹⁰ Moreover, they have only taken measures which are clearly insufficient⁸⁹¹ and, in all events, their actual action plainly contradict even their low-ambition commitments, leading to major projected increase of fossil fuel use and therefore in GHG emissions.⁸⁹² It is therefore clear that States having engaged in the Relevant Conduct are in breach of Article 194(1) of the UNCLOS.
451. In addition to the obligation formulated in Article 194(1) of the UNCLOS, Article 194(2) formulates another consistent but distinct obligation, which more specifically requires States parties to “*take all measures necessary to ensure that activities under their jurisdiction or control*” are conducted in a way to prevent harm to the environment of other States and of areas beyond national.
452. The terms used in the formulation of Article 194(2) recall the principle of prevention of significant harm to the environment in general international law and the considerations made in relation to the latter (see Section 4.4.3.C of this Chapter) are also applicable here. There is, however, one noteworthy difference between the prevention principle and Article 194(2), namely the narrower focus of the latter on

⁸⁹⁰ United Nations Environment Programme, *Emissions Gap Report 2023 : Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), p. 30 ([link](#)).

⁸⁹¹ ‘Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat’, 26 October 2022, FCCC/PA/CMA/2022/4, 7, para. 13 (“[t]he total global GHG emission level in 2030 taking into account implementation of all latest NDCs is estimated to be 10.6 (3.6–17.5) per cent above the 2010 level and 0.3 percent below the 2019 level”) ([link](#)).

⁸⁹² United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up ? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 (“the increases estimated under the government plans and projections pathways would lead to global production levels in 2030 that are 460%, 29%, and 82% higher for coal, oil, and gas, respectively, than the median 1.5°C-consistent pathways ... The disconnect between governments’ fossil fuel production plans and their climate pledges is also apparent across all three fuels.”) ([link](#)).

“damage by pollution” and on *“pollution arising from incidents or activities under their jurisdiction or control”*.

453. In the relations between the obligation formulated in Article 194(1) and that in Article 194(2), the latter presents three distinctive features. First, it specifically focuses on activities which may not be conducted by the State itself but by third parties, e.g. companies, under the State’s jurisdiction or control. This is the case of many activities emitting GHG emissions. Second, instead of emphasising, as Article 194(1) that pollution of the marine environment must be prevented, reduced and control, the obligation in Article 194(2) emphasises that the interests of other States and of the environment must be protected. Third, whereas the obligation in Article 194(1) is modulated by reference to the means and capabilities, Article 194(2) formulates a *“floor”* obligation which applies to all States on a similar footing and requires activities under the jurisdiction or control of a State not to cause *“damage by pollution”* to other States or the environment. This *“no harm”* obligation, whether with respect to the environment of other States or that beyond national jurisdiction, must be understood as targeting *“significant”* damage or harm. If the harm caused is significant, the obligation is breached. By contrast, the obligation in Article 194(1) governs the prevention, reduction and control of pollution of the marine environment irrespective of whether actual significant harm has been caused.
454. The facts supporting a finding of a breach of the principle of prevention of significant harm, the duty to protect and preserve the marine environment and Article 194(1) of the UNCLOS are equally relevant here to conclude that States having displayed the Relevant Conduct are also in breach of Article 194(2).
339. The obligations in Article 194(1) and 194(2) of the UNCLOS apply to **any source of pollution**, whereas other obligations formulated in Part XII of the UNCLOS concern specific sources of pollution. Three of them specifically govern the Relevant Conduct, namely those formulated in Articles 207 (Pollution from land-based sources), 211 (Pollution from vessels) and 212 (Pollution from or through the atmosphere).

(2) Article 207 of the UNCLOS

455. Article 207(1)-(2) of the UNCLOS relevantly states the general obligation regarding pollution from land-based sources, as it concerns anthropogenic GHG emissions, as follows:

“1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.”

456. This obligation can be seen as a specific application of the obligation stated in Article 194(1) of the UNCLOS to “*pollution of the marine environment from land-based sources*”. Article 207(2) states the residual obligation, which requires the adoption of “*measures*” in general, whereas paragraph 1 refers to “*laws and regulations*” specifically, which must be consistent with “*internationally agreed rules, standards and recommended practices and procedures*”. The level of consistency is characterised by the terms “*taking into account*”, which is less than the full consistency required by other provisions (Article 210(6) and 211(2) of the UNCLOS) but is enough to require the benchmarking of domestic laws and regulations with evolving international standards.
457. The introduction into the marine environment of carbon dioxide emitted from “*the burning of fossil fuels, deforestation, land use and land use changes (LULUC), livestock production, fertilisation, waste management, and industrial processes*”⁸⁹³ clearly falls under the definition of pollution of the marine environment from “*land-based sources*”. Although the UNCLOS does not define “*land-based sources*”, certain regional instruments provide a converging definition. The OSPAR Convention defines land-based sources as “*point and diffuse sources on land from which **substances or energy reach the maritime area** by water, **through the air**, or directly from the coast*” (emphasis added).⁸⁹⁴ The Land-Based Sources Protocol to the Cartagena Convention defines “*land-based sources and activities*” as “*those sources and activities causing pollution of the Convention area from coastal disposal or from discharges that emanate from [...] other sources on the territory of a Contracting Party, **including atmospheric deposition originating from sources located on its territory***” (emphasis added).⁸⁹⁵ The Protocol on Land-Based Sources to the Kuwait Regional Convention defines “*land-based sources*” as “*municipal, industrial or agricultural sources, both fixed and mobile on land*” and characterises land-based pollution as “*discharges [...] from any other land-based sources situated within the territories of the Contracting States, whether through water, **through the atmosphere** or directly from the coast*”.⁸⁹⁶ Clearly, carbon dioxide emitted from in-land activities and reaching the marine environment “*through the air*” or through “*atmospheric deposition*” or “*through the atmosphere*” amounts to pollution of the marine environment from land-based sources.

⁸⁹³ IPCC Glossary ([link](#)).

⁸⁹⁴ Convention for the protection of the marine environment of the North-East Atlantic, 22 September 1992, 2354 UNTS 67, art. 1(e) ([link](#)).

⁸⁹⁵ Protocol concerning Pollution from Land-Based sources and activities to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (adopted 6 October 1999, entry into force 13 August 2010), art. 1(d) ([link](#)).

⁸⁹⁶ Protocol for the Protection of the Marine Environment against Pollution from Land-Based Sources (adopted 21 February 1990, entry into force 2 January 1993), art. I(8) and III(d) ([link](#)).

458. As noted earlier, according to the IPCC, one quarter of all anthropogenic carbon dioxide emissions are largely absorbed by the oceans⁸⁹⁷ with massive deleterious effects to the marine environment.⁸⁹⁸ Moreover, the considerations made in relation to the finding of a breach of the prevention principle, the duty to protect and preserve the marine environment and the obligations arising from Article 194(1)-(2) of the UNCLOS are equally relevant here. They lead to the conclusion that States having displayed the Relevant Conduct have failed to “*adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources*”.

(3) *Article 211 of the UNCLOS*

459. Another relevant application of the general obligation stated in Article 194(1) is formulated in Article 211(2) in the following terms:

“States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry. Such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.”

460. Emissions from shipping are very significant. According to the UNEP’s Emissions Gap Report (2022), emissions from international transport, i.e. aviation and shipping, was one of the eight major emitters in 2020, alongside China, the United States of America, the European Union (27), India, Indonesia, Brazil and the Russian Federation.⁸⁹⁹ A study from the International Maritime Organisation (IMO) found that, in 2018, the share of shipping emissions in global anthropogenic emissions of carbon dioxide, methane and nitrous oxide was 2.89%.⁹⁰⁰ Historically, international aviation and shipping together have contributed 2% of cumulative net anthropogenic emissions of carbon dioxide, a figure similar to the contribution of the entire Middle East region.⁹⁰¹ Moreover, according to the IPCC, “*current sectoral levels of [mitigation] ambition vary, with emission reduction aspirations in international aviation and shipping lower than in many other*”.⁹⁰²

⁸⁹⁷ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2021), p. 714 ([link](#)).

⁸⁹⁸ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2.3 ([link](#)).

⁸⁹⁹ United Nations Environment Programme, *Emissions Gap Report* (2022), p. 7 ([link](#)).

⁹⁰⁰ IMO, *Fourth IMO GHG Study 2020*, Executive Summary ([link](#)).

⁹⁰¹ Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, SPM.2 panel (b) ([link](#)).

⁹⁰² Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, statement E.6.4 ([link](#)).

461. Like the obligation relating to land-based pollution, the obligation stated in Article 211(2) also applies to activities within the jurisdiction or control of the States, which in the case of vessel-source pollution is given by the assertion of jurisdiction over vessels flying the flag or registered in a State. With respect to such vessels, States are required to adopt “*laws and regulations for the prevention, reduction and control of pollution of the marine environment*”. The terms used in this formulation are similar to those discussed earlier in the context of other obligations, with two differences, namely the specific focus on “*pollution of the marine environment from vessels*” and the requirement that such laws and regulations have “*the same effect as that of generally accepted international rules and standards [...]*”. The latter refers to a global treaty, the MARPOL Convention,⁹⁰³ which is also useful to characterise the specific source of pollution in question.
462. The terms “*pollution from vessels*” are generally understood as encompassing both operational and accidental discharges of harmful substances. Although in the terminology of Article 211, these terms are not limited by the specifications contained in MARPOL, even the narrower definition used in the latter instrument clearly encompasses anthropogenic GHG emissions. Pursuant to Article 2(3)(a) of MARPOL, a discharge is defined as “*any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying*”, with three specific exclusions which are not relevant for present purposes. MARPOL governs discharges of “*harmful substances or effluents containing such substances*” (Article 2(3)(a) MARPOL). Article 2(2) of MARPOL defines “*harmful substances*” as “*any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life [...] and includes any substance subject to control by the present Convention*”. Since 2011, a series of amendments to the regulations annexed to MARPOL have specifically brought carbon dioxide under the “*control*” of the Convention. Specifically, Resolution MEPC.203(62) of 15 July 2011, amended Annex VI of MARPOL, introducing energy efficiency requirements in relation to emissions of carbon dioxide.
463. Thus, emissions of carbon dioxide from vessels are directly governed by MARPOL and, more generally, by Article 211(2) of the UNCLOS. The “*laws and regulations*” adopted under the latter must “*at least have the same effect as*” those under MARPOL, but States parties to the UNCLOS may need to go beyond MARPOL as a matter of due diligence, if the GHG emissions from vessels flying their flag or of their registry are significant and, therefore, cause significant harm to the marine environment as part of the climate system and other parts of the environment.

(4) Article 212 of the UNCLOS

⁹⁰³ International Convention for the prevention of pollution from ships, 1973, as modified by the Protocol of 1978, 17 February 1978, 1340 UNTS 61 ([link](#)).

464. A third application of the general obligation stated in Article 194(1) is formulated in Article 212(1)-(2) in the following terms:

“1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty and to vessels flying their flag or vessels or aircraft of their registry, taking into account internationally agreed rules, standards and recommended practices and procedures and the safety of air navigation.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.”

465. As noted earlier in this section, anthropogenic GHG emissions from international transport, including both shipping and aviation, are globally very significant. The obligation formulated Article 212(1)-(2) require States to “*adopt laws and regulations*” or to “*take other measures*”, in relation to “*air space under their sovereignty and to vessels flying their flag or vessels or aircraft of their registry*” (emphasis added) to prevent, reduce and control pollution of the marine environment. As for the obligation concerning land-based pollution, international standards must be “*tak[en] into account*”.

466. The specific reference to aircraft means that States have a specific obligation to regulate the anthropogenic GHG emissions not only from shipping but also from aviation in the air space under the sovereignty or for aircraft of their registry. Given the significance of such source of GHG emissions, this obligation is particularly relevant to govern the Relevant Conduct. A 2020 report from a private consultancy estimated, on the basis of a study of 34811 aircraft around the world, that the highest number of registered aircraft is concentrated in only a few States, mainly the United States (9371) and China (4081).⁹⁰⁴

467. To the extent that the Relevant Conduct displayed by such States is not covered by other obligations codified and/or enshrined in Part XII of the UNCLOS, Article 212(1)-(2) governs “*pollution of the marine environment from or through the atmosphere*” resulting from the Relevant Conduct. A Study from the International Civil Aviation Organization (ICAO) estimating the trends on carbon dioxide emissions between 2005 and 2050 shows that, even in the most optimistic fuel efficiency, traffic management and infrastructure use scenarios, emissions are on a substantial upward trend⁹⁰⁵ instead of in the steep declining trend, which would be required in light of the massive adverse implications of any increment in GHG emissions.⁹⁰⁶ Such upward trend results from a failure by States with jurisdiction of

⁹⁰⁴ Study by consultancy Cirium, reported in Tom Boon, ‘Where Are The World’s Aircraft Registered’ (*Simple Flying*, 13 October 2020) ([link](#)).

⁹⁰⁵ Gregg G. Fleming, Ivan de Lépinay & Roger Schaufele, ‘Environmental Trends in Aviation to 2050’ in *Aviation & Environmental Outlook* (ICAO, 2022), Figure 1.6 ([link](#)).

⁹⁰⁶ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.3 ([link](#)).

such aircraft to act individually or collectively to ensure that GHG emissions from aviation steeply decrease, to avoid pollution of the marine environment from or through the atmosphere.

F. Obligations arising from the Convention on the Rights of the Child

‘I would like to tell [adults] that we are the future generations and, if you destroy the planet, where will we live?’⁹⁰⁷

468. In addition to the rights which apply under the UDHR, ICCPR and ICESCR, children have a further set of parallel rights which apply specially to them. These rights are set out in the CRC.
469. The CRC came into force in 1990 and is the most widely ratified international human rights treaty,⁹⁰⁸ with all but one UN member State having ratified the treaty.⁹⁰⁹ The UN Committee on the Rights of the Child (CRC Committee) is the body of independent experts expressly mandated under the CRC to interpret its provisions; monitor its implementation; and hear and resolve individual communications.⁹¹⁰ Vanuatu refers to and repeats its submissions in relation to the teleological method of interpretation and the extraterritorial scope of human rights obligations, as set out in paragraph 332 of Section 4.4.4.B(1).
470. For the same reasons as given above in connection with the ICCPR and ICESCR rights, Vanuatu submits that the obligations arising under the rights of the child are applicable to all States, irrespective of whether or when they have ratified the CRC.
471. The CRC protects a wide range of rights, including the rights to: life (Article 6(1)); freedom of expression (Article 13(1)); freedom of thought, conscience and religion (Article 14(1)); freedom of association and peaceful assembly (Article 15(1)); privacy (Article 16(1)); enjoy “*the highest attainable standard of health*” (Article 24(1)); benefit from social security (Article 26(1)); an adequate standard of living (Article 27(1)); education (Article 28(1)); enjoy their own culture (Article 30); rest and leisure and to engage in play and recreational activities and to participate freely in cultural life and the arts (Article 31(1)). The CRC Committee has also recognized

⁹⁰⁷ Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 3 ([link](#)).

⁹⁰⁸ Aoife Nolan, “Children’s Rights” in Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran, *International Human Rights Law* (Oxford University Press, 4th ed, 2023) (**Exhibit ZE**), p. 339.

⁹⁰⁹ Only the United States of America has not ratified the treaty.

⁹¹⁰ Convention on the Rights of the Child, arts. 43–45 ([link](#)); see Aoife Nolan, “Children’s Rights” in Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran, *International Human Rights Law* (Oxford University Press, 4th ed, 2023) (**Exhibit ZE**), p. 344.

that the right to a healthy environment is “*implicit in the [CRC]*” and “*directly linked to*” certain rights protected therein.⁹¹¹

472. Further, Article 3(1) of the CRC requires that the “*best interests of the child shall be a primary consideration*” in “*all actions taken concerning children*”.⁹¹² The term “*all actions concerning children*” has been interpreted broadly; it covers a wide range of actions and inactions that directly or indirectly affect children, including decisions, acts, conduct, proposals, services, procedures and other measures, inaction, and omissions.⁹¹³
473. This principle operates as a substantive right and is to be applied flexibly.⁹¹⁴ It requires that children have their “*best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake*” whenever a decision is to be made that will affect them.⁹¹⁵ Given how climate change affects children, Vanuatu submits that the principle operates to ensure that the best interests of the child are taken into account *as a primary consideration* in all decisions regarding prevention of significant harm to, and protection of, the climate system and other parts of the environment.

⁹¹¹ Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, UN Doc CRC/C/GC/26 (22 August 2023), para. 63 ([link](#)) (“*implicit in the [CRC] and directly linked to, in particular, the rights to life, survival and development, under article 6, to the highest attainable standard of health including taking into consideration the dangers and risks of environmental pollution, under article 24, to an adequate standard of living, under article 27, and to education, under article 28, including the development of respect for the natural environment, under article 29*”)

⁹¹² See William A. Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021) (**Exhibit ZY**), p. 181; UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 1069/2002: Bakhtiyari et al. v. Australia*, CCPR/C/79/D/1069/2002, 6 November 2003, para. 9.7 ([link](#)); UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 2081/2011: D.T. et al. v. Canada*, CCPR/C/117/D/2081/2011, 15 July 2016., para. 7.10 ([link](#)) (“*the principle that in all decisions affecting a child, its best interests shall be a primary consideration, forms an integral part of every child’s right to such measures of protection as required by his or her status as a minor...*”); *X. v. Latvia*, European Court of Human Rights Application No. 27853/09, 26 November 2013, concurring opinion of Judge Pinto de Albuquerque (describing the principle as customary international law) ([link](#)).

⁹¹³ Committee on the Rights of the Child, *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, UN Doc CRC/C/GC/14, paras. 17, 18 ([link](#)).

⁹¹⁴ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC/C/GC/14, paras. 6, 11 ([link](#)). Further to this operation, the “*best interests of the child*” principle is also operationalised as an *interpretive principle* (i.e. if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen) and as a *rule of procedure* (i.e., whenever a decision is to be made that will affect a child “*the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned*”): para. 6.

⁹¹⁵ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC/C/GC/14, para. 6 ([link](#)). See Aoife Nolan, “Children’s Rights” in Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran, *International Human Rights Law* (Oxford University Press, 4th ed, 2023) (**Exhibit ZE**), p. 347.

474. The rights of the child are plainly impacted by climate change.⁹¹⁶ In General Comment No. 26, the CRC Committee has developed extensive commentary on these impacts and related obligations of States.⁹¹⁷ In *Chiara Sacchi et al.*, which concerned complaints brought by a group of children to the CRC Committee against different States parties on the basis that their rights under the CRC were violated because those State parties had failed to prevent and mitigate the consequences of climate change, the Committee affirmed that (emphasis added):

“...as children, the authors are particularly impacted by the effects of climate change, both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime, in particular 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.”⁹¹⁸

475. Given the foregoing considerations, the Relevant Conduct clearly engages children’s rights and is governed the obligations imposed on States under the CRC.⁹¹⁹ States have the obligations to:⁹²⁰

- *respect the rights* — a negative obligation, requiring that States refrain from conduct causing a violation of the rights;
- *ensure the rights* — a positive obligations, requiring that States protect against of acts committed by private persons or entities that would impair the enjoyment of the rights; and to adopt legislative,

⁹¹⁶ This has been recognized by Human Rights Council resolutions and other UN documents: e.g., see Human Rights Council, *Human Rights and Climate Change* (HRC Res. 32/33) 18 July 2016, UN Doc. A/HRC/RES/32/33, pmbi., para. 13 (“recognizing that children are among the most vulnerable to climate change”); Knox, *Report on the relationship between children’s rights and environmental protection*, 24 January 2018, U.N. Doc. A/HRC/37/58, para. 69 ([link](#)) (stating “climate change ... threaten[s] to cause long-term effects that will blight children’s lives for years to come.”); *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child - Report of the Office of the United Nations High Commissioner for Human Rights*, 4 May 2017, U.N. Doc. A/HRC/35/13, paras. 20, 55 ([link](#)) (noting that “[a]ll children are exceptionally vulnerable to the negative impacts of climate change,” and that the negative impacts of climate change will disproportionately affect children in vulnerable situations). See also *The Paris Agreement*, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, pmbi para. 11 ([link](#)).

⁹¹⁷ Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, UN Doc CRC/C/GC/26 (22 August 2023) ([link](#)).

⁹¹⁸ Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, para. 10.13 ([link](#)).

⁹¹⁹ Preambular paragraph 5 of Resolution 77/276 itself “[e]mphasiz[es] the importance of ... the [CRC]” to the Relevant Conduct.

⁹²⁰ Convention on the Rights of the Child, arts. 2, 4 ([link](#)); Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, para. 10.3 ([link](#)). See also, *Maastricht Principles on The Human Rights of Future Generations* (adopted on 3 February 2023), principles 13, 16-21 ([link](#)).

judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations;

476. Moreover, noting that children are more likely than adults to suffer serious harm from environmental degradation, the CRC Committee has explained that States have a “*heightened duty of care*” with respect to children such that they are required to “*set and enforce environmental standards that protect children from ... disproportionate and long-term effects*”.⁹²¹
477. Due to the indivisible, interdependent and interrelated nature of rights, virtually all children’s rights are affected by climate change. Vanuatu refers to and repeats the discussion of how climate impacts impair human rights in Sections 4.4.3.B (Obligations arising from the rights recognized in the Universal Declaration of Human Rights), 4.4.3.E (Obligations arising from the right to self-determination), 4.4.4.B (Obligations arising from the rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), 4.4.4.C (Obligations arising from the right to clean, healthy and sustainable environment as it relates to other rights and existing international law), all of which also apply to children.⁹²² The impacts will be felt intensely by children of the Pacific, including in Vanuatu. Vanuatu provides the following illustrations of climate impacts on children’s rights:

- (a) Right to health. The CRC Committee has emphasized that climate change is “*one of the biggest threats to children’s health*”.⁹²³ Children and youth suffer acute physical and psychological harm from experiencing current climate effects such as natural disasters and face a chronic psychological burden triggered by acute events, slow-moving disasters, and a persistent awareness of the current and anticipated effects of climate change.⁹²⁴ Children are particularly vulnerable to physical ailments (e.g., asthma, malnutrition, stunting, fatigue) and diseases (e.g. malaria, dengue fever), which are exacerbated by climate change.⁹²⁵ Children and youth around the world are experiencing “*climate anxiety*,” where concern about impending climate-related disasters cause reactions such as loss of appetite, sleeplessness, and panic attacks.⁹²⁶

⁹²¹ Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, UN Doc CRC/C/GC/26 (22 August 2023), para. 73 ([link](#)).

⁹²² For an example of a domestic Court making findings based on evidence about how climate change acutely and especially affects children, see *Held v. Montana* CDV-2020-307, Montana First Judicial District Court, WL 1997864, decision of 14 August 2023, paras. 105-136 ([link](#)).

⁹²³ Committee on the Rights of the Child, *General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health* (art. 24), 17 April 2013, CRC/C/GC/15 (GC 15), para. 50 ([link](#)).

⁹²⁴ American Psychological Association, *Mental Health and our Changing Climate* (March 2017), p. 22 ([link](#)).

⁹²⁵ See United Nations Children’s Fund (UNICEF), *Over the Tipping Point* (May 2023), p. 37 ([link](#)).

⁹²⁶ Eva Gifford & Robert Gifford, *The Largely Unacknowledged Impact of Climate Change on Mental Health* (2016) 72(5) *Bulletin of the Atomic Scientists* 292 ([link](#)). Further, in a U-Report poll launched by UNICEF in

- (b) Right to education. Tropical cyclones damage schools and otherwise cause children to stop going to school for sustained periods of time.⁹²⁷ More generally, heatwaves and higher daytime temperatures interrupt learning and undermine the quality of education.⁹²⁸ As children and young people are more susceptible to illnesses such as heatstroke and malaria, worsening climate change will cause lower school attendance and poorer learning outcomes. In Vanuatu, climate change has negatively affected learning outcomes,⁹²⁹ by reason of difficulties regarding school attendance;⁹³⁰ student learning;⁹³¹ and school availability, especially in circumstances of climate-induced disasters or extreme weather, which can destroy or damage schools.⁹³²
- (c) Right to an adequate standard of living (including housing). According to a global analysis of children internally displaced by weather-related hazards, 95% of internal displacements of children between 2016-2021 were driven by floods or storms, reflecting a pattern of extreme events increasing in frequency and severity as a result of climate change. Relative to the size of the child population, Vanuatu is the sixth top country for child displacement due to storms (cyclones), with 24.9% of the child population having been internally displaced in the six years preceding the study — most of them by cyclone Harold in April 2020.⁹³³

the lead up to COP27 in 2022, responses from 169 youth and young adults (70% aged 20-34), across all provinces of Vanuatu, show that 3 in 5 (61%) feel worried as a result of climate change: U-Report, *COP27 Poll: Kiribati, Solomon Islands, Vanuatu*, 2022 ([link](#)).

⁹²⁷ For example, in 2020, Tropical Cyclone Harold (category 5) damaged or destroyed 885 schools in Northern Vanuatu and left around 40,000 children out of school: Plan International Australia, 'From Crisis to Classroom: Understanding the Effects of Disasters on Girls' Access to Education' (19 April 2023), p. 10 ([link](#)). See Statement of Jimmy Namile dated 9 January 2024 (**Exhibit L**), para. 25 ("The children really suffered. After Pam they couldn't go to school for three to four months. The same thing happened after the twin cyclone in 2023."). See also Impact Statement of Rothina Ilo Noka, Director for the Department of Women's Affairs, the Republic of Vanuatu, 15 March 2024 (**Exhibit P**), para. 26 ("For children, including girl children, they have increasingly limited access to education. In January 2023, we had the twin cyclones and most children did not go to school for 2 to 3 months. Just as children returned to school and the national exams were about to start, TC Lola came through and damaged the very same schools again.")

⁹²⁸ Save the Children, *Born into the Climate Crisis: Why We Must Act Now to Secure Children's Rights* (2021), p. 32 ([link](#)).

⁹²⁹ Impact Statement of John Kaltau, Acting Director General of the Department of Education, Republic of Vanuatu, 14 March 2024 (**Exhibit S**), paras. 7-9.

⁹³⁰ Impact Statement of John Kaltau, Acting Director General of the Department of Education, Republic of Vanuatu, 14 March 2024 (**Exhibit S**), para. 8, see para. 25. These impacts are felt on particular groups of children with particular intensity, such as children with disability, who can't go to school when it is not safe for them to travel: see para. 8.

⁹³¹ Impact Statement of John Kaltau, Acting Director General of the Department of Education, Republic of Vanuatu, 14 March 2024 (**Exhibit S**), para. 9.

⁹³² See Impact Statement of John Kaltau, Acting Director General of the Department of Education, Republic of Vanuatu, 14 March 2024 (**Exhibit S**), paras. 10, 13-16.

⁹³³ UNICEF, *Children Displaced in a Changing Climate: Preparing for a Future Already Underway*, October 2023 ([link](#)).

- (d) Cultural rights. Further, Indigenous children and children from other minority groups, “*whose rights, way of life and cultural identity are intimately related to nature ... face serious harm to culture and traditional knowledge due to the impacts of climate change*”.⁹³⁴

478. Based on the above, the impacts of climate change on the climate system and other parts of the environment are felt intensely by the children of Vanuatu and of the Pacific. Vanuatu submits that the Relevant Conduct is, in principle, in breach of a catalogue of protected rights children are entitled to, including the rights to life, health, housing and culture.

4.4.5. *Obligations arising with respect to future generations*

479. Question (a) requests the Court to identify the obligations of States in respect of “*future generations*”. Future generations are those generations that do not yet exist but will exist and who will inherit the Earth, including persons, groups and peoples.⁹³⁵

480. The principle of intergenerational equity provides a legal basis for the rights of future generations.⁹³⁶ This principle “*places a duty on current generations to act as responsible stewards of the planet and ensure the rights of future generations to meet their developmental and environmental needs*”.⁹³⁷ The principle has been referred to in preambular statements across several treaties and other international instruments.⁹³⁸ The principle has been referred to by members of this Court on

⁹³⁴ Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, UN Doc CRC/C/GC/26 (22 August 2023), para. 58 ([link](#)).

⁹³⁵ Liebenberg, S (Chair) et al., *Maastricht Principles on the Human Rights of Future Generations* (adopted on 3 February 2023), principle 1 ([link](#)).

⁹³⁶ The UNFCCC encourages States to apply the principle of intergenerational equity: United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107, art. 3(1) ([link](#)).

⁹³⁷ Office of the United Nations High Commissioner for Human Rights, *Analytical Study on the Relationship Between Climate Change and the Full and Effective Enjoyment of the Rights of the Child*, U.N. Doc. A/HRC/35/13 (4 May 2017) (OHCHR Analytical Study), para. 35 ([link](#)); UNFCCC, art. 3(1) (“*Parties should protect the climate system for the benefit of present and future generations of humankind...*”); “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, preamble ([link](#)). See Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, UN Doc CRC/C/GC/26 (22 August 2023), para. 11 ([link](#)).

⁹³⁸ UN Charter, Preamble (peoples of the United Nations are “*determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind*”) ([link](#)); Stockholm Declaration (full consistent citation), UN Doc A/Conf.48/14/Rev.1, principle 1 (refers to States’ “*solemn responsibility to protect and improve the environment for present and future generations*”); Rio Declaration on Environment and Development, 13 June 1992, UN Doc A/CONF.151/26, principle 3 (“[t]he right to development must be fulfilled as to equitably meet developmental and environmental needs of present and future generations”) ([link](#)); Convention on Biological Diversity, 5 June 1992, 1760 U.N.T.S. 69, preamble (provides for the “*benefit of present and future generations*” in conservation and sustainable use of biological diversity) ([link](#)); United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107, art 3(1) (“*Parties should protect the climate system for the benefit of present and future generations of humankind*”) ([link](#)); “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, preamble (“*acknowledging that climate change is a common concern of humankind*”, provides that “*Parties should, when taking action to address climate change, respect, promote and consider, among other things, their respective obligations on human rights [...] and intergenerational*”

numerous occasions,⁹³⁹ and has also often been referred to in domestic courts.⁹⁴⁰ By virtue of the principle of intergenerational equity, the interests of future generations when articulating the scope and content of State obligations of

equity”). [\(link\)](#) The Committee on the Rights of the Child developed the intergenerational dimensions of realizing children’s rights in several General Comments: see e.g., Committee on the Rights of the Child, *General Comment No. 13 on the right of the child to freedom from all forms of violence*, UN Doc. CRC/C/GC/13 (18 April 2011), paras. 14, 75(b) (“[p]reventing violence in one generation reduces its likelihood in the next”) [\(link\)](#); Committee on the Rights of the Child, *General Comment No. 16 on State Obligations regarding the impact of the business sector on Children’s right* UN Doc. CRC/C/GC/16 (17 April 2013), para. 4 (CRC asserted that violations to children’s rights “may have lifelong, irreversible and even transgenerational consequences”) [\(link\)](#); Committee on the Rights of the Child, *General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts*, UN Doc. CRC/C/GC/17 (17 April 2013), para. 46 (States Parties to take steps to eliminate the “loss of many childhood games, songs, rhymes, traditionally transmitted from generation to generation on the street and in the playground”), para. 32 (connects the importance of dialogue between “older and younger generations”), para. 12 (enabling children to gain an understanding of their cultural and artistic life, which they will “translate and adapt its meaning through their own generational experience.”) [\(link\)](#). Most recently, see Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, UN Doc. CRC/C/GC/26 (22 August 2023), para. 11 (“While the rights of children who are present on Earth require immediate urgent attention, the **children constantly arriving** are also entitled to the realization of their human rights to the maximum extent.”) (emphasis added) [\(link\)](#).

⁹³⁹ *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court’s Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case*, I.C.J. Reports 1995, 288, Dissenting Opinion of Judge Weeramantry, p. 341 (describing intergenerational equity as “an important and rapidly developing principle of contemporary international law”); *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) (1996) I.C.J. Reports 226, Dissenting Opinion of Judge Weeramantry, p. 233 (“[t]he rights of future generations have passed the stage when they were merely an embryonic right struggling for recognition. They have woven themselves into international law through major treaties, through juristic opinion and through general principles of law recognized by civilized nations”). See, generally, *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C. J. Reports 1997, Separate Opinion of Vice-President Weeramantry (explaining at some length how principles concerning intergenerational equity and the future generations of children found reflection not only in written legal systems but also in the traditional and ancient legal systems); *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, 14, Separate Opinion of Judge Trindade, para. 122 (acknowledging the need “to give clear expression to intergenerational equity, so as to fulfil the pressing need to assert and safeguard the rights of present as well as future generations” and concluding that “in 2010, it can hardly be doubted that the acknowledgement of intergenerational equity forms part of conventional wisdom in International Environmental Law”); *Whaling in the Antarctic (Australia v. Japan; New Zealand intervening)*, Judgment (31 March 2014) (unreported), Separate Opinion of Judge Trindade, para. 47 (“intergenerational equity marks presence nowadays in a wide range of instruments of international environmental law, and indeed of contemporary public international law”). See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, p. 241, para. 29 (“generations unborn”).

⁹⁴⁰ See e.g., *Demanda Generaciones Futuras v. Minambiente (Future Generations v. Ministry of the environment and others)* 2018 STC4360-2018 para. 5.2, 22; *Ashgar Leghari v. Federation of Pakistan*, Lahore High Court, case no. 25501/2015, Order of 4 September 2015. pp. 5–6; *Khan Cement Company v. Government of Punjab*, Supreme Court of Pakistan, 2021 SCMR 834 [\(link\)](#); *Shrestha v. Office of the Prime Minister et al.*, Supreme Court of Nepal NKP, 2075 61 (3), Decision No. 10210 2018 (Nepal) [\(link\)](#). See also *Minors Oposa et al. v. Secretary of the Environment and Natural Resources Fulgencio Factoran*, GR No. 101083, 30 July 1993, reprinted in (1994) 33 ILM 173 (Philippines) [\(link\)](#); Bundesverfassungsgericht [BVerfG], Federal Constitutional Court, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20, 24 March 2021 (Germany), p. 56-57 [\(link\)](#); *Waratah Coal Pty Ltd v. Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 (Australia), paras. 1588-1589, 1593, see also para. 1603 [\(link\)](#); *State of Himachal Pradesh and Others v. Ganesh Wood Products and Others*, Supreme Court of India, A.I.R. (1996) (India), p. 150 [\(link\)](#); *Goa Foundation v. Union of India & Ors*, Supreme Court of India, Writ Petition (Civil) no. 435 of 2012, Judgment, 21 April 2014 (India) [\(link\)](#); *In re Court on Its Own Motion v. State of Himachal Pradesh*, National Green Tribunal Delhi, 9 May 2016 (India) [\(link\)](#); *Sudiep Shrivastava v. Union of India*, National Green Tribunal of India, Appeal no. 73/2012, 24 March 2014 (India), para. 25 [\(link\)](#); *Waweru v. Republic of Kenya*, High Court of Kenya, 1 KLR (E&L) 2006 (Kenya), 677–696 [\(link\)](#); *Ground International Work Trust & Vukani Environmental Justice Alliance Movement in Action v. Minister of Environmental Affairs & Others*, High Court of South Africa, Case no. 39724/2019, [2022] ZAGPPHC 208 (2022) (South Africa), para. 82.4 [\(link\)](#); *Held v. Montana CDV-2020-307*, Montana First Judicial District Court, WL 1997864, decision of 14 August 2023 [\(link\)](#).

relevance to the protection of the climate system and other parts of the environment. This is consistent with an interpretive approach governed by systemic integration.

481. Existing international law provides a legal basis for the rights of future generations, especially human rights law.

- (a) The rights protected across general international law and in the human rights treaties are “*living*,” in the sense that they must be interpreted with regard to the future.⁹⁴¹ In this way, they are protective of the rights of persons, groups and peoples across time and space and in respect of past, present and future harms, including therefore future generations.⁹⁴² This Court has recognized that state obligations under international law are not limited to current generations but also apply to future generations.⁹⁴³ Several UN human rights treaty bodies interpret the human rights treaties over which they have an interpretive mandate so as to encompass the rights of future generations.⁹⁴⁴ On a regional level, the Inter-American Court of Human Rights has recognised the rights of future generations as implicitly and explicitly protected under the American Convention of Human Rights.⁹⁴⁵ Domestic courts too are making rulings and determinations

⁹⁴¹ This is consistent with the teleological method of interpretation required for human rights treaties: see paragraph 332 of Section 4.4.4.B(1).

⁹⁴² UN Secretary General, “Intergenerational Solidarity and the Needs of Future Generations”, *Report of the Secretary-General* (15 August 2013) A/68/322, para. 13 (“*the equal concern and respect that we owe to all humans, regardless of where and when they may have been born*”) ([link](#)).

⁹⁴³ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7, para. 140; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, paras. 29; 35-36, see also Dissenting Opinion of Judge Shahabuddeen, pp. 158-160; Dissenting Opinion of Judge Weeramantry, pp. 454-456.

⁹⁴⁴ See, e.g., Human Rights Committee, General Comment No. 36: Article 6: Right to Life (3 September 2019) UN Doc. CCPR/C/GC/36 para. 62 ([link](#)) (“*Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life*”); The Committee on Economic, Social and Cultural Rights, overseeing the ICESCR, recognized that the rights under the Covenant must be realized sustainably to ensure that it is fulfilled for both present and future generations, including the rights to food, water and culture: see Committee on Economic, Social and Cultural Rights, *General Comment No. 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food (article 11)*, 12 May 1999, E/C12/1999/5, para. 7 ([link](#)); Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, E/C.12/2002/11), paras. 11, 28 ([link](#)); Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, 21 December 2009, para. 50; Committee on Economic, Social and Cultural Rights, *General Comment No. 25 on science and economic, social, and cultural rights*, UN Doc. E/C.12/GC/25 (30 April 2020), para. 56 ([link](#)); Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26 (22 August 2023) para. 11 ([link](#)).

⁹⁴⁵ See, e.g., *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment of 31 August 2001, Inter-American Court of Human Rights 2001 Series C, No. 79, para. 141 (confirming interconnections between land, culture and its intergenerational transmission for indigenous communities) ([link](#)); *Advisory Opinion OC-23/17 (‘The Environment and Human Rights’)*, Inter-American Court of Human Rights Series A No. 23, 15 November 2017, para. 59 (“*the right to a healthy environment constitutes a universal value that is owed to both present and future generations*”) ([link](#)).

which recognise the distinctive interests of future generations in their own right,⁹⁴⁶ including in the specific context of climate harms.⁹⁴⁷

- (b) There are also many treaties outside the human rights field, including on the protection of the environment and cultural heritage, that recognize obligations towards future generations and the need to ensure intergenerational equity must also be integrated under a holistic human rights protection scheme.⁹⁴⁸

482. In Vanuatu’s submission, the principle of intergenerational equity and existing international law require that States take into account future generations when discharging their obligations under international law. Put another way, the interests of future generations are to be factored into the analysis of state obligations arising across the corpus of international law. Accordingly, in the context of the question referred to this Court in the present advisory proceedings, Vanuatu submits that the Relevant Conduct is governed by an overarching obligation to protect the climate system and other parts of the environment from significant harm *for the benefit of persons, individuals and people of future generations*.

⁹⁴⁶ See e.g., *Corte Suprema de Columbia, Demanda Generaciones Futuras v. Minambiente* (Colombia) 5 April 2018 (where the Colombian Supreme Court of Justice upheld a constitutional *tutela* action brought by several youth plaintiffs on behalf of both present and future generations challenging the government’s failure to comply with Amazon deforestation commitments) ([link](#)); *Mathur v. Ontario*, 2020 ONSC 6918 (Canada), paras. 238 – 253 (where the Superior Court of Justice of Ontario, Canada dismissed the Ontario Government’s motion to strike out an application by seven children and youth challenging the Ontario’s greenhouse gas emissions targets and plans. One of the grounds of the motion to strike out this application was that the applicants did not have standing to bring the application on behalf of future generations) ([link](#)).

⁹⁴⁷ *Neubauer v. Germany*, 1 BvR 2656/18 2020, Decision of 24 March 2021, (Germany), para. 146 ([link](#)).

⁹⁴⁸ See, e.g., UN Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), June 1972, UN Doc A/CONF48/14/Rev1, Principle 1 (“*responsibility to protect and improve the environment for present and future generations*”) ([link](#)); Convention on International Trade in Endangered Species of Wild Fauna and Flora (Adopted 3 March 1973, entered into force 1 July 1975) 993 UNTS 243, preambular paragraph 1 (fauna and flora must be “*protected for this and the generations to come*”) ([link](#)); Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Adopted 24 November 1987) 26 ILM 38 (States parties acknowledge that “*their responsibility to preserve their natural heritage for the benefit and enjoyment of present and future generations*”) ([link](#)); Convention on Biological Diversity, 5 June 1992, 1760 U.N.T.S. 69, preamble (provides for the “*benefit of present and future generations*” in conservation and sustainable use of biological diversity), preamble (“*for the benefit of present and future generations*”) ([link](#)); United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (adopted 14 October 1994, entered into force 26 December 1996) 1954 UNTS 3, preamble (“*for the benefit of present and future generations*”) ([link](#)); Rio Declaration on Environment and Development, 13 June 1992, UN Doc A/CONF.151/26, principle 3 (affirms the need to “*equitably meet developmental and environmental needs of present and future generations*”) ([link](#)); United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107, preamble and Article 3(1) (refers to future generations in its preamble, and centers intergenerational equity as one of the Convention’s guiding principles) ([link](#)); “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, preamble, para. 11 ([link](#)); see *The human right to a clean, healthy and sustainable environment*, UN General Assembly Resolution 76/300, adopted 28 July 2022, A/RES/76/300, preamble (“*the protection of the environment, including ecosystems, contribute to and promote human well-being and the full enjoyment of all human rights, for present and future generations*”) ([link](#)).

483. Moreover, in the context of human rights obligations, Vanuatu submits that States must:

- (a) *respect* the rights of future generations,
- (b) *ensure* the rights of future generations; and
- (c) take into account the *best interests of future generations of children* when making decisions that will affect them.

The rights violations experienced by persons (including children), groups and people of Vanuatu extend to future generations. Despite uncertainty about how exactly these violations will materialise for future Ni-Vanuatu children, with their nature, scale and severity depending on a wide range of factors, it is clear from the evidence that certain violations of future generations' rights have already materialised and will continue to materialise as a result of the Relevant Conduct. Indeed, the Republic of Vanuatu submitted above that the Relevant Conduct "has violated, is violating, and will continue to violate with increasing scale, intensity and frequency," various rights. It is the future generations of Vanuatu who will most acutely experience the increased scale, intensity and frequency of such rights violations.

4.5. Concluding submissions

484. For the foregoing reasons, the Republic of Vanuatu submits that the answer to Question (a) requires an examination of the entire corpus of international law, guided by the characterization of the Relevant Conduct provided by the General Assembly, having particular regard, without limitation, to the rules from treaties and general international law mentioned in the chapeau paragraph of the operative part. The Republic of Vanuatu further submits that, in this light:

- (a) the following obligations arising from general international law specifically govern the acts and omissions of States underpinning the Relevant Conduct: the duty of due diligence; the obligations arising from the rights recognized in the Universal Declaration of Human Rights; the principle of prevention of significant harm to the environment; the duty to protect and preserve the marine environment; the obligations arising from the right to self-determination; the right to a clean and healthy environment as a necessary derivation of the rights recognized in the Universal Declaration of Human Rights; the duty to co-operate and the obligations arising from the principle of good faith. **These obligations are binding on all States and the Relevant Conduct is in breach of them.**
- (b) In addition, the following obligations arising from treaties in force also govern the Relevant Conduct of States which are parties to one or more of them: obligations arising from the Charter of the United Nations and the subsequent interpretive practice under it, including the rights recognized in the Universal Declaration of Human Rights, the right of peoples to self-

determination, the duty to co-operate and the obligations arising from the principle of good faith; obligations arising from the rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; obligations arising from the right to clean, healthy and sustainable environment as it relates to other rights and existing international law; obligations arising from the UNFCCC and the Paris Agreement; obligations arising from the United Nations Convention on the Law of the Sea; and obligations arising from the Convention on the Rights of the Child. **These obligations are binding on States parties to the relevant treaties and the Relevant Conduct is in breach of them.**

- (c) Furthermore, international human rights law and the principle of intergenerational equity create binding obligations for States towards future generations. **These obligations are binding on all States and the Relevant Conduct is in breach of them.**

CHAPTER V
THE DETERMINATION OF THE LEGAL CONSEQUENCES OF THE
RELEVANT CONDUCT

5.1. Summary of Vanuatu’s submission

485. Question (b) of the operative part of Resolution 77/276 asks the Court to determine the legal consequences arising for States having displayed the Relevant Conduct with respect to two categories of victims, namely States which, due to their geographical circumstances and level of development, are injured or specially affected by or particularly vulnerable to the adverse effects of climate change, and peoples and individuals of the present and future generations affected by such adverse effects.
486. The acts and omissions constituting the Relevant Conduct are attributable to the State under the customary international rules of attribution, particularly – without limitation – the provision of governmental subsidies to fossil fuels production and/or use, the adoption of laws, policies, programmes and decisions regarding energy policy, and – very importantly – the omission to act to limit GHG emissions to a level below the threshold of significance of the Relevant Conduct. The breach results from the display of Relevant Conduct, whether this is analyzed at the level of specific States, of a specific group of States or of the Relevant Conduct in and of itself. This conduct is in breach of the obligations identified in response to Question (a) of the operative part. The breach arises from a “*composite act*” in the meaning of the rule codified in Article 15(1) of ARSIWA, namely “*a series of actions or omissions defined in aggregate as wrongful*”. Such series has unfolded over time, and it amounts to partial and/or total non-conformity with the requirements of each obligation. With respect to certain rules of a peremptory or *erga omnes* nature, the series of acts and omissions qualify as a breach of a serious character. The breach triggers legal consequences with respect to the two categories of victims.
487. The legal consequences with respect to “*States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change*” are governed by the relevant rules of general international law codified in the ARSIWA, including Articles 30 (Cessation and non-repetition), 31 (Reparation), 33 (Scope of the international obligations set out in this part), 34 (Forms of reparation), 35 (Restitution), 36 (Compensation), 37 (Satisfaction) and 41 (Particular consequences of a serious breach of certain obligations). This general regime is residual, as recalled by Article 55 of ARSIWA. It applies to the determination of legal consequences for breaches involving harm

to the environment, with its specificities, including the existence of several concurrent causes and the nature of the injury. The two basic legal consequences of the breach arising for States having displayed the Relevant Conduct are the obligations of cessation (for those States – and the group thereof – which are still displaying the Relevant Conduct) and reparation (for those States – and the group thereof – which have displayed the Relevant Conduct in breach of their obligations, whether they have already ceased their unlawful behaviour or not). The obligation of cessation of the Relevant Conduct requires deep cuts in GHG emissions in accordance with the scientific consensus regarding what needs to be done and by when. The obligation of reparation entails, first and foremost, restitution when this is possible (including support for adaptive capacity, non-monetary redress for the human mobility, including displacement and migration, caused by the adverse effects of climate change, recognition of sovereignty, statehood, territory and maritime boundaries despite sea-level rise). Reparation also entails compensation when restitution is not possible (including for both economic and non-economic loss and damage, and for damage caused to the environment in and of itself). Satisfaction must be provided where restitution and compensation fail to result in full reparation. In addition, particular consequences attach to serious breaches of certain obligations owed *erga omnes* or to the international community as a whole, such as the obligation to refrain from largescale violations of human rights and the obligations arising from the right to self-determination.

488. The legal consequences with respect to “*Peoples and individuals of the present and future generations affected by the adverse effects of climate change*” are described in both general international law and in special treaty rules. There are three important legal consequences that arise from the violation of human rights obligations by States having displayed the Relevant Conduct, namely the obligation to provide an effective remedy in order to afford redress for the human rights violation, the obligation to provide structural remedies, and the additional obligation arising from serious breaches of obligations owed *erga omnes* or to the international community as a whole. In relation, specifically, to violations of human rights resulting from loss and damage, the legal consequences include cessation, the provision of redress, and the provision of structural remedies, including measures beyond victim-specific remedies such as changes in the State’s laws and practices. In addition, the breach of the right to self-determination also gives rise to additional legal consequences. The Court can provide advice to the General Assembly regarding the modalities required to ensure the continued enjoyment of the right to self-determination by peoples which, due to loss and damage, will be unable to continue to fully exercise their right to self-determination in their own territory. All States have to cooperate to achieve this precise result, and they are also required to recognize the continued enjoyment by the affected peoples of their right to self-determination in the way it has been exercised, including independence and Statehood in the limits of their own territory and maritime spaces, and not to render aid or assistance in maintaining or expanding new fossil fuel production and use.

5.2. Assessment of the Relevant Conduct under each obligation clarified in response to Question (a) of Resolution 77/276

5.2.1. *The focus of Question (b) of Resolution 77/276*

489. After identifying and clarifying the relevant obligations, the UN General Assembly has requested the Court to assess the Relevant Conduct in their light (Question (b)) to determine the ensuing legal consequences. A very important dimension of Resolution 77/276 is therefore that it entrusts the Court with the mandate to remove a prevailing legal ambiguity with immense implications. Simply stated, the question is whether the Relevant Conduct, i.e. the conduct that has caused the “*unprecedented challenge of civilizational proportions*”⁹⁴⁹ we know as climate change, is lawful or not under international law taken as a whole.
490. As demonstrated in Chapter IV, several rules of international law identified in response to Question (a) directly govern the Relevant Conduct, and this conduct is, in principle, inconsistent with their requirements. Question (b) moves a step further and raises the core issue of Resolution 77/276, namely climate justice. The question for the Court is whether the ultimate form of harm, that resulting from a conduct that interferes with the climate system and the environment as whole with massive and literally unprecedented adverse impacts for humans and the environment, can be lawful under international law. To paraphrase Raphael Lemkin, the intellectual father of the Convention against Genocide, why would killing an individual be banned but the same would not be true of killing millions?⁹⁵⁰ In the same vein, how could the most serious form of interference with the environment, the conduct that causes climate change, not be unlawful if basic incidents of transboundary pollution are indeed so?
491. The legal ambiguity surrounding the legality, in principle, under international law of the Relevant Conduct must be removed once and for all. At present, it is preventing any progress in the protracted climate negotiations. The process remains captured by a crass illegality that is hiding in plain sight. Merely engaging in a debate about the terminological ambiguities of one or more terms selected for certain provisions of the UNFCCC or the Paris Agreement would be a barren exercise, given that, in good faith, it is impossible to conclude that any of the terms of these instruments allows, in the wake of the unprecedented climate emergency, the continued extraction – indeed the increase – and burning of massive amounts of fossil fuels. The spirit in which both the UNFCCC and the Paris Agreement were concluded is certainly a different one. These instruments were intended to provide solutions to the problem, rather than to offer a shield to protect the cause of the problem and the States responsible for it. More fundamentally, irrespective of such interpretive debates, the Relevant Conduct was – before the UNFCCC and the Paris

⁹⁴⁹ UN General Assembly Resolution 77/276 : Obligations of States in relation to climate change, 29 March 2023, A/RES/77/276, preambular para. 1.

⁹⁵⁰ Raphael Lemkin, ‘Genocide’ (1946) 15/2 *American Scholar* 227-230 ([link](#)).

Agreement even entered into force – and remains directly governed by many other rules of international law, including rules with substantive priority over those two instruments. Only the Court can remove the ambiguity regarding the illegality of the Relevant Conduct in the light of the entire corpus of international law, by drawing on its unique mandate and authority as the principal judicial organ of the United Nations.

492. The inquiry that the UN General Assembly requested from the Court concerns the analysis of the Relevant Conduct in the light of the obligations identified in response to Question (a). For the Relevant Conduct to constitute a breach of one or more of these obligations, in addition to the specific requirements set out in each obligation (see Chapter IV, Sections 4.4.3 and 4.4.4), the rule codified in Article 2 of the ARSIWA⁹⁵¹ requires attribution of the conduct to the State and the characterization of the nature of the breach.

5.2.2. *The Relevant Conduct is attributable to States under the general international law of State responsibility*

493. As shown in Chapter III, Resolution 77/276 focuses on the assessment of a certain conduct that has been ongoing for well over a century. This Relevant Conduct consists of **acts and omissions** of individual States that have resulted over time in a level of anthropogenic GHG emissions from activities within their jurisdiction or control which have interfered with the climate system and other parts of the environment to an extent which amounts to significant harm to the latter, whether or not the anthropogenic GHG emissions of a given State over time are the only or the main cause of climate change, and whether or not they are the only or the main cause of the specific harm suffered by another State, people or individual.
494. The Relevant Conduct is a conduct of States, i.e. attributable to the State under the customary international law rules on the attribution of conduct to States codified in the ARSIWA.⁹⁵² In order to establish such attribution, the types of acts and omissions forming the Relevant Conduct can be further characterized, following the analysis in Chapter III, as involving *inter alia* the provision of governmental subsidies to fossil fuels production and/or use (coal, oil and gas), the adoption of laws, policies, programmes and decisions regarding energy policy, and – very

⁹⁵¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected ([link](#)).

⁹⁵² Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected ([link](#)). The customary nature of attribution rules has been recognised in the case law of the Court as well as of other international tribunals. See e.g. *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, I.C.J. Reports 1999, p. 62, para. 62; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p.168, para. 213; *United States - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, Report of the Appellate Body (11 March 2011), WT/DS379/AB/R, para. 311, footnote 222 ([link](#)); *Jan de Nul N.V., Dredging International N.V. v. Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008), para. 156 ([link](#)); *Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, Award (29 April 2020), para. 155 ([link](#)).

importantly – the omission to act to limit GHG emissions to a level below the threshold of significance of the Relevant Conduct. All three forms of the Relevant Conduct are attributable to the State.

495. With respect to governmental subsidies to fossil fuels, this is by definition an act of the State. As explained in Chapter III, the term subsidy is not used in the technical meaning of a specific trade agreement, but in the economic meaning of the provision by a government of financial support – direct or indirect – for the production and/or use of fossil fuels. Fossil fuel subsidies reached record levels in 2022, according to the International Monetary Fund, with direct subsidies more than doubling since 2020.⁹⁵³ The main providers of governmental subsidies were China, the United States, the Russian Federation, the European Union and India.⁹⁵⁴ When the entity granting the subsidy is an organ of the State, the provision of the subsidy is attributable to the State, irrespective of whether the conduct is in the exercise of public authority or of a commercial nature. Article 4 of ARSIWA codifies⁹⁵⁵ the relevant customary rule of attribution in the following terms:

“1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State.”

When the entity providing the subsidy is not structurally part of the State, the provision of the subsidy is attributable to the State under the rule codified in Article 5 of ARSIWA⁹⁵⁶ if the entity is “*empowered by the law of that State to exercise elements of the governmental authority*” and “*is acting in that capacity in the particular instance*”. The provision of energy subsidies is an exercise of energy policy as well as industrial policy, which are both exclusive prerogatives of the State. Therefore, such provision is attributable to the State even if the entity providing it is not structurally part of the State.

496. As for the energy laws, policies, programmes and decisions themselves, they may also be attributed to the State as “*acts*” of its organs or, given the sovereign prerogative over energy policy, of entities “*empowered by the law of that State to*

⁹⁵³ Simon Black, Antung A. Liu, Ian Parry & Nate Vernon, ‘IMF Fossil Fuel Subsidies Data: 2023 Update’ (August 2023) IMF Working Paper (Fiscal Affairs Department), Washington, DC, WP/23/169 ([link](#)).

⁹⁵⁴ Simon Black, Antung A. Liu, Ian Parry & Nate Vernon, ‘IMF Fossil Fuel Subsidies Data: 2023 Update’ (August 2023) IMF Working Paper (Fiscal Affairs Department), Washington, DC, WP/23/169, p. 4 ([link](#)).

⁹⁵⁵ See *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion*, I.C.J. Reports 1999, p. 62, para. 62.

⁹⁵⁶ *Noble Ventures, Inc. v. Romania*, ICSID Case No. ARB/01/11, Award (12 October 2005), para. 70 ([link](#)); *Jan de Nul N.V., Dredging International N.V. v. Egypt*, ICSID Case No. ARB/04/13, Decision on Jurisdiction (16 June 2006), para. 89 ([link](#)).

exercise elements of the governmental authority” and “acting in that capacity in the particular instance”.

497. In any event, irrespective of the attribution of specific acts (subsidies, laws, policies, programmes, decisions, etc.), a key component of the Relevant Conduct is conduct by omission, a failure to act in a way that only the State itself is empowered to act. Specifically, for States having under their jurisdiction or control the entities which have emitted very large amounts of GHGs over time, the key component of the Relevant Conduct is the failure to take action to keep such emissions below the threshold of significance. Such failure is well established. All the major GHG emitters, including those whose emissions have peaked or decreased, still have very substantial GHG emissions. This can be seen both from the perspective of cumulative GHG emissions and recent emissions. On the first, the Expert Report by Professor Corinne Le Quéré explains that:

“Cumulative CO₂ emissions, the main cause of human-induced climate change, has clear origin in historical use of fossil fuels and land by countries. The largest contributors to cumulative emissions of CO₂ during 1851-2022 were the USA (20.5%), whose emissions peaked around 2005; the EU27 (11.7%), with emissions decreasing since the early 1980s; China (11.7%), with most of its emissions occurring since 2000; Russia (7.0%); and Brazil (4.6%) [...] The largest contributors to cumulative emissions of CO₂ during 1990-2022 were China (19.4%), the USA (15.5%), the EU27 (9.3%), Brazil (5.1%), and Russia (4.8%). Globally, land use contributed 31% and fossil fuel use 69% to cumulative CO₂ emissions during 1851-2022. Land use emissions were the dominant source of global CO₂ emissions globally until the 1950s”⁹⁵⁷

These countries remained, individually and collectively, the main GHG emitters according to the latest estimated for 2022. According to the UNEP Emissions Gap Report (2023):

“The top seven global emitters remain the same as in 2021: Brazil, China, India, Indonesia, the European Union, the Russian Federation and the United States of America [...] Collectively, and with the addition of international transport, these emitters accounted for a total of 33 2eGtCO₂e in 2021, or 65 per cent of global emissions on a territorial basis, including national inventory-based LULUCF CO₂. **Combined, the G20 accounted for 76 per cent of global emissions. By contrast, least developed countries accounted for 3.8 per cent of global emissions, while small island developing States contributed less than 1 per cent”⁹⁵⁸**

⁹⁵⁷ Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (**Exhibit B**), para. 17 (emphasis original, underlining added).

⁹⁵⁸ United Nations Environment Programme, *Emissions Gap Report 2023 : Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), page 6 (emphasis added) ([link](#)).

This paragraph restates what is abundantly established by the scientific sources, namely that the States that individually and collectively have failed and are still failing to act are well known, as are the victims of climate injustice.

498. Both acts and omissions are attributable to the State under the rule codified in Article 4 of ARSIWA. The ILC commentary introduces chapter II of ARSIWA devoted to attribution with the following overarching statement:

“one of the essential conditions for the international responsibility of a State is that the conduct in question is attributable to the State under international law. Chapter II defines the circumstances in which such attribution is justified, *i.e.* **when conduct consisting of an act or omission or a series of acts or omissions is to be considered as the conduct of the State**” (emphasis added)⁹⁵⁹

The ILC commentary to Article 4 re-emphasizes this point when it states the fundamental principle of the unity of the State: “[t]he *principle of the unity of the States entails that the **acts or omissions** of all its organs should be regarded as **acts or omissions** of the State for the purposes of international responsibility*”.⁹⁶⁰

499. When the primary rule of obligation governing the conduct requires the State to take action, as is the case of all the obligations governing the Relevant Conduct identified in response to Question (a), then the failure to act constitutes an omission or a series of omissions attributable to the State under Article 4 of ARSIWA.

5.2.3. *The Relevant Conduct is, in principle, in breach of international law*

A. Overview

500. Article 12 of ARSIWA states that:⁹⁶¹

“[t]here is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character”.

501. The reference to the irrelevance of the origin or character of the obligation emphasizes that the rules formulated in the ARSIWA are of general application. The rule codified in Article 12 has indeed been referred to in a range of different normative and geographical contexts.⁹⁶² It is also important to stress that, even in

⁹⁵⁹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, chapter II, commentary, para. 1 ([link](#))

⁹⁶⁰ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 4, commentary, para. 5 ([link](#)).

⁹⁶¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected ([link](#)).

⁹⁶² See *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Decision on Jurisdiction and Merits (3 September 2013), para. 289 (footnote 308) ([link](#)); *The Prosecutor v. Salim Jamil Ayyash et al.*, Special Tribunal

cases of similar or identical rules of international law resting on different sources (i.e., in treaty and in custom), the breaches arising from the conduct remain distinct.⁹⁶³

502. This section contains the submissions of the Republic of Vanuatu regarding the nature of the breaches of international law resulting from the Relevant Conduct in the light of the general international law of State responsibility for internationally wrongful acts. It begins in Section (B) by clarifying whose conduct, specifically, is in breach of the governing obligations. It then summarizes the reasons, discussed in Chapter IV, why the Relevant Conduct is in breach of the obligations identified and clarified in response to Question (a) (C). Subsequently, it analyzes four main aspects regarding the nature of the breach, namely (D) the total and partial character of the non-conformity, (E) the temporal dimension of the breach, (F) the composite nature of the breach, and (G) the serious character of the breach of certain peremptory norms.

B. Whose conduct constitutes a breach?

503. As shown earlier in this Written Statement (see above Chapter III, Section 3.2.2), the Relevant Conduct entails a combination of acts and omissions (i) whereby specific States individually⁹⁶⁴ have caused significant harm to the climate system and other parts of the environment and, (ii) the acts and omissions of a specific

for Lebanon, STL-11-01, Decision on Updated Request for a Finding of Non-Compliance (27 March 2015), paras. 43-45 ([link](#)); *Hossam Ezzat & Rania Enayet v. The Arab Republic of Egypt*, African Commission on Human and Peoples' Rights, Communication No. 355/07, Decision, 28 April 2018, para. 124 ([link](#)); *Venezuela US, S.R.L. v. Bolivarian Republic of Venezuela*, PCA Case No. 2013-34, Partial Award (Jurisdiction and Liability) (5 February 2021), para. 155 (footnote 136) ([link](#)).

⁹⁶³ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment. I.C.J. Reports 1986, p. 14, para. 177: “even if the customary norm and the treaty norm were to have exactly the same content, this would not be a reason for the Court to hold that the incorporation of the customary norm into treaty-law must deprive the customary norm of its applicability as distinct from that of the treaty norm”. Paragraph 177 is specifically referred to in the commentary to Article 12 of ARSIWA: Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 12, commentary, para. 4 ([link](#)).

⁹⁶⁴ As explained in Chapter III, the specific States whose individual contribution to global warming is above 3% of the observed change in temperature are the USA, China, the Russian Federation, Brazil, India and Indonesia. See Matthew W. Jones, Glen P. Peters, Thomas Gasser, Robbie M. Andrew, Clemens Schwingshackl, Johannes Gütschow, Richard A. Houghton, Pierre Friedlingstein, Julia Pongratz & Corinne Le Quéré, ‘National contributions to climate change due to historical emissions of carbon dioxide, methane and nitrous oxide since 1852’ (2023) 10:155 ([link](#)); Professor Le Quéré provides a list of States whose individual contributions are above the 1% of the observed change in temperature. For the cumulative GHG emissions between 1851-2022, these are USA (responsible for 17.0% of the global warming in 2022 due to their historical GHG emissions; 0.28°C), China (12.5%; 0.21°C), the EU27 (10.3%; 0.17°C, including Germany 2.9%, France 1.3%, Poland 1.0% and Italy 0.9%), Russia (6.3%; 0.11°C), Brazil (4.9%; 0.081°C), India (4.7%; 0.078°C), Indonesia (3.7%; 0.061°C), the United Kingdom (2.4%; 0.040°C), Canada (2.1%; 0.035°C), Japan (2.1%; 0.035°C), Australia (1.5%; 0.025°C), Mexico (1.4%; 0.023°C), Ukraine (1.4%; 0.022°C), Nigeria (1.2%; 0.019°C), Argentina (1.2%; 0.019°C), and Iran (1.1%; 0.019°C). For the period 1990-2022, the list is the same but with China as the largest contributor. Attribution of observed global warming to countries. Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (**Exhibit B**), paras. 25 and 26.

group of States taken together⁹⁶⁵ have caused not only significant but catastrophic harm in the form of climate change and its adverse effects, including loss and damage. Given that any State that displays the Relevant Conduct is, in principle, in breach of its obligations under international law, (iii) the Relevant Conduct as such is, in principle, illegal under international law, and it can also be analyzed as such rather than by reference to one or more specific States.

504. Importantly, as the Court has made clear in the *Bosnia Genocide* case, in the context of an obligation requiring the display of due diligence, it is irrelevant whether a specific State would have been unable, alone, to prevent the result targeted by a primary rule of obligation, whether such result is the prevention of significant harm to the environment, the protection and preservation of the marine environment, the prevention of pollution of the marine environment, the respect, protection and fulfilment of human rights, the respect and promotion of the right to self-determination, or others. This is particularly so when the requisite level of diligence displayed by each of the States individually would have, collectively, prevented both significant and catastrophic harm to the climate system and other parts of the environment. In the terms used by the Court:

“it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide. As well as being generally difficult to prove, this is irrelevant to the breach of the obligation of conduct in question, **the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result** — averting the commission of genocide — which the efforts of only one State were insufficient to produce” (emphasis added).⁹⁶⁶

⁹⁶⁵ As explained in Chapter III, the contribution to climate change of a specific group of States has not only caused significant harm to the climate system and other parts. of the environment but it has caused catastrophic harm, in the form of climate change and its adverse effects. According to the report of Professor Le Quéré: **“The top 10 contributors to global warming from historical emissions of GHG during 1851-2022 are the USA (responsible for 17.0% of the global warming in 2022 due to their historical GHG emissions; 0.28°C), China (12.5%; 0.21°C), the EU27 (10.3%; 0.17°C, including Germany 2.9%, France 1.3%, Poland 1.0% and Italy 0.9%), Russia (6.3%; 0.11°C), Brazil (4.9%; 0.081°C), India (4.7%; 0.078°C), Indonesia (3.7%; 0.061°C), the United Kingdom (2.4%; 0.040°C), Canada (2.1%; 0.035°C), and Japan (2.1%; 0.035°C).** The GHG emissions from these contributors, together with those from Australia (1.5%; 0.025°C), Mexico (1.4%; 0.023°C), Ukraine (1.4%; 0.022°C), Nigeria (1.2%; 0.019°C), Argentina (1.2%; 0.019°C), and Iran (1.1%; 0.019°C), amount to three quarters of the global warming due to GHG emissions during 1851-2022”, Expert Report of Professor Corinne Le Quéré on Attribution of global warming by country (dated 8 December 2023) (**Exhibit B**), para. 25 (emphasis original, underlining added). A consistent estimate is provided in UNEP Emissions Gap Report (2023): **“Nearly 80 per cent of historical cumulative fossil and LULUCF CO2 emissions came from G20 countries,** with the largest contributions from China, the United States of America and the European Union, while least developed countries contributed 4 per cent”, United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), page xviii (emphasis added) ([link](#)).

⁹⁶⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 430.

505. In *Daniel Billy et al. v. Australia*, the respondent State argued that it was not possible under the law of State responsibility or under human rights law to attribute climate change to Australia.⁹⁶⁷ It did so partly to challenge the admissibility of the individual communication brought by the complainants under the Optional Protocol to the ICCPR. Specifically, it noted that “*the State party cannot be held responsible — as a legal or practical matter — for the climate change impacts that the authors allege in their communication*”.⁹⁶⁸ The Human Rights Committee rejected this argument on the grounds that, irrespective of whether Australia caused climate change, it was a significant contributor:

“With respect to mitigation measures, although the parties differ as to the amount of greenhouse gases emitted within the State party’s territory, and as to whether those emissions are significantly decreasing or increasing, **the information provided by both parties indicates that the State party is and has been in recent decades among the countries in which large amounts of greenhouse gas emissions have been produced.** The Committee notes that the State party ranks high on world economic and human development indicators. In view of the above, the Committee considers that the alleged actions and omissions fall under the State party’s jurisdiction under articles 1 or 2 of the Optional Protocol and therefore, it is not precluded from examining the present communication” (emphasis added)⁹⁶⁹

On the merits, the Human Rights Committee went on to find breaches by Australia of Articles 17 (right to private, family and home life) and 27 (right to enjoy one’s culture) of the ICCPR.

506. Whether the Court reaches its conclusions with respect to the “*significant harm to climate system and other parts of the environment*” caused by one or more specific States, the catastrophic harm, in the form of the climate change and its adverse effects, caused by a specific group of States, or the illegality – in principle – of the Relevant Conduct as such, this is a necessary step to determine the legal consequences of the Relevant Conduct, as requested under Question (b) of Resolution 77/276.

C. Breach of the obligations identified in response to Question (a)

507. The obligations governing the Relevant Conduct have been examined in detail in Chapter IV. Such examination is important to clarify what aspects of each obligation are breached by the Relevant Conduct and how. The analysis in that context covered the specific scope and requirements of each obligation. It was therefore more

⁹⁶⁷ Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019, Human Rights Committee CCPR/C/135/D/3624/2019, 22 September 2022, paras. 4.2 and 4.3 ([link](#)).

⁹⁶⁸ Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019, Human Rights Committee CCPR/C/135/D/3624/2019, 22 September 2022, para. 7.6 ([link](#)).

⁹⁶⁹ Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019, Human Rights Committee CCPR/C/135/D/3624/2019, 22 September 2022, para. 7.8 ([link](#)).

appropriate, in that context, to also assess the non-conformity of the Relevant Conduct with each obligation. Yet, such assessment is part of Question (b).

508. The present section is **not intended to replace the analysis in Chapter IV with a shorter statement, but only to recall some core inconsistencies between the Relevant Conduct and what is required by each obligation, each time in a single paragraph**. Following the structure of Chapter IV, the following paragraphs distinguish, for presentation purposes, (1) the obligations arising from general international law and (2) those arising from treaties, although some rules are based on both formal sources. The nature of the breach is further explained in the subsequent sections.

(1) Obligations arising from general international law

509. The Relevant Conduct is, in principle, inconsistent with the duty of due diligence, the obligations to respect, protect and fulfil the human rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment, the duty to protect and preserve the marine environment, the obligation to respect the right of peoples to self-determination, the duty to cooperate and the obligations arising from the principle of good faith.

510. The Republic of Vanuatu has explained in Chapter IV, Section 4.4.3.A that *the duty of all States to exercise due diligence in the prevention of reasonably foreseeable harm from activities within their jurisdiction or control* crystallized as a primary obligation by the time of *Alabama Claims* arbitration. The duty remains an obligation of States governing the Relevant Conduct from a distinct but complementary perspective to that of the principle of prevention of significant harm to environment (notably, the duty of due diligence is neither limited to “environmental” harm nor triggered only by the risk of “significant” harm). Since the nineteenth century, the duty of a State to exercise due diligence has required the adoption of timely and effective measures to prevent a foreseeable harm caused by the State’s historical and ongoing acts and omissions. Whilst the duty of due diligence contains no threshold of significant harm, any State that, by its acts and omissions, causes harm reaching that threshold is, in principle, in breach of the duty of due diligence. This Court may offer an important clarification to the obligations of States by affirming that a State which has displayed the Relevant Conduct is, in principle, in breach of its duty to exercise due diligence in the prevention of reasonably foreseeable harm to the climate system and other parts of the environment and, through its contribution to climate change and its adverse effects, to other States, peoples, or individuals.

511. The Relevant Conduct is in breach, in principle, of the *obligations to respect, protect and fulfil the human rights recognized by the Universal Declaration of Human Rights* (see above Chapter IV, Section 4.4.3.B). In the joint Statement on “Human Rights and Climate Change”, five human rights treaty bodies specifically

stated that States must reduce their GHG emissions displaying their “*highest possible ambition*”, including by means of “*phasing out fossil fuels*”, holding private actors “*accountable for harm they generate both domestically and extraterritorially*” and “*discontinuing financial incentives or investments in activities and infrastructure that are not consistent with loss greenhouse gas emissions pathways*”.⁹⁷⁰ The Relevant Conduct over time and up until the present day is in stark contrast with what is required. The UNEP Production Gap Report (2023) shows that most of the 20 countries profiled “*continue to promote, subsidize, support and plan on the expansion of fossil fuel production*”,⁹⁷¹ and this in direct contradiction with their climate pledges.⁹⁷² Research by the International Monetary Fund has further shown that fossil fuel subsidies reached an all-time high of USD 7 trillion in 2022, with explicit subsidies (i.e. undercharging for the supply costs of fossil fuels) more than double the levels of 2020.⁹⁷³ These subsidies are provided mainly by the States and jurisdictions which are also the largest GHG emitters, namely China, the US, Russia, the EU and India.⁹⁷⁴ Moreover, States having displayed the Relevant Conduct have neither compensated peoples and individuals who have suffered human rights violations nor held accountable the companies responsible for GHG emissions and harm. In short, States having displayed the Relevant Conduct have not only failed to do what is required of them by the obligations to respect, protect, promote and fulfil human rights (as applicable); they have effectively done, and continue to do, the opposite (continually and with increasing intensity and frequency, breach their obligations).

512. In Chapter IV, Section 4.4.3.C, it was further shown that the Relevant Conduct is, in principle, in *breach of the principle of prevention of significant harm to the environment*. Diligent conduct to prevent both significant harm to the climate system and other parts of the environment and catastrophic harm in the form of climate change and its adverse effects includes, from a scientific standpoint: a reduction of 45 per cent of GHG emissions in eight years compared with emission

⁹⁷⁰ *Statement on Human Rights and Climate Change*, 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, paras. 11 and 12, footnotes omitted (emphasis added) ([link](#)). The footnotes in these paras. refer to additional statements and practice of these committees of further relevance for the link between contribution to climate change and human rights obligations.

⁹⁷¹ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), p. 5 ([link](#)). The 20 countries studied are (in alphabetical order) : Australia, Brazil, Canada, China, Colombia, Germany, India, Indonesia, Kazakhstan, Kuwait, Mexico, Nigeria, Qatar, Russian Federation, Saudi Arabia, South Africa, United Arab Emirates, United Kingdom and the United States.

⁹⁷² United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), p. 5 ([link](#)).

⁹⁷³ Simon Black, Antung A. Liu, Ian Parry & Nate Vernon, ‘IMF Fossil Fuel Subsidies Data: 2023 Update’ (August 2023) IMF Working Paper (Fiscal Affairs Department), Washington, DC, WP/23/169, p. 3 ([link](#)).

⁹⁷⁴ Simon Black, Antung A. Liu, Ian Parry & Nate Vernon, ‘IMF Fossil Fuel Subsidies Data: 2023 Update’ (August 2023) IMF Working Paper (Fiscal Affairs Department), Washington, DC, WP/23/169, p. 4 ([link](#)).

projections;⁹⁷⁵ no new oil and gas fields or coal mines approved for development beyond projects already committed as of 2021,⁹⁷⁶ and little or no new carbon dioxide-emitting infrastructure⁹⁷⁷; “*rapid and deep and, in most cases, immediate greenhouse gas emissions reductions in all sectors this decade*”⁹⁷⁸; substantial reduction in overall fossil fuel use, minimal use of unabated fossil fuels⁹⁷⁹. Instead, what we see from countries having displayed the Relevant Conduct is delay, low ambition and, in practice, concrete plans to expand the extraction and use of fossil fuels. The cost of delay is fully clear from the UNEP Emissions Gap Report (2023), which shows that, as a result of past inaction, the yearly emission cuts between 2024 and 2030 would have to be almost twice the cuts caused by the COVID-19 lockdown to stay in the 1.5°C pathway.⁹⁸⁰ More fundamentally, the Summary for policymakers of the IPCC’s Synthesis Report of 2023 stresses that “*continued emissions will further affect all major climate system components*” and “*with every additional increment of global warming, changes in extremes continue to become larger*”.⁹⁸¹ The low-level of ambition is equally well established, with the UNFCCC’s 2022 Nationally Determined Contributions (NDCs) Synthesis Report concluding that, even on the questionable assumption that all pledged actions are implemented, “*the total global GHG emission level in 2030 [...] is estimated to be 10.6 (3.6–17.5) per cent above the 2010 level*”.⁹⁸² GHG emissions are therefore still increasing. And clearly, the implementation of even these low-ambition NDCs is anything but certain. According to UNEP’s Production Gap Report 2023, government plans and projections would lead to major increases in fossil fuel production, which are inconsistent not only with 1.5°C-consistent pathways but also with the climate pledges of those very States.⁹⁸³ Therefore, it is clear that the display of the Relevant Conduct by specific States and a specific group of States, as well as

⁹⁷⁵ United Nations Environment Programme, *Emissions Gap Report* (2022), Executive Summary, at page xvi ([link](#)).

⁹⁷⁶ International Energy Agency, *Net Zero by 2050. A Roadmap for the Global Energy Sector* (May 2021), Summary for policymakers, p. 10 ([link](#)).

⁹⁷⁷ Dan Tong, Qiang Zhang, Yixuan Zheng, Ken Caldeira, Christine Shearer, Chaopeng Hong, Yue Qin & Steven J. Davis, ‘Committed emissions from existing energy infrastructure jeopardize 1.5 °C climate target’ (2019) 572 *Nature* 373 (**Exhibit Y**).

⁹⁷⁸ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statements B.6, C.2 ([link](#)).

⁹⁷⁹ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement C.3.2 ([link](#)).

⁹⁸⁰ United Nations Environment Programme, *Emissions Gap Report 2023 : Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), p. 30 ([link](#)).

⁹⁸¹ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.1.3 ([link](#)).

⁹⁸² ‘Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat’, 26 October 2022, FCCC/PA/CMA/2022/4, 7, para. 13 ([link](#)).

⁹⁸³ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up ? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), p. 5 ([link](#)). The 20 countries to which this conclusion applies are (in alphabetical order): Australia, Brazil, Canada, China, Colombia, Germany, India, Indonesia, Kazakhstan, Kuwait, Mexico, Nigeria, Qatar, Russian Federation, Saudi Arabia, South Africa, United Arab Emirates, United Kingdom and the United States.

the Relevant Conduct as such, constitutes a breach of the principle of prevention of significant harm to the environment. This is so irrespective of the level of diligence that one or more States may show in the future, as their lack of diligence in the past has already breached the principle. In any event, far from adopting diligent conduct, States having displayed the Relevant Conduct are doubling down on it, through delayed and un-ambitious actions and new investment in fossil fuels, further departing from what is required from them under the prevention principle.

513. In addition, the Relevant Conduct is, in principle, in *breach of the duty to protect and preserve the marine environment in general international law* (see above Chapter IV, Section 4.4.3.D). The Summary for Policymakers of the IPCC's 2023 Synthesis Report establishes that the marine environment has been directly polluted and harmed by anthropogenic GHG emissions, which come from specific States, and such harm goes well beyond the threshold of significance, with “*virtually certain*” increased ocean acidification and “*high confidence*” regarding deoxygenation of the marine environment.⁹⁸⁴ In addition, the IPCC concludes that “*Ocean warming and ocean acidification have adversely affected food production from fisheries and shellfish aquaculture in some oceanic regions (high confidence)*.”⁹⁸⁵ It is therefore clear that the display of the Relevant Conduct by specific States and a specific group of States, as well as the Relevant Conduct as such, constitutes, in principle, a breach of the duty to protect and preserve the marine environment.
514. Importantly, as demonstrated in Chapter IV, Section 4.4.3.E, *the Relevant Conduct constitutes, in principle, a breach of the obligation to respect the right to self-determination in all relevant aspects*.⁹⁸⁶ By contributing to the alteration of the environmental conditions that underpin the political, economic, social and cultural aspects of peoples' existence, the Relevant Conduct has impaired the ability of peoples to freely make autonomous choices about their political status and in pursuit of their economic, social and cultural development; the ability of peoples to exercise sovereignty over their natural resources; and it has deprived them of their

⁹⁸⁴ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.1.3 ([link](#)).

⁹⁸⁵ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2.4 ([link](#)).

⁹⁸⁶ See also UN General Assembly, *Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Note by the Secretary-General*, UN Doc A/74/161 (15 July 2019) para. 26 ([link](#)); UN Human Rights Council, *Human Rights and Climate Change*, HRC res 35/20, UN Doc A/HRC/RES/35/20 (7 July 2017) recital 12 ([link](#)); UN Human Rights Council, “Addressing Human Rights Protection Gaps in the Context of Migration and Displacement of Persons across International Borders Resulting from the Adverse Effects of Climate Change and Supporting the Adaptation and Mitigation Plans of Developing Countries to Bridge the Protection Gaps”, 23 April 2018, UN Doc A/HRC/38/21, para. 19 ([link](#)); Secretary-General, *The impacts of climate change on the human rights of people in vulnerable situations* (6 May 2022) UN Doc A/HRC/50/57, paras. 7, 8, 15 ([link](#)).

means of subsistence.⁹⁸⁷ Low-lying Island States face an existential threat.⁹⁸⁸ As acknowledged in the work of the International Law Commission, sea-level rise threatens the continued existence of certain low-lying States and, given that “*it is unlikely that the whole community would be able to be relocated and remain together elsewhere, with functioning institutions and governance capacity*”,⁹⁸⁹ contributing to such losses and damages violates the right to self-determination. This situation is already forcing some Pacific Island leaders to negotiate relocation agreements with other governments to safeguard the lives of their citizens.⁹⁹⁰ In Vanuatu, the inundation of coastal areas has already displaced some communities from their ancestral land,⁹⁹¹ and—with 60% of the population living within one kilometre of the coast⁹⁹²—threatens to forcibly displace many more. Such forced displacement impairs territorial sovereignty and inhibits the affected right-holders from making a free choice about their futures.⁹⁹³ In addition to sea-level rise, other climate impacts also impair or violate the right to self-determination. For example, the warming of seas results in a lethal impact on coral reefs,⁹⁹⁴ which impacts the fisheries and tourism these reefs provide for millions of people across the Pacific and thus impairs the exercise of permanent sovereignty over these natural resources.⁹⁹⁵ Moreover, the submergence of land, increased flooding and storm surges, stronger tropical cyclones and the destruction of freshwater resources and cultivable land deprive peoples of their own means of subsistence. Those States which individually have displayed the Relevant Conduct and, collectively, have caused catastrophic harm to the climate system and other parts of the environment

⁹⁸⁷ Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights (15 January 2009), UN Doc A/HRC/10/61, para. 40 ([link](#)).

⁹⁸⁸ See, e.g., Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), p. 15 ([link](#)).

⁹⁸⁹ ILC, “Sea-level Rise in Relation to International Law: Second Issues Paper” by Patrícia Galvao Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on Sea-level Rise in Relation to International Law’ UN Doc A/CN.4/752 (19 April 2022) para. 252(j) ([link](#)).

⁹⁹⁰ See, e.g., Falepili Union treaty (Australia-Tuvalu) (signed 10 November 2023) ([link](#)).

⁹⁹¹ Intergovernmental Panel on Climate Change, “Chapter 29: Small Islands” in *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects, Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2014), p. 1620 ([link](#)); Alex Chapman, William Davies, Ciaran Downey, & MacKenzie Dove, *Climate Risk Country Profile: Vanuatu* (World Bank Group 2021), p. 17 ([link](#)).

⁹⁹² Intergovernmental Panel on Climate Change, “Chapter 15: Small Islands” in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), pp. 2063-2064 ([link](#)).

⁹⁹³ Human Rights Council, ‘International Solidarity and Climate Change: Report of the Independent Expert on Human Rights and International Solidarity’ UN Doc A/HRC/44/44 (1 April 2020) para. 47 ([link](#)) (“[r]ising sea levels, hurricanes and other extreme events are decimating the territories of all too many small island developing States and, by extension, negatively affecting human rights, including ... self-determination”).

⁹⁹⁴ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), p. 382 ([link](#)).

⁹⁹⁵ See Charlotte Moritz, Jason Vii, Warren Lee Long, Jerker Tamelander, Aurelie Thomassin, Serge Planes (eds), *Status and Trends of Coral Reefs of the Pacific* (2018), p. 24 ([link](#)); see also Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2022), p. 413 ([link](#)).

in the form of climate change and its adverse effects have thereby undermined the conditions necessary for the exercise of the right to self-determination. Significantly, leaders of Pacific Island States, including Vanuatu, have given voice to the will of their peoples to continue living on their ancestral islands in accordance with their right to self-determination. Yet the Relevant Conduct has continued, resulting in violations of the right to self-determination, which are likely to continue to occur in Vanuatu and across the Pacific with increased intensity, scale and frequency as the climate crisis worsens.

515. *The Relevant Conduct is, in principle, also in breach of the duty to co-operate arising from general international law* (see above Chapter IV, Section 4.4.3.F). States are required to co-operate, given that the Relevant Conduct concerns activities that may cause significant harm *inter alia* to the environment of other States.⁹⁹⁶ In their discharge of their duty to co-operate, States must not preclude the outcome of a cooperative process by unilateral action taken while the process is ongoing.⁹⁹⁷ However, the UNEP's Production Gap Report 2023 shows that major GHG emitters are, in fact, aiming to increase their production of fossil fuels to levels that, in 2030, “are 460%, 29%, and 82% higher for coal, oil, and gas, respectively, than the median 1.5°C-consistent pathways”.⁹⁹⁸ The breach is particularly blatant in the light of the fact that, as evidenced in UNEP's Production Gap Report 2023, the increase in the production of fossil fuels contradicts the very climate pledges of States engaging in such unilateral action.⁹⁹⁹ In addition, the Relevant Conduct is also unlawful under a range of other primary rules, including obligations owed *erga omnes*, *erga omnes partes* or to the international community as a whole reviewed in this Chapter. The duty to co-operate applies therefore not only as primary rule but also as a secondary rule requiring cooperation to achieve a precise result, namely cessation of the conduct in breach, the Relevant Conduct.¹⁰⁰⁰
516. In Chapter IV, Section 4.4.3.G, it was also shown that *the Relevant Conduct is in breach of the obligations arising from the principle of good faith*. States having displayed the Relevant Conduct have indeed acted contrary to good faith both in their under-performance of their other international obligations, including those arising from the UNFCCC and the Paris Agreement, and in their disingenuous

⁹⁹⁶ *Corfu Channel Case, Judgment of 9 April 1949*, I.C.J. Reports 1949, p. 4, p. 22; Rio Declaration on Environment and Development, 13 June 1992, UN Doc A/CONF.151/26, principles 18 and 19 ([link](#)); *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, p. 665, paras. 104, 108, 168.

⁹⁹⁷ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p.14, para. 144.

⁹⁹⁸ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)).

⁹⁹⁹ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)).

¹⁰⁰⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136 para. 159.

negotiations and pledges to reduce GHG emissions while, in fact, their policies lead to a massive increase in the production and use of fossil fuels.¹⁰⁰¹

(2) *Obligations arising from the applicable treaties*

517. As explained in Chapter IV, Section 4.4.4.A, in addition to its non-conformity with general international law, *the Relevant Conduct is, in principle, also in breach of several obligations arising from the Charter of the United Nations with a content similar or identical¹⁰⁰² to obligations to respect, protect and fulfil the human rights recognized in the UDHR, the obligation to respect the right to self-determination, the duty to co-operate and the obligations arising from the principle of good faith.* The reasons why this is so have already been provided in relation to each of those obligations. Importantly, by virtue of Article 103 of the UN Charter, these obligations arising from the Charter prevail over any inconsistent obligation arising from any other agreement. Thus, other agreements, including the UNFCCC and the Paris Agreement, cannot be given priority on grounds of speciality (*lex specialis*) or temporality (*lex posterior*). Clearly, such agreements cannot be considered a *lex specialis* in relation to matters such as human rights, the right of peoples to self-determination, the principle of prevention of significant environmental law or the law of the sea, to mention some important rules and bodies of rules governing the Relevant Conduct. But even if it were argued that the UNFCCC and the Paris Agreement are a *lex specialis*, such an argument would fail not only *ratione materiae* but also on grounds of normative priority. The overriding rules continue to govern the Relevant Conduct and this conduct is, in principle, in breach of them.
518. In Chapter IV, Section 4.4.4.B, it was further shown that the *Relevant Conduct is, in principle, in breach of the obligations arising from a range of human rights, including as a minimum the rights to life; private, family and home life; culture; an adequate standard of living, encompassing food, health and housing; and health.* Specifically, the Relevant Conduct affects the human rights of individuals and collective subjects both in the territories of the States displaying it and beyond, when the affected populations are under their jurisdiction. Such jurisdiction is extended extraterritorially by virtue of the effective control that such States have over the source of the GHG emissions, whether conducted by them or arising from activities under their jurisdiction. Regarding *the right to life*, the Relevant Conduct has been displayed despite reasonably foreseeable life-threatening situations, which have now materialized and will become even more intense and frequent in the future. With respect to the *right to privacy, family and home life*, as a result of the Relevant Conduct, small island nations and communities, including in Vanuatu, are

¹⁰⁰¹ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)).

¹⁰⁰² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, para. 177. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 3, para. 88 (“Where a treaty states an obligation which also exists under customary international law, the treaty obligation and the customary law obligation remain separate and distinct”)

already experiencing flooding and inundation of their villages and ancestral burial lands, destruction or withering of their traditional gardens through salinification caused by flooding or seawater ingress, decline of nutritionally and culturally important marine species and associated coral bleaching and ocean acidification. As regards *cultural rights*, the impacts of climate change have forced many communities to abandon their ancestral lands and important traditional food sources and relocate to safer areas, often resulting in the loss of cultural heritage, cultural identity, cultural practices, social cohesion, and economic stability and insecurity. Such impacts on the elements protected by cultural rights were foreseeable by States displaying the Relevant Conduct. In addition, the foreseeable impacts on some of these components, including adequate food, water and shelter, make the Relevant Conduct inconsistent with the *right to an adequate standard of living*. Furthermore, the impacts of climate change, including tropical cyclones and other extreme weather events, have interfered with the provision of health and medical services in Vanuatu and many other countries in vulnerable situations, and they have amplified other problems. The health effects of extreme heat include death, heat stroke, heat cramps, hyperthermia, and exacerbation of existing illnesses, and rainfall patterns and humidity will create conditions for increase vector-borne diseases. The Relevant Conduct underpinning such impacts is therefore *in breach of the right to health*.

519. *In addition to the human rights already mentioned, the Relevant Conduct is, in principle, in breach of the right to a clean, healthy and sustainable environment* (see above Chapter IV, Section 4.4.4.C). The UN General Assembly has recognized this in Resolution 76/300, which states that “*the impact of climate change [...] interfere[s] with the enjoyment of a clean, healthy and sustainable environment*”.¹⁰⁰³ Similarly, the UN Special Rapporteur on Human Rights and the Environment has concluded that “[t]he failure of States to take adequate steps to address climate change can constitute a violation of the right to a healthy environment”.¹⁰⁰⁴ The Relevant Conduct is clearly a “*failure to take adequate steps to address climate change*”, particularly given that, far from adopting laws and policies to achieve deep GHG emissions cuts, States having displayed the Relevant Conduct are doubling down on fossil fuel production. According to the UNEP Production Gap Report (2023), the planned increases in fossil fuel production by 2030 “*are 460%, 29%, and 82% higher for coal, oil, and gas, respectively, than the median 1.5°C-consistent pathways*”.¹⁰⁰⁵ This is despite the fact that these States

¹⁰⁰³ *The human right to a clean, healthy and sustainable environment*, UN General Assembly Resolution 76/300, adopted 28 July 2022, A/RES/76/300, preambular para. 9 ([link](#)).

¹⁰⁰⁴ Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, A/74/161, 15 July 2019, see in particular paras. 44; 63 ([link](#)). The UN General Assembly has recognised that “*the impact of climate change ... the resulting loss of biodiversity and the decline in services provided by ecosystems’ interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights*”: *The human right to a clean, healthy and sustainable environment*, UN General Assembly Resolution 76/300, adopted 28 July 2022, A/RES/76/300 ([link](#)).

¹⁰⁰⁵ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up ? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)).

continue to make pledges that are both insufficient and that, as the UNEP Production Gap Report (2023) shows, also contradicted by the production policies and plans in place in such countries.¹⁰⁰⁶ The deterioration of the quality of the environment (including to the climate system) is felt “*most acutely*” by some groups, including Indigenous Peoples,¹⁰⁰⁷ and thus violations of the right may materialize at a lower level of harm in respect to those groups.

520. As shown in Chapter IV, Section 4.4.4.D, *the Relevant Conduct of the major GHGs emitting States, individually and collectively, is in breach of the standard of due diligence attached to the obligations – whether substantive (such as for all Parties to take domestic mitigation measures) or obligations of conduct (such as to aim to achieve the objectives of these mitigation measures)*¹⁰⁰⁸ in the Paris Agreement. The Relevant Conduct of the major GHGs emitting States is not in line individually with pathways consistent with the 1.5°C temperature goal. The Climate Action Tracker, a leading and well-respected expert-led source,¹⁰⁰⁹ finds that the policies and actions of China,¹⁰¹⁰ Indonesia,¹⁰¹¹ Brazil¹⁰¹² and the Russian Federation are consistent with 4°C warming, the United States of America’s¹⁰¹³ and India’s¹⁰¹⁴ in line with 3°C warming, and the European Union (27) with 2°C warming.¹⁰¹⁵ Nor is the Relevant Conduct of the major GHGs emitting States in line collectively with pathways consistent with the 1.5°C temperature goal identified in the Paris Agreement. The 2022 UNFCCC NDCs Synthesis Report estimates, based on an assessment of existing national contributions from Parties, that the peak temperature in the twenty-first century is in the range of 2.1–2.9°C.¹⁰¹⁶ Similarly, the UNEP Emissions Gap Report (2023) finds that “*even in the most optimistic scenario considered in this report, the chance of limiting global warming to 1.5°C is only 14 per cent*”.¹⁰¹⁷ Finally, the Relevant Conduct of the major GHGs emitting States is not in line with their fair share. To stay in line with a 1.8°C or 1.5°C consistent emissions level in 2030, some developed countries would need to be

¹⁰⁰⁶ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)).

¹⁰⁰⁷ See Human Rights Council, *Human rights and the environment*, A/HRC/RES/37/8, 9 April 2018, preambular para. 11 ([link](#)).

¹⁰⁰⁸ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 4(2) ([link](#)).

¹⁰⁰⁹ The Climate Action Tracker is an independent scientific project that tracks government climate action and measures it against the globally agreed Paris Agreement’s goals. The CAT has been providing this independent analysis to policymakers since 2009. Many of its team members have contributed to the IPCC and UNEP GAP reports. See for further information: <https://climateactiontracker.org/> (visited on 15 March 2024).

¹⁰¹⁰ Available online at: <https://climateactiontracker.org/countries/china/> (visited on 15 March 2024).

¹⁰¹¹ Available online at: <https://climateactiontracker.org/countries/Indonesia/> (visited on 15 March 2024).

¹⁰¹² Available online at: <https://climateactiontracker.org/countries/brazil/> (visited on 15 March 2024).

¹⁰¹³ Available online at: <https://climateactiontracker.org/countries/usa/> (visited on 15 March 2024).

¹⁰¹⁴ Available online at: <https://climateactiontracker.org/countries/india/> (visited on 15 March 2024).

¹⁰¹⁵ Available online at: <https://climateactiontracker.org/countries/eu/> (visited on 15 March 2024).

¹⁰¹⁶ ‘Nationally determined contributions under the Paris Agreement: Synthesis report by the secretariat’, 26 October 2022, FCCC/PA/CMA/2022/4, 7, para. 17 ([link](#)).

¹⁰¹⁷ United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), Executiv Summary, p. xxii ([link](#)).

around zero (USA, Japan) or net-negative (e.g. Germany, France, UK) by 2030. This means that these States have already used their “*fair share*” of emissions space and should stop emitting GHGs by 2030.¹⁰¹⁸

521. The *Relevant Conduct* is, in principle, also inconsistent with several obligations arising from Part XII of the UNCLOS (see above Chapter IV, Section 4.4.4.E). As noted earlier in this Section, the Relevant Conduct constitutes a breach of the duty to protect and preserve the marine environment in general international law and in Article 192 of the UNCLOS. In addition, individual States having displayed the Relevant Conduct and the specific group of States whose display of such conduct, taken together, has caused climate change and its adverse effects have failed to take the necessary measures to prevent, reduce and control pollution of the marine environment, and they have effectively caused damage by pollution to it. This contravenes the obligations set out in Article 194(1)-(2) of the UNCLOS. Indeed, as evidenced by the Summary for Policymakers of volume I of the IPCC’s Sixth Assessment Report: “[I]and and ocean have taken up a near-constant proportion (globally about 56% per year) of CO₂ emissions from human activities over the past six decades, with regional differences (high confidence)”.¹⁰¹⁹ The anthropogenic “introduction” of the “substance” carbon dioxide is not only “likely to result” but has effectively resulted in “deleterious effects”, including “harm to the living resources and marine life, hazards to human health” (Article 1(1)(4) of the UNCLOS). There is a scientific consensus on this conclusion, endorsed by all State members of the IPCC, in the Summary for Policymakers of the IPCC’s Synthesis Report of its Sixth Assessment Report: “Climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems (high confidence)”.¹⁰²⁰ The ocean has absorbed a quarter of all carbon dioxide emissions.¹⁰²¹ The burning of fossil fuels and the land uses underlying the Relevant Conduct take place mostly in land, although their deleterious effects spread well beyond, including to the marine environment inside and outside areas under State jurisdiction. As a result, the Relevant Conduct amounts to a failure to take measures to prevent, reduce and control pollution of the marine environment from land-based sources, as required by Article 207(1)-(2) of the UNCLOS. Moreover, if the GHG emissions from

¹⁰¹⁸ Lavanya Rajamani, Louise Jeffery, Niklas Höhne, Frederic Hans, Alyssa Glass, Gaurav Ganti & Andreas Geiges “National ‘fair shares’ in reducing greenhouse gas emissions within the principled framework of international environmental law” (2021) 21:8 *Climate Policy*, 983, p, 999 ([link](#)). This article has been relied on extensively by the litigants in two climate cases currently pending before the Grand Chamber of the European Court of Human Rights: see *Duarte Agostinho and Others v. Portugal and Others* (Application no. 39371/20) (pending); *Verein KlimaSeniorinnen and Others v. Switzerland* (Application no. 53600/20) (pending).

¹⁰¹⁹ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1.1 ([link](#)).

¹⁰²⁰ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2.3 ([link](#)).

¹⁰²¹ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Full Report (2021), p. 714 ([link](#)).

vessels flying the flag of or registered in a State have caused significant harm to the marine environment, that amounts also to a breach of Article 211(2) of UNCLOS. A Study from the International Civil Aviation Organization (ICAO) estimating the trends on carbon dioxide emissions between 2005 and 2050 further shows that, even in the most optimistic fuel efficiency, traffic management and infrastructure use scenarios, emissions from aviation are on a substantial upward trend.¹⁰²² This is inconsistent with the obligation of States with the highest number of registered aircraft¹⁰²³ under Article 212(1)-(2) to adopt the necessary laws and regulations to prevent, control and reduce pollution of the marine environment from or through the atmosphere, including from aircraft. Thus, to the extent that the Relevant Conduct displayed by such States is not covered by the obligations arising from other rules codified and/or enshrined in Part XII of the UNCLOS, it is governed by – and it is inconsistent with – the obligations stated in Article 212(1)-(2) of the UNCLOS.

525. As explained in Chapter IV, Section 4.4.4.F, the *Relevant Conduct is, in principle, in breach of a range of rights of the child, including the rights to life, health, housing and culture*. Importantly, Article 3(1) of the CRC requires that the “*best interests of the child shall be a primary consideration*” in “*all actions taken concerning children*”.¹⁰²⁴ The terms “*all actions taken concerning children*” encompass a wide range of actions and inactions that directly or indirectly affect children, including decisions, acts, conduct, proposals, services, procedures and other measures, inaction, and omissions.¹⁰²⁵ Due to the fact that children are more likely than adults to suffer serious harm from environmental degradation, States have a “*heightened duty of care*” with respect to children such that they are required “*set and enforce environmental standards that protect children from ... disproportionate and long-term effects*”.¹⁰²⁶ Climate change is “*one of the biggest threats to children’s health*”.¹⁰²⁷ Contributing to climate change is therefore inconsistent with the

¹⁰²² Gregg G. Fleming, Ivan de Lépinay & Roger Schaufele, ‘Environmental Trends in Aviation to 2050’ in *Aviation & Environmental Outlook* (ICAO, 2022), Figure 1.6 ([link](#)).

¹⁰²³ Study by consultancy Cirium, reported in Tom Boon, ‘Where Are The World’s Aircraft Registered’ (*Simple Flying*, 13 October 2020) ([link](#)).

¹⁰²⁴ See William A. Schabas, *The Customary International Law of Human Rights* (Oxford University Press, 2021) (**Exhibit ZY**), p. 181; UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 1069/2002: Bakhtiyari et al. v. Australia*, CCPR/ C/ 79/ D/ 1069/ 2002, 6 November 2003, para. 9.7 ([link](#)); UN Human Rights Committee, *Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 2081/2011: D.T. et al. v. Canada*, CCPR/C/117/D/2081/2011, 15 July 2016, para. 7.10 ([link](#)) (“*the principle that in all decisions affecting a child, its best interests shall be a primary consideration, forms an integral part of every child’s right to such measures of protection as required by his or her status as a minor...*”); *X. v. Latvia*, European Court of Human Rights Application No. 27853/ 09, 26 November 2013, concurring opinion of Judge Pinto de Albuquerque (describing the principle as customary international law) ([link](#)).

¹⁰²⁵ Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14 (GC 14), paras. 17, 18 ([link](#)).

¹⁰²⁶ Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, UN Doc CRC/C/GC/26 (22 August 2023), para. 73 ([link](#)).

¹⁰²⁷ Committee on the Rights of the Child, *General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health* (art. 24), 17 April 2013, CRC/C/GC/15, para. 50 ([link](#)).

discharge of States' heightened duty of care, acting with the best interests of the child as a primary consideration, and particularly with the omission to drastically curb GHG emissions and with policies that promote the continued production and consumption of fossil fuels.

(3) *Obligations arising with respect to future generations*

526. International law, including the principle of intergenerational equity and human rights law, operate to protect future generations. Accordingly, States must protect the climate system and other parts of the environment from significant harm for the benefit of persons, individuals and people of future generations. This involves obligations on States to *respect* and *ensure* the rights of future generations and also take into account the *best interests* of future generations. The rights violations experienced by the **persons (including children), groups and people** of Vanuatu extend to future generations. These violations include an inability of future children to enjoy their culture where harm to the climate system and other parts of the environment involves the destruction of cultural heritage, thus preventing its transmission to future generations. Despite uncertainty about how exactly these violations will materialise for future Ni-Vanuatu generations, it is clear from the evidence set out above in respect of the situation of Vanuatu and in connection with each of the obligations of States discussed in sections 4.4.3 and 4.4.4, that certain violations of future generations' rights have already materialised and will continue to materialise as a result of the Relevant Conduct.

D. Total and partial non-conformity of the Relevant Conduct

522. The non-conformity of the Relevant Conduct with the obligations identified in Chapter IV of this Written Statement is the essence of what makes it a breach of such obligations or, in other terms, illegal under international law.
523. For a breach to be established, it is not necessary for the non-conformity of the Relevant Conduct with the relevant obligation to be total. The ILC explains, in the commentary to Article 12 of ARSIWA, that such breach may result both from total or partial non-conformity, whether as a result of acts or omissions of the State or a combination thereof:

“The expression ‘not in conformity with what is required of it by that obligation’ is the most appropriate to indicate what constitutes the essence of a breach of an international obligation by a State. It allows for the possibility that a breach may exist even if the act of the State is only partly contrary to an international obligation incumbent upon it.”¹⁰²⁸

¹⁰²⁸ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 12, commentary, para. 2 ([link](#)).

524. Whether the Court considers that the Relevant Conduct is in total or partial non-conformity with one or more obligations, it is no less constitutive of a breach. As the ILC notes in the same commentary, the characterization of a conduct as a breach “*can involve relatively minor infringements as well as the most serious breaches of obligations under peremptory norms of general international law*”.¹⁰²⁹
525. Given the sheer diversity of the situations covered, including “*the combination of acts and omissions*” as well as the “*taking of precautions or the enforcement of a prohibition*”,¹⁰³⁰ the Court itself has resorted to a variety of expressions, such as those of “*incompatibility with the obligations*” of a State,¹⁰³¹ acts “*contrary to*” or “*inconsistent with*” a given rule¹⁰³² or the “*failure to comply with its treaty obligations*”¹⁰³³ or, still, the “*conformity*” with requirements of an obligation.¹⁰³⁴ All these expressions entail a non-conformity of a given conduct, here the Relevant Conduct, with what is prescribed or prohibited by a given rule, here the obligations identified in response to Question (a).

E. Temporal dimension of the breach resulting from the Relevant Conduct

526. The Relevant Conduct entails a temporal dimension, which has three types of implications for its characterization as a breach of the governing obligations.
527. First, the Relevant Conduct has unfolded over time, when considered both as acts and omissions of individual States resulting in significant harm to the climate system and other parts of the environment and as acts and omissions of a specific group of States resulting collectively in catastrophic harm in the form of climate change and its adverse effects. Preambular paragraph 5 of Resolution 77/276 emphasizes this dimension when it refers to “*the conduct of States **over time** in relation to activities that contribute to climate change and its adverse effects*” (emphasis added).¹⁰³⁵ The Relevant Conduct consists of a combination of acts and omissions of individual States in relation to “*the burning of fossil fuels, deforestation, land use and land use changes (LULUC), livestock production,*

¹⁰²⁹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 12, commentary, para. 6 ([link](#)).

¹⁰³⁰ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 12, commentary, para. 2 (“*In some cases precisely defined conduct is expected from the State concerned; in others the obligation only sets a minimum standard above which the State is free to act. Conduct proscribed by an international obligation may involve an act or an omission or a combination of acts and omissions; it may involve the passage of legislation, or specific administrative or other action in a given case, or even a threat of such action, whether or not the threat is carried out, or a final judicial decision. It may require the provision of facilities, or the taking of precautions or the enforcement of a prohibition*”) ([link](#)).

¹⁰³¹ *United States Diplomatic and Consular Staff in Tehran, Judgment*, I.C.J. Reports 1980, p. 3., para. 56.

¹⁰³² *Military and Paramilitary Activities in und against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment. I.C.J. Reports 1986, p. 14, paras. 115 and 186.

¹⁰³³ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7, para. 57.

¹⁰³⁴ *Elettronica Sicula S.P.A.(ELSI)*, Judgment, I.C.J. Reports 1989, p. 15, para. 70.

¹⁰³⁵ In the French version: “le comportement des États dans le temps relativement aux activités contribuant aux changements climatiques et à leurs effets néfastes”.

fertilisation, waste management, and industrial processes”¹⁰³⁶ which have taken place under their jurisdiction or control. Some of these activities are activities of the State itself. Some others consist of the State omission to prohibit or regulate the activities unfolding under the State’s jurisdiction or control in a situation where international law required such State to “*not to allow knowingly its territory to be used for acts contrary to the rights of other States*”¹⁰³⁷ and “*to use all the means at its disposal in order to avoid activities which take place in its territory, or in an area under its jurisdiction, causing significant damage to the environment of another State*”.¹⁰³⁸ Irrespective of whether each specific act or omission has a continuing character or not, it is the combination of acts and omissions of each State that has a continuing character and extends over time in the meaning of the rule formulated in Article 14(2)-(3) of ARSIWA. The significant interference with the climate system and other parts of the environment at the heart of the Relevant Conduct has taken the form of a combination of acts and omissions over time, as observed in preambular paragraph 5 of Resolution 77/276.

528. Second, a State may have ceased to display the Relevant Conduct and its conduct may therefore no longer – in this respect – be in breach of the obligations identified in response to Question (a) of Resolution 77/276. Yet, if it displayed the Relevant Conduct in the past, i.e. if its acts and omissions in the past amounted to causing significant harm to the climate system and other parts of the environment, then the State breached the governing obligations in force at that point in the past, triggering the legal consequences contemplated in international law. In this regard, it is important to note that the historical responsibility of developed countries, which pre-existed the negotiation process leading to the adoption of the UNFCCC, is acknowledged in the preamble of the UNFCCC,¹⁰³⁹ alongside certain pre-existing principles governing the Relevant Conduct.¹⁰⁴⁰ The fact that the relevant combination of acts and omissions may have begun and ended in the past does not make them less of a breach. Thus, States whose historical GHG emissions were significant cannot escape responsibility by saying that they have now taken action to drastically reduce such emissions. Whereas such present conduct is to be welcome, it only amounts to cessation of what is otherwise a breach with a

¹⁰³⁶ IPCC Glossary ([link](#)).

¹⁰³⁷ *Corfu Channel (United Kingdom v. Albania)*, Merits, *Judgment*, I.C.J. Reports 1949, p. 22.

¹⁰³⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, I.C.J. Reports 2010, p. 14, para. 101.

¹⁰³⁹ Preambular para. 4 of the UNFCCC expressly notes “that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries”, United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107 ([link](#)).

¹⁰⁴⁰ Preambular paras. 7 and 8 of the UNFCCC expressly recall the “*pertinent provisions*” of the 1972 Declaration of the Stockholm Conference on the Human Environment and the specific text of the principle of prevention, already part of general international law by then, as suggested by the text of preambular para. 8 which restates principle 21 of the Stockholm Declaration in the slightly adjusted formulation which was retained in principle 2 of the Rio Declaration on Environment and Development: “*Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction*”, United Nations Framework Convention on Climate Change, 9 May 1992, 1771 U.N.T.S. 107 ([link](#)).

continuous character, in the terms of Article 14(2)-(3) of ARSIWA. But neither the past breach nor its legal consequences are erased.

529. Third, the Relevant Conduct has been governed by different obligations over time, well before the entry into force of the UNFCCC on 21 March 1994,¹⁰⁴¹ the Kyoto Protocol on 16 February 2005¹⁰⁴² and the Paris Agreement on 4 November 2016.¹⁰⁴³ For example, the duty of due diligence has been binding on all States since at least the late nineteenth Century,¹⁰⁴⁴ the principle of prevention of significant environmental harm was recognized as early as 1941 by the *Trail Smelter* tribunal,¹⁰⁴⁵ the obligations arising from the human rights protected by the Universal Declaration on Human Rights were already binding¹⁰⁴⁶ when, in the 1960s, the implications of the Relevant Conduct for climate change became well-known and the duty to protect and preserve the marine environment pre-exists its codification in Article 192 of the UNCLOS.¹⁰⁴⁷ These pre-existing rules are of particular note, given that they are expressly mentioned in the operative part of Resolution 77/276 and, as recalled in Chapter IV of this Written Statement, they are part of general international law, applicable to all States. Yet, several important principles and treaties, including the Charter of the United Nations, the right of peoples to self-determination¹⁰⁴⁸ and the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights,¹⁰⁴⁹ among others, were also in force and binding on States who displayed the Relevant Conduct. The basic requirement stated in Article 13 of ARSIWA that, for a breach to occur, the relevant obligation must be binding on the State at the time it displays the violative conduct,¹⁰⁵⁰ is clearly met. However, the Court does not need to say exactly when each of these obligations emerged and became binding because the Relevant Conduct is not only a conduct with a continuous character, but also a breach resulting from a composite act spanning well over a century.

¹⁰⁴¹ See the record in the United Nations Treaty Series at ([link](#))

¹⁰⁴² See the record in the United Nations Treaty Series at ([link](#))

¹⁰⁴³ See the record in the United Nations Treaty Series at ([link](#))

¹⁰⁴⁴ See Chapter IV, Section 4.4.3.A.

¹⁰⁴⁵ See Chapter IV, Section 4.4.3.C.

¹⁰⁴⁶ See Chapter IV, Section 4.4.3.B.

¹⁰⁴⁷ See Chapter IV, Section 4.4.3.D.

¹⁰⁴⁸ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, paras. 150, 152 (“*The adoption of resolution 1514 (XV) of 14 December 1960 represents a defining moment in the consolidation of State practice on decolonization [...] The Court considers that, although resolution 1514 (XV) is formally a recommendation, it has a declaratory character with regard to the right to self-determination as a customary norm, in view of its content and the conditions of its adoption*”). See further Chapter IV, Section 4.4.3.E and 4.4.4.A.

¹⁰⁴⁹ See Chapter IV, Section 4.4.4.B.

¹⁰⁵⁰ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 13 (“*An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs*”) ([link](#)).

F. The composite nature of the breach resulting from the Relevant Conduct

530. The Relevant Conduct constitutes a breach of the obligations identified in response to Question (a) irrespective of whether the specific acts and omissions underpinning it are each, in and of themselves, a violation of international law. Indeed, the Relevant Conduct is a “*composite act*” in the meaning of the rule formulated in Article 15(1) of ARSIWA, namely “*a series of actions or omissions defined in aggregate as wrongful*”.¹⁰⁵¹
531. Emphasizing the composite nature of the Relevant Conduct is important for five main reasons. *First*, the ILC commentary to Article 15 of ARSIWA notes that composite acts concern an “*aggregate of conduct and not individual acts*” and provides as examples “*genocide, apartheid or crimes against humanity, systematic acts of racial discrimination*”.¹⁰⁵² The analogies with genocide, apartheid and systematic racial discrimination are particularly poignant. Just as a genocide where millions of people are murdered cannot be lawful if murdering a single individual is unlawful,¹⁰⁵³ it is unthinkable that the worse form of pollution, which threatens the habitability of the Earth, may be lawful in principle if a specific incident of pollution is unlawful under international law. Similarly, just as apartheid, with its numerous acts and omissions, underpinned by legal and societal structures, degraded the moral and social fabric of society, so too does the Relevant Conduct—

¹⁰⁵¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 15 ([link](#)). The concept of a breach resulting from a composite act has received wide recognition in international judicial and arbitral practice. See e.g. *Gemplus S.A., SLP S.A., Gemplus Industrial S.A. de C.V. v. The United Mexican States and Talsud S.A. v. The United Mexican States*, ICSID Cases No. ARB(AF)/04/3 and ARB(AF)/04/4, Award (16 June 2010), para. 12-44 ([link](#)); *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, UNCITRAL Arbitration, Award on Jurisdiction and Liability (28 April 2011), paras. 495-500 ([link](#)); *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award (31 October 2011), para. 516 ([link](#)); *Pac Rim Cayman LLC v. The Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent’s Jurisdictional Objections (1 June 2012), paras. 2.70-2.71, available at the following link: <https://www.italaw.com/cases/783> (visited on 15 March 2024); *Crystalex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award (4 April 2016), para. 669, available at the following link: <https://www.italaw.com/cases/1530> (visited on 15 March 2024); *Rusoro Mining Limited v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (22 August 2016), para. 227 ([link](#)); *Blusun A.A., Jean-Pierre Lecorcier and Michael Stein v. Italian Republic*, ICSID, Case No. ARB/14/3, Award (27 December 2016), para. 361 ([link](#)); *Burlington Resources Inc. v. Republic of Ecuador*, ICSID, Case No. ARB/08/5, Decision on Reconsideration and Award (7 February 2017), para. 452 ([link](#)); *Hydro S.r.l. et al. v. Republic of Albania*, ICSID Case No. ARB/15/28, Award (24 April 2019), paras. 557-558 ([link](#)); *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Award (27 March 2020), para. 411, available at the following link: <https://www.italaw.com/cases/4695> (visited on 15 March 2024); *Carlos Ríos and Francisco Ríos v. Republic of Chile*, ICSID Case No. ARB/17/16, Award (11 January 2021), para. 189 ([link](#)); *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award (3 June 2021), para. 230 ([link](#)); *El-Masri v. The Former Yugoslav Republic of Macedonia*, European Court of Human Rights, Application No. 39630/09, Judgment (13 December 2012), para. 97 ([link](#)); *Husayn (Abu Zubaydah) v. Poland*, European Court of Human Rights Application No. 7511/13, Judgment (24 July 2014), para. 201 ([link](#)); *Nasr et Ghali v. Italy*, European Court of Human Rights Application 44883/09, Judgment, 23 February 2016, para. 185 ([link](#)); *Duzgit Integrity Arbitration (Republic of Malta v. Democratic Republic of Sao Tome and Principe)*, PCA Case No. 2014-07, Award on Reparation (18 December 2019), para. 86 ([link](#)).

¹⁰⁵² Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 15, commentary, para. 2 ([link](#)).

¹⁰⁵³ Raphael Lemkin, ‘Genocide’ (1946) 15/2 *American Scholar* 227-230 ([link](#)).

involving myriad incidents of environmental harms supported by industrial and policy frameworks—threaten the very habitability of the territory of small island developing States and a range of other States particularly vulnerable to the adverse effects of climate change. This parallel also extends to the racial dimensions of climate change, with the aggregate impact of environmental degradation and pollution disproportionately affecting racialized and marginalized communities.¹⁰⁵⁴ As the UN Secretary-General António Guterres has warned, the aggregate effect of such conduct risks rendering the Earth “*uninhabitable*”.¹⁰⁵⁵ Therefore, the beating heart of the question put by the UN General Assembly to the Court in these proceedings is whether the conduct which has caused this ultimate form of harm – the Relevant Conduct – is, in principle, illegal under international law and, if so, what are the ensuing legal consequences.

532. The *second reason* why reliance on the rule formulated in Article 15 of ARSIWA is important concerns the temporal dimension of the Relevant Conduct. The ILC commentary to Article 15 clarifies that, by definition, **the initial acts and omissions of the composite act are not constitutive of a breach of the relevant obligation. The breach results from all the acts and omissions taken together which at given point in time reached the threshold that makes them illegal under international law:**

“A consequence of the character of a composite act is that the time when the act is accomplished cannot be the time when the first action or omission of the series takes place. It is only subsequently that the first action or omission will appear as having, as it were, inaugurated the series. Only after a series of actions or omissions takes place will the composite act be revealed, not merely as a succession of isolated acts, but as a composite act, *i.e.* an act defined in aggregate as wrongful.”¹⁰⁵⁶

Thus, part of the series of acts and omissions forming the composite act may be lawful when they first occur,¹⁰⁵⁷ either because they are not yet inconsistent with an applicable obligation (e.g. their harm is not yet significant enough) or because the

¹⁰⁵⁴ Tendayi E Achiume, *Ecological crisis, climate justice and racial justice* (Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), 25 October 2022, UN Doc A/77/549 ([link](#)).

¹⁰⁵⁵ UN News, 'Climate Change Making Earth 'Uninhabitable' Guterres Warns' (23 March 2023) ([link](#)).

¹⁰⁵⁶ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 15, commentary, para. 7 ([link](#)).

¹⁰⁵⁷ This is in the very nature of the composite act, which is wrongful when all the acts and omissions are taken as a whole, rather than individually. Yet, it is possible that some acts and omissions may, as such, be unlawful. As noted by ILC commentary to art. 15 “*While composite acts are made up of a series of actions or omissions defined in aggregate as wrongful, this does not exclude the possibility that every single act in the series could be wrongful in accordance with another obligation. For example, the wrongful act of genocide is generally made up of a series of acts which are themselves internationally wrongful. Nor does it affect the temporal element in the commission of the acts: a series of acts or omissions may occur at the same time or sequentially, at different times*”, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 15, commentary, para. 9 ([link](#)).

governing obligation has not yet arisen.¹⁰⁵⁸ But, taken together, they constitute a breach of the obligation governing the overall conduct. Thus, the illegality in principle of the Relevant Conduct under international law does not require a showing that each and every act or omission of the past were illegal.¹⁰⁵⁹ It is the cumulative effect of the acts and omissions over time, when they reach a threshold of significance (“*significant harm to the climate system and other parts of the environment*”), that constitutes the composite conduct in breach of the obligations clarified in response to Question (a).

533. *Third*, according to Article 15(2) of ARSIWA, the breach extends from the first acts and omissions of the series, even if as such lawful, over the entire period during which the series continues:

“the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation”

The commentary to Article 15 notes that “*the time at which a composite act ‘occurs’ [is] the time at which the last action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act without it necessarily having to be the last in the series*”.¹⁰⁶⁰ Thus, the breach crystallizes at that point, but – pursuant to Article 15(2) of ARSIWA – the starting point of the breach is “*the first of the actions or omissions of the series*” and it may continue to be a breach “*for as long as these actions or omissions are repeated and remain not in conformity with the international obligation*”.¹⁰⁶¹ This is important because the non-conformity of the Relevant Conduct with a specific obligation identified in response to Question (a) may have occurred at any point throughout the duration of the entire series constituting the composite act. Given the long period of time during which the Relevant Conduct has unfolded, which starts no later than 1850, and

¹⁰⁵⁸ *Société Générale In respect of DR Energy Holdings Limited and Empresa Distribuidora de Electricidad del Este, S.A. v. The Dominican Republic*, UNCITRAL, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction (19 September 2008), para. 91 (“*While normally acts will take place at a given point in time independently of their continuing effects, and they might at that point be wrongful or not, it is conceivable also that there might be situations in which each act considered in isolation will not result in a breach of a treaty obligation, but if considered as a part of a series of acts leading in the same direction they could result in a breach at the end of the process of aggregation, when the treaty obligation will have come into force*”) ([link](#)).

¹⁰⁵⁹ *Carlos Ríos and Francisco Ríos v. Republic of Chile*, ICSID Case No. ARB/17/16, Award (11 January 2021), paras. 189-190 ([link](#)); *Infinito Gold Ltd. v. Republic of Costa Rica*, ICSID Case No. ARB/14/5, Award (3 June 2021), para. 230 (“*to amount to a composite breach, the various acts must not separately amount to the same breach as the composite act (although they could separately amount to different breaches). It also clarifies that the breach cannot ‘occur’ with the first of the acts in the series*”) ([link](#)).

¹⁰⁶⁰ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 15, commentary, para. 8 (emphasis added) ([link](#)).

¹⁰⁶¹ Arbitral tribunals have emphasised this duration. See e.g. *Carlos Ríos and Francisco Ríos v. Republic of Chile*, ICSID Case No. ARB/17/16, Award (11 January 2021), paras. 189-190 ([link](#)) (visited on 15 March 2024); *Duzgit Integrity Arbitration (Republic of Malta v. Democratic Republic of Sao Tome and Principe)*, PCA Case No. 2014-07, Award on Reparation (18 December 2019), paras. 85-86 ([link](#)).

continues at the levels of both individual States and the specific group of major GHG emitters (see Chapter III), **the non-conformity with the relevant obligations may have occurred at any point during that time. The Court does not need to say when exactly each governing obligation emerged but only that it emerged during that long period of time in which the Relevant Conduct was displayed.**

534. *Fourth*, the extension in time of the Relevant Conduct has implications for individual States displaying such conduct. **At the level of individual States, the moment at which the cumulative GHG emissions of a given State reached the threshold to consummate the breach is when such emissions caused significant harm to the climate system and other parts of the environment.** At that crystallization moment, the conduct becomes an aggregate that the start of the wrongful act is retrospectively set when the first act or omission in the series took place. There is no need, at this individual level, for a State to have caused climate change or its adverse effects. The breach is consummated by the significance of the aggregation of anthropogenic GHG emissions. Such significance can be established scientifically, as demonstrated in Chapter III by reference to the share of both cumulative emissions and global warming caused by certain countries. As explained in that chapter, it is the significance of the contribution to the problem which, much like for the incremental pollution of a river, triggers the illegality.
535. *Fifth*, with respect to **the group of States whose GHG emissions, taken together, have caused not just significant harm to the climate system and other parts of the environment but catastrophic harm in the form of climate change and its adverse effects, their acts and omissions, taken together, also amount to a composite act in breach of the relevant rules** of general international law, including the duty of due diligence, the obligations arising *inter alia* from the rights recognized in the Universal Declaration of Human Rights, the right to self-determination, the principle of prevention of significant environmental harm, the duty to protect and preserve the marine environment, the duty to co-operate and the obligations arising from the principle of good faith. The rules in Article 15 (Breach consisting of a composite act) and in Article 47 (Plurality of responsible States) of ARSIWA operate together to characterize the breach as one resulting from the acts and omissions of several States, much like incremental contribution to the pollution of a river. **Each State engages its international responsibility for the breach arising from its composite act** (resulting from causing significant harm to the climate system and other parts of the environment) **and, in addition, the group of States also engages the international responsibility of each State for a composite act of more profound consequence** (causing not only significant harm but catastrophic harm to the climate system and other parts of the environment, in the form of the unprecedented phenomenon of climate change and its adverse effects). These States are responsible individually and collectively for breaches of different degrees (significant and catastrophic harm). **Under these circumstances, the Relevant Conduct itself, considered in general and whichever State displayed it, is also in principle illegal.**

G. The Relevant Conduct amounts to a serious breach of obligations owed *erga omnes* or to the international community as a whole

536. As demonstrated in Chapter IV, the Relevant Conduct is governed by obligations under general international law, which are owed *erga omnes* and, in some cases, are peremptory norms of international law, including the obligation to refrain from largescale violations of human rights,¹⁰⁶² such as the prohibition of racial discrimination,¹⁰⁶³ and the obligations arising from the right to self-determination.¹⁰⁶⁴
537. Although State responsibility can arise from a breach of any obligation, the peremptory character of the norm and the gravity of the breach “*can affect the consequences which arise for the responsible State and, in certain cases, for other States also*”.¹⁰⁶⁵ Specifically, the Relevant Conduct amounts to a “*serious breach*” in the meaning of Article 40(2) of ARSIWA as it involves, at the very least, a “*gross [...] failure by the responsible State to fulfil the obligation*”, with the additional consequences – discussed later in this Chapter – recognized in both the decisions of international judicial bodies¹⁰⁶⁶ and by the ILC, most notably in Article 41 of

¹⁰⁶² *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and Scope of articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*, Inter-American Court of Human Rights, Series A No. 26, Advisory Opinion No. OC-26/20 (9 November 2020), paras. 103-104 ([link](#)).

¹⁰⁶³ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 40, commentary, para. 4 ([link](#)); Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries, Yearbook of the International Law Commission, 2022, vol. II, Part Two, conclusion 23 and Annex, letter (e) ([link](#)).

¹⁰⁶⁴ *East Timor (Portugal v. Australia), Judgment*, I.C.J. Reports 1995, p. 90, para. 29; Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 40, commentary, para. 5 ([link](#)); Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries, Yearbook of the International Law Commission, 2022, vol. II, Part Two, conclusion 23 and Annex, letter (h) ([link](#)).

¹⁰⁶⁵ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 12, commentary, para. 6 ([link](#)).

¹⁰⁶⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, paras. 149-160; *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment*, I.C.J. Reports 2012, p. 99, para. 93; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, paras. 180-182; *Prosecutor (on the application of Victims) v. Bosco Ntaganda*, International Criminal Court, Trial Chamber VI, Second decision on the defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9, Case No. ICC-01/04–02/06–1707, ICL 1730, 4 January 2017, para. 53 and footnote 131; *Güzelyurtlu And Others v. Cyprus and Turkey*, European Court of Human Rights (Grand Chamber) Application No. 36925/07, Judgment, 29 January 2019, paras. 157-158 ([link](#)); *Dispute Concerning Costal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)*, PCA Case No. 2017-06, Award (Preliminary Objections) (21 February 2020), para. 170 ([link](#)); *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and Scope of articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*, Inter-American Court of Human Rights, Series A No. 26, Advisory Opinion No. OC-26/20 (9 November 2020), paras. 103-104 ([link](#)).

ARSIWA and conclusion 19 of the Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*).

340. As explained in the commentary to Article 40 of ARSIWA:

“To be regarded as systematic, a violation would have to be carried out in an organized and deliberate way. In contrast, the term “gross” refers to the intensity of the violation or its effects; it denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the rule. The terms are not of course mutually exclusive”¹⁰⁶⁷

In the dossier communicated to the Court by the UN Secretariat accompanying the request made in UN General Assembly Resolution 77/276, Part III concerns scientific reports, including reports from the IPCC (Part III (A)) and other reports (Part III (B)). The latter contains, two reports from the United Nations Environment Programme (UNEP). A more recent report from UNEP, the Production Gap Report (2023), concludes inter alia that:

“While 17 of the 20 countries profiled have pledged to achieve net-zero emissions, and many have launched initiatives to reduce emissions from fossil fuel production activities, **most continue to promote, subsidize, support, and plan on the expansion of fossil fuel production. None have committed to reduce coal, oil, and gas production in line with limiting warming to 1.5°C.**” (emphasis added)¹⁰⁶⁸

341. The very title of this report, *Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises*, captures well the core message and the main concern of the UNEP. In a context of climate emergency, in which the IPCC – and each and every State who has approved line by line the IPCC’s summaries for policymakers – warns that “[d]elayed mitigation and adaptation action would lock-in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages”,¹⁰⁶⁹ the countries identified in the Production Gap Report¹⁰⁷⁰ are deliberately delaying

¹⁰⁶⁷ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 40, commentary, para. 8 ([link](#)).

¹⁰⁶⁸ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 5 ([link](#)).

¹⁰⁶⁹ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement C.2 (“Deep, rapid and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce projected losses and damages for humans and ecosystems ... and deliver many co-benefits, especially for air quality and health ... Delayed mitigation and adaptation action would lock-in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages ... Near-term actions involve high up-front investments and potentially disruptive changes that can be lessened by a range of enabling policies”) ([link](#)).

¹⁰⁷⁰ The 20 countries studied are (in alphabetical order): Australia, Brazil, Canada, China, Colombia, Germany, India, Indonesia, Kazakhstan, Kuwait, Mexico, Nigeria, Qatar, Russian Federation, Saudi Arabia, South Africa, United Arab Emirates, United Kingdom and the United States.

mitigation actions, locking in new fossil fuel production, knowingly that their actions and omissions increase losses and damages and preclude the very feasibility of mitigation action.

342. The UNEP Production Gap Report finds, indeed, that such are States are still planning **increases in fossil fuel production**:

“Many major fossil-fuel-producing governments are still planning near-term increases in coal production and long-term increases in oil and gas production. In total, government plans and projections would lead to an increase in global production until 2030 for coal, and until at least 2050 for oil and gas, creating increasingly large production gaps over time.”¹⁰⁷¹

These planned increases are deliberate, despite the clear scientific consensus – acknowledged politically – on the need to reduce GHG emissions drastically¹⁰⁷² and the very pledges of the relevant governments. The UNEP Production Gap Report (2023) makes this point forcefully:

“To be consistent with limiting warming to 1.5°C, global coal, oil, and gas supply and demand must instead decline rapidly and substantially between now and mid-century. However, **the increases estimated under the government plans and projections pathways would lead to global production levels in 2030 that are 460%, 29%, and 82% higher for coal, oil, and gas, respectively, than the median 1.5°C-consistent pathways ... The disconnect between governments’ fossil fuel production plans and their climate pledges is also apparent across all three fuels.**”¹⁰⁷³

343. This conduct is both a gross and systematic violation of the obligations identified in response to Question (a), including those owed *erga omnes* or with peremptory character, such as obligation to refrain from largescale violations of human rights and the obligation to respect the right to self-determination.

5.3. The determination of the legal consequences of the assessment

5.3.1. Overview

¹⁰⁷¹ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), p. 4 ([link](#)).

¹⁰⁷² Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.6 (“All global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot, and those that limit warming to 2°C (>67%), involve rapid and deep and, in most cases, immediate greenhouse gas emissions reductions in all sectors this decade”) ([link](#)).

¹⁰⁷³ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), pp. 4-5 ([link](#)).

538. The clarification of the legal consequences arising from the Relevant Conduct is requested “*with respect to*” two categories of victims of such conduct. The relevant wording of the operative part of Resolution 77/276 reads as follows:

“(b) What are the legal consequences [...] 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?”

539. The question specifically asks the Court’s opinion on the legal consequences of the Relevant Conduct. This focus is expressly stated in the question as required in the practice of the Court summarized in its advisory opinion on *Kosovo*:

“The Court notes that, in past requests for advisory opinions, the General Assembly and the Security Council, when they have wanted the Court’s opinion on the legal consequences of an action, have framed the question in such a way that this aspect is expressly stated (see, for example, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 16 and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, I.C.J. Reports 2004 (I), p. 136)”¹⁰⁷⁴

540. In the following paragraphs, the Republic of Vanuatu states its understanding of the scope of each category of victims as well as of the legal consequences of the Relevant Conduct “*with respect to*” to each of them under both general international law and the applicable treaties.

5.3.2. *Legal consequences with respect to “States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change”*

A. States victim of climate injustice

541. The first category of victims are “*States, including, in particular, small island developing States*”, like the Republic of Vanuatu and other similarly situated States, which “*due to their geographical circumstances and level of development, are*

¹⁰⁷⁴ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Advisory Opinion*, I.C.J. Reports 2010, p. 403, para. 51.

injured or specially affected by or are particularly vulnerable to the adverse effects of climate change”.

542. Small island developing States are specifically mentioned, but the first category is broader, including also other States which, by virtue of their geographical circumstances and level of development, have suffered or are particularly exposed to the adverse impacts of climate change. The identification of the first category of States thus reflects the scientific consensus expressed *inter alia* in the IPCC reports regarding the uneven impacts of climate change. In its latest assessment report, in the Summary for Policymakers of volume 2, concerning impacts, the IPCC concludes, with high confidence, that:

“Increasing weather and climate extreme events have exposed millions of people to acute food insecurity and reduced water security, with the largest impacts observed in many locations and/or communities in Africa, Asia, Central and South America, Small Islands and the Arctic”¹⁰⁷⁵

543. Small Island Developing States such as the Republic of Vanuatu are massively impacted. The IPCC has confirmed that the risks associated with sea level rise are amplified for small islands, low-lying coastal areas and deltas,¹⁰⁷⁶ with resulting damage and adaptation costs of several percentage points of gross domestic product.¹⁰⁷⁷ It has gone as far as to characterize the risk posed by sea level rise for such States as nothing short of an “*existential threat*”.¹⁰⁷⁸ The devastating effects of climate change on the Republic of Vanuatu and its people are addressed in detail in Chapter II of this Written Statement.
544. In the identification of the first category of victims, it is particularly important to note that the terminology retained by the UN General Assembly, acting by consensus, for Question (b)(i) of the operative part of Resolution 77/276 is specifically based on the international law of State responsibility for wrongful acts.

¹⁰⁷⁵ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1.3 ([link](#)). See also Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), Summary for Policymakers, statement A.2.2, which also includes Least Developed Countries (LDCs) in this grouping ([link](#)).

¹⁰⁷⁶ Intergovernmental Panel on Climate Change, *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 (2018), statement B.2.3 ([link](#)).

¹⁰⁷⁷ Intergovernmental Panel on Climate Change, *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 (2014), p. 17 ([link](#)).

¹⁰⁷⁸ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.4.5 ([link](#)).

The UN Secretariat recognized such reference and included in the dossier communicated to the Court the ARSIWA, with commentaries and supplement.

545. Indeed, the terms “*injured*” States (“*lésés*” in the French version of Resolution 77/276) and “*especially affected*” States (“*spécialement atteints*” in the French version)¹⁰⁷⁹ are borrowed from Article 42 of ARSIWA, which reads:

“A State is entitled as an **injured State** to invoke the responsibility of another State if the obligation breached is owed to:

(a) that State individually; or

(b) a group of States including that State, or the international community as a whole, and the breach of the obligation:

(i) **especially affects** that State; or

(ii) is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation”. (emphasis added)

546. The ILC commentary to Article 42 of ARSIWA observes that there are three main situations in which a State is “*injured*” by the conduct of another State or a group thereof. These three situations imply the broad concept of “*injury*” defined in Article 31(2) of ARSIWA as “*includ[ing] any damage, whether material or moral, caused by the internationally wrongful act of a State*”.¹⁰⁸⁰ Given the wide range of obligations that govern the Relevant Conduct, all three situations are concerned.

547. *First*, a State is an injured State when an obligation – whether arising from a treaty, a unilateral act, a customary rule or a judicial decision, amongst others – is owed to a particular State individually.¹⁰⁸¹ In the present context, this would be the case, for example, of commitments to provide financial means made with respect to specific States, as expressly recognized by Article 11(5) of the UNFCCC,¹⁰⁸² or of commitments in relation to facilitated human mobility, as illustrated by Article 3(1) of the Australia-Tuvalu Falepili Union Treaty,¹⁰⁸³ or still of the obligation – under

¹⁰⁷⁹ The French version of the ARSIWA uses these exact terms in art. 42: “Etat lésé” and “Atteint spécialement”. See *Projet d’articles sur la responsabilité de l’Etat pour fait internationalement illicite*, 2001, annexe à la résolution 56/83 de l’Assemblée générale du 12 décembre 2001, et rectifié par document A/56/49 (Vol. I)/Corr.3.

¹⁰⁸⁰ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 31(2) ([link](#)).

¹⁰⁸¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 42, para. 7 ([link](#)).

¹⁰⁸² Article 11(5) of the UNFCCC reads: “*The developed country Parties may also provide and developing country Parties avail themselves of, financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels*”, United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107 ([link](#)).

¹⁰⁸³ Article 3(1) of this treaty provides: “*Australia shall arrange for a special human mobility pathway for citizens of Tuvalu to access Australia which shall enable citizens of Tuvalu to: a. live, study and work in Australia; b. access Australian education, health, and key income and family support on arrival*”, Falepili Union treaty (Australia-Tuvalu) (signed 10 November 2023) ([link](#)). The preamble of this treaty “*recogni[zes] the special and unique circumstances faced by Tuvalu and that climate change is Tuvalu’s greatest national security*

the principle of prevention of significant harm to the environment, seen from its transboundary perspective – not to cause harm to the environment of another State.

548. *Second*, a State is also an injured State when the obligation is owed to “*a group of States including that State, or the international community as a whole*” and “*the breach of the obligations ... specially affects*” that State. The use by the UN General Assembly of the terms “*specially affected*” in Question (b) of Resolution 77/276 emphasizes that, of the different situations whereby States are injured by the Relevant Conduct, this is the most frequent one. This is because the nature of the main obligations governing the Relevant Conduct, which arise from a range of multilateral treaties and from general international law. Such is the case of the obligations analyzed in Chapter IV in response to Question (a), which are, in principle, breached by the Relevant Conduct, by specific States having caused significant harm to the climate system, a specific group of States having caused climate change, and in general. The States to which these obligations are owed do not need to be grouped into an entity with international legal personality or even be part of a specific organization.¹⁰⁸⁴ Indeed, the obligations can be owed to the international community as a whole, as is the case of certain obligations arising from general international law.
549. The breach of the obligations must “specially affect” a given State or group of States. The ILC commentary to Article 42 explains that the terminology is borrowed from the law of treaties and gives the example of pollution of the marine environment in breach of Article 194 of the UNCLOS, which affects every State but specially affects certain coastal States:

“Even in cases where the legal effects of an internationally wrongful act extend by implication to the whole group of States bound by the obligation or to the international community as a whole, the wrongful act may have particular adverse effects on one State or on a small number of States. For example a case of pollution of the high seas in breach of article 194 of the United Nations Convention on the Law of the Sea may particularly impact on one or several States whose beaches may be polluted by toxic residues or whose coastal fisheries may be closed. In that case, independently of any general interest of the States parties to the Convention in the preservation of the marine environment, those coastal States parties should be considered as injured by the breach”.¹⁰⁸⁵

The ILC commentary further notes that “the nature or extent of the special impact that a State must have sustained in order to be considered ‘injured’” is not defined,

concern” and the parties also recognise, in art. 2(2)(b) “*the statehood and sovereignty of Tuvalu will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of climate change-related sea-level rise*”.

¹⁰⁸⁴ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 42, commentary, para. 11 ([link](#)).

¹⁰⁸⁵ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 42, commentary, para. 12 ([link](#)).

as it is to be assessed “on a case-by-case basis, having regard to the object and purpose of the primary obligation breached and the facts of each case”.¹⁰⁸⁶ As a general matter, however, “[f]or a State to be considered injured, it must be affected by the breach in a way which distinguishes it from the generality of other States to which the obligation is owed”.¹⁰⁸⁷

550. This is unquestionably the case of States, such as the Republic of Vanuatu and other small island developing States,¹⁰⁸⁸ who are generally recognised – including in the preamble of Resolution 77/276 itself¹⁰⁸⁹ – as specifically and disproportionately affected by the “adverse effects of climate change”.¹⁰⁹⁰ Such effects are broadly defined in Article 1(1) of the UNFCCC in a way that reflects a pre-existing scientific understanding:

“changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or the operation of socio-economic systems or on human health and welfare”.

The underlying scientific use of the term in the IPCC work¹⁰⁹¹ and elsewhere gives it general relevance for the evaluation of the Relevant Conduct under all the obligations identified in response to Question (a).

551. *Third*, a State is an injured State where it breaches an obligation “*of such a character as radically to change the position of all the other States to which the*

¹⁰⁸⁶ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 42, commentary, para. 12 ([link](#)).

¹⁰⁸⁷ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, Article 42, commentary, para. 12 ([link](#)).

¹⁰⁸⁸ The preamble of the aforementioned Falepili Union treaty (Australia-Tuvalu) (signed 10 November 2023) ([link](#)) expressly “*recogni[s]es the special and unique circumstances faced by Tuvalu and that climate change is Tuvalu’s greatest national security concern*”. *The impact of climate change on such small island developing States threatens their very survival, as acknowledged in art. 2(2)(b) of this treaty “the statehood and sovereignty of Tuvalu will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of climate change-related sea-level rise”*.

¹⁰⁸⁹ Preambular para. 8 of UN General Assembly Resolution 77/276 makes this point very clear: “*Noting with profound alarm that emissions of greenhouse gases continue to rise despite the fact that all countries, in particular developing countries, are vulnerable to the adverse effects of climate change and that 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, are already experiencing an increase in such effects, including persistent drought and extreme weather events, land loss and degradation, sea level rise, coastal erosion, ocean acidification and the retreat of mountain glaciers, leading to displacement of affected persons and further threatening food security, water availability and livelihoods, as well as efforts to eradicate poverty in all its forms and dimensions and achieve sustainable development*”.

¹⁰⁹⁰ Intergovernmental Panel on Climate Change, *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 (2014), p. 17 ([link](#)).

¹⁰⁹¹ The IPCC Glossary defines the term “*impact*” as follows: “*The consequences of realized risks on natural and human systems, where risks result from the interactions of climate-related hazards (including extreme weather/climate events), exposure, and vulnerability. Impacts generally refer to effects on lives, livelihoods, health and well-being, ecosystems and species, economic, social and cultural assets, services (including ecosystem services), and infrastructure. Impacts may be referred to as consequences or outcomes and can be adverse or beneficial*”, IPCC Glossary ([link](#)).

obligation is owed with respect to the further performance of the obligation". Obligations of this type arise from treaties "*where each party's performance is effectively conditioned upon and requires the performance of each of the others*".¹⁰⁹² A treaty context such as that of the UNFCCC and the Paris Agreement falls both under the previous category of obligations and this category. This is because if a given State and, even more so, a group of States display the Relevant Conduct (cause(s) significant harm to the climate system or other parts of the environment), performance of the obligations under the treaty by other parties loses its *raison d'être*. The very nature of the collective action underpinning climate policy, i.e. the risk that a "free riding" State may benefit from the mitigation actions of other States without itself contributing to the effort, confirms that the UNFCCC and Paris Agreement also fall under Article 42(b)(ii) of ARSIWA. Here, the breach and the injury are glaring because, as noted earlier by reference to the UNEP Production Gap Report 2023, "[t]he disconnect between governments' fossil fuel production plans [the plans by most large producers of fossil fuels to substantially increased their production levels of coal, oil and gas] and their climate pledges is also apparent across all three fuels."¹⁰⁹³ Such increases would defeat the entire system and the fundamental compromise struck by these treaties.

552. In addition to "*injured*" States, including those "*specially affected*" ones, the text of Resolution 77/276 includes in the first category of victims of the Relevant Conduct also States which are "*particularly vulnerable*" to the adverse effects of climate change. This category encompasses a wider group of States, whether or not they also fall under the category of "*injured*" or "*specially affected*". At the same time, it is narrower than the even broader category of "*States other than injured States*" in the meaning of Article 48 of ARSIWA.¹⁰⁹⁴ It is now well established, including in the case law of the Court, that State does not need to be "*injured*" in the meaning of Article 42 to have a legal interest to invoke the responsibility of another State for breach of obligations that protect collective interests.¹⁰⁹⁵ The terms "*particularly vulnerable*" are used in the operative part of Resolution 77/276 to refer to States which, whether they qualify as injured States (including specially affected States)

¹⁰⁹² Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 42, commentary, para. 13 ([link](#)).

¹⁰⁹³ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), p. 5 ([link](#)).

¹⁰⁹⁴ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 48, commentary, para. 2 ([link](#)).

¹⁰⁹⁵ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422, para. 68; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016, p. 255, para. 42; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 3, paras. 41-42; *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. 180 ([link](#)); *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and Scope of articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(1), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*, Inter-American Court of Human Rights, Series A No. 26, Advisory Opinion No. OC-26/20 (9 November 2020), paras. 103-104 ([link](#)).

or not, are more exposed to the adverse effects of climate change “*due to their geographical circumstances and level of development*”.

553. “*Vulnerability*” as a term is used in a variety of contexts, including – but not limited to¹⁰⁹⁶ – the UNFCCC¹⁰⁹⁷ and the Paris Agreement.¹⁰⁹⁸ The IPCC Glossary defines it as:

“The propensity or predisposition to be adversely affected. Vulnerability encompasses a variety of concepts and elements, including **sensitivity or susceptibility to harm and lack of capacity to cope and adapt**”¹⁰⁹⁹ (emphasis added)

The two criteria used in the text of the operative paragraph (b)(i) of Resolution 77/276 are directly based on this scientific definition. The terms “*geographical circumstances*” give expression to the “*sensitivity or susceptibility to harm*” and the reference to the “*level of development*” reflects the “*lack of capacity to cope and adapt*”. Particularly vulnerable States are thus a sub-set of the wider category of “*States other than injured States*”. It includes States which have already been injured or specially affected or that, even if they do not qualify as such, are nevertheless in a particular position with respect to the adverse effects of climate change. That may be so, for example, because they face higher risks or are likely to shoulder a disproportional burden arising from the adverse effects of climate change.

554. The essence of the references to “*injured*”, “*specially affected*” and/or “*particularly vulnerable*” States in the operative part of Resolution 77/276 is the issue of climate justice. To recall the core issue with a scientifically consensual and politically endorsed statement excerpted from the summary for policymakers of a 2022 IPCC report:

“Historical contributions to cumulative net anthropogenic CO₂ emissions between 1850 and 2019 vary substantially across regions in terms of total magnitude [...] **LDCs** [nb: least developed countries] **contributed less than 0.4% of historical cumulative CO₂-FFI** [nb: fossil fuels and industrial] **emissions between 1850 and 2019, while SIDS** [nb: small island developing States] **contributed 0.5%.**”¹¹⁰⁰ (emphasis added)

¹⁰⁹⁶ For example, the Climate Vulnerable Forum brings together 55 States from different continents.

¹⁰⁹⁷ United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107, preamble and arts. 3(2) and 4(4) ([link](#)).

¹⁰⁹⁸ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, preamble and arts. 6(6), 7(2), 7(6), 9(4), 11(1) ([link](#)).

¹⁰⁹⁹ IPCC Glossary ([link](#)).

¹¹⁰⁰ Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, statements B.3.2, B.3.2 ([link](#)).

Even if a specific State is not “*injured*” or otherwise “*especially affected*”, it suffices that it is “*particularly vulnerable*” to the adverse effects of climate change to be part of the first category of victims of climate injustice.

555. In Question (b)(i), the UN General Assembly requests the Court to clarify the legal consequences of the Relevant Conduct – under the obligations identified in response to Question (a) – with respect to such States.

B. Legal consequences of the internationally wrongful acts resulting from the Relevant Conduct

556. The specific legal consequences for States which have individually and/or collectively displayed the Relevant Conduct with respect to States in the first category of victims of climate injustice are for the Court to determine.

557. The overarching framework governing such consequences is given by the relevant rules of general international law codified in the ARSIWA, including Articles 30 (Cessation and non-repetition),¹¹⁰¹ 31 (Reparation),¹¹⁰² 33 (Scope of the international obligations set out in this part),¹¹⁰³ 34 (Forms of reparation),¹¹⁰⁴ 35 (Restitution),¹¹⁰⁵ 36 (Compensation),¹¹⁰⁶ 37 (Satisfaction)¹¹⁰⁷ and 41 (Particular consequences of a serious breach of certain obligations).¹¹⁰⁸ This general regime is residual, as recalled by Article 55 of ARSIWA. Therefore, the provisions of certain treaties may not only help to interpret the legal consequences arising from general

¹¹⁰¹ See *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99, para. 137.

¹¹⁰² See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 460.

¹¹⁰³ See *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. The United Mexican States*, ICSID Case No. ARB (AF)/04/5, Award, 21 November 2007, para. 118 ([link](#)).

¹¹⁰⁴ See *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 273; *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, paras. 196-197 ([link](#)).

¹¹⁰⁵ See *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99, para. 137.

¹¹⁰⁶ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 460.

¹¹⁰⁷ See *Rainbow Warrior (New Zealand/ France)*, R.I.A.A., vol. XX, p. 217 (1990) at pp. 272-273, para. 122 ([link](#)).

¹¹⁰⁸ See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, paras. 149-160; *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99, para. 93; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95, paras. 180-182; *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)*, PCA Case No. 2017-06, Award (Preliminary Objections) (21 February 2020), para. 170 ([link](#)); *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and Scope of articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(1), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*, Inter-American Court of Human Rights, Series A No. 26, Advisory Opinion No. OC-26/20 (9 November 2020), paras. 103-104 ([link](#)).

international law but also define certain specific consequences resulting from a given treaty.

558. In analyzing this overarching framework, the following paragraphs emphasize six main aspects by reference to the case law of the Court, namely: (1) the general international law on State responsibility codified in the ARSIWA applies to the determination of legal consequences for breaches involving harm to the environment; (2) in this context, some specific issues may arise, including the existence of several concurrent causes and the nature of the injury, which have to be addressed in the circumstances of each case and depend in part on the primary rule violated; (3) the legal consequences of the Relevant Conduct require both cessation (for those States – and the group thereof – which are still displaying the Relevant Conduct) and reparation (for all States which have displayed the Relevant Conduct in breach of their obligations, whether they have already ceased their unlawful behaviour or not) (4) the obligation of cessation of the Relevant Conduct requires deep cuts in GHG emissions in accordance with the scientific consensus regarding what needs to be done and by when; (5) reparation entails, first and foremost, restitution when this is possible (including support for adaptive capacity, non-monetary redress for the human mobility, including displacement and migration, caused by the adverse effects of climate change, recognition of sovereignty, statehood, territory and maritime boundaries despite sea-level rise); (6) reparation also entails compensation when restitution is not possible (including for both economic and non-economic loss and damage, and for damage caused to the environment in and of itself); (7) reparation entails satisfaction where restitution and compensation fail to result in full reparation; and (8) particular consequences attach to serious breaches of certain obligations owed *erga omnes* or to the international community as a whole, such as the obligation to refrain from largescale violations of human rights and the obligations arising from the right to self-determination.

(1) Applicability of the general international law of State responsibility

559. Regarding the first aspect, in its judgment on compensation in the *Costa Rica v. Nicaragua* case, the Court confirmed that the general principle of international law according to which “*the breach of an engagement involves an obligation to make reparation in an adequate form*”¹¹⁰⁹ also governs the determination of legal consequences of breach in cases involving environmental harm,¹¹¹⁰ as is the case of the Relevant Conduct.

¹¹⁰⁹ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, para. 29, quoting the judgment of the Permanent Court of International Justice in *Factory at Chorzow*, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21.

¹¹¹⁰ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, paras. 29-34; *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004, p. 12, para. 119; *Ahmadou Sadio Diallo (Republic of Guinea*

(2) *Specificities of environmental harm*

560. On the second aspect, the Court has recognized that certain issues may arise in cases of environmental harm, given that the “*damage may be due to several concurrent causes, or the state of the science regarding the causal link between the wrongful act and the damage may be uncertain*”.¹¹¹¹ Yet, the Court reasoned that “[t]hese are difficulties that must be addressed as and when they arise in light of the facts of the case at hand and the evidence presented to the Court” and that “[u]ltimately, it is for the Court to decide whether there is a sufficient causal nexus between the wrongful act and the injury suffered”.¹¹¹²
561. In the context giving rise to the present advisory proceedings, there is a scientific consensus, politically endorsed by all States of the IPCC through the process of adoption of Summaries for policymakers,¹¹¹³ and subsequently in preambular paragraph 9 of Resolution 77/276, that:

“anthropogenic emissions of greenhouses gases **are unequivocally the dominant cause** of the global warming observed since the mid-20th century,¹¹¹⁴ that **human-induced climate change**, including more frequent and intense extreme events, **has caused** widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability, and that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected¹¹¹⁵” (emphasis added)

In the Summary for Policymakers of the IPCC’s 2023 Synthesis Report of the Sixth Assessment Report, the same conclusions are reached in the following terms:

“**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,

v. Democratic Republic of the Congo), Merits, *Judgment*, I.C.J. Reports 2010, p. 639, para. 161; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *Judgment*, I.C.J. Reports 1997, p. 7, para. 150; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, I.C.J. Reports 2010, p. 14, para. 273.

¹¹¹¹ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Compensation, Judgment*, I.C.J. Reports 2018, p. 15, para. 34.

¹¹¹² *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Compensation, Judgment*, I.C.J. Reports 2018, p. 15, para. 34.

¹¹¹³ On the scientific consensus on the causes of climate change and its impact, and the process followed by the IPCC to adopt and approve summaries for policy makers, see Chapter II of this Written Statement.

¹¹¹⁴ The part of the text of preambular para. 9 of Resolution 77/276 is based on Intergovernmental Panel on Climate Change, *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 (2014), statement 1.2 ([link](#)); Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1 ([link](#)).

¹¹¹⁵ The part of the text of preambular para. 9 of Resolution 77/276 is based on Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.1 ([link](#)).

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” (emphasis added)¹¹¹⁶

“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)**” (emphasis added)¹¹¹⁷

562. Thus, there is no uncertainty regarding either the cause of climate change, i.e. the Relevant Conduct, and the adverse effects of climate change. In the context of this advisory proceedings, it is enough that the Relevant Conduct displayed by specific States has caused significant harm “*to the climate system and other parts of the environment*”, irrespective of the ascertainment of a causal link between the specific conduct of a given State and specific impacts on Vanuatu or other States who are victims of climate injustice. It is also sufficient for the Court to base its answer on the consensus finding of the IPCC that the Relevant Conduct displayed by a specific group of States, taken together, has caused not only significant harm to the climate system and other parts of the environment but catastrophic harm in the form of climate change, with its “*widespread adverse impacts and related losses and damages to nature and people*”. That causal link is incontrovertible given the existing scientific consensus politically endorsed by all States of the IPCC. Whether the Court analyzes the legal consequences of the Relevant Conduct displayed by one or more specific States, or by a group of States taken as a whole, or even of whichever State performs the Relevant Conduct, there is no uncertainty arising from Question (b) in relation to the causal link.

(3) *Obligations of cessation and reparation*

563. With respect to the third aspect, the legal consequences of the Relevant Conduct under general international law require **both cessation** of the Relevant Conduct, when a State or group thereof is still displaying it, **and reparation**, by all States having displayed the Relevant Conduct. As recalled by the Court in its judgment in the *Jurisdictional Immunities* case:

“According to general international law on the responsibility of States for internationally wrongful acts, as expressed in this respect by Article 30 (a) of the International Law Commission’s Articles on the subject,

¹¹¹⁶ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.1 ([link](#)).

¹¹¹⁷ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2 ([link](#)).

the State responsible for an internationally wrongful act is under an **obligation to cease that act, if it is continuing. Furthermore, even if the act in question has ended, the State responsible is under an obligation to re-establish, by way of reparation, the situation which existed before the wrongful act was committed**, provided that re-establishment is not materially impossible and that it does not involve a burden for that State out of all proportion to the benefit deriving from restitution instead of compensation. This rule is reflected in Article 35 of the International Law Commission’s Articles.” (emphasis added)¹¹¹⁸

564. The Relevant Conduct is a composite act (see Section 5.2.3.F of this Chapter), which includes the acts and omissions leading to GHG emissions over time up until today. Together, such acts and omissions over time constitute a breach of the obligations identified in response to Question (a) (see Section 5.2.3.C of this Chapter). The incremental GHG emissions of a State today cannot be dissociated from the GHG emissions of that State in the past. As a result, once the emissions of a State have reached the threshold of causing significant harm to the climate system and other parts of the environment, its incremental emissions (higher, stable or lower) are an extension of that conduct, and its legality under international law must be considered together with past “cumulative” emissions. Therefore, all those States which have engaged in the Relevant Conduct are, as a general matter, continuing to do so at present. Their obligation is to cease this conduct and to make reparation for the consequences of the conduct. By contrast, States whose past emissions are insufficient to reach the threshold of significance can be deemed not to have engaged or be engaging in the Relevant Conduct.
565. It is conceivable that the GHG emissions of a State who has displayed the Relevant Conduct in the past may no longer be in breach of a given obligation. There are different possibilities, which all describe narrow and specific situations. The *first* concerns a situation in which the State is no longer bound by the treaty containing the breached obligation. In that case, there is no obligation of cessation arising from the breach of that specific treaty obligation, but there is still an obligation of reparation. Yet, the obligation of cessation (and that of reparation) would still arise from the breach of other obligations, including rules of general international law. *Second*, it would also be possible that a specific obligation targets a specific form of pollution (e.g. pollution from vessels) which has been reduced so sharply by a given State that, taking together past and present pollution, State conduct no longer amounts to a composite act in breach of that specific obligation. In such case, again, there would be no obligation of cessation but there would still be an obligation of reparation arising from the prior breach of that obligation (in addition to the obligations of cessation and reparation arising from breach of rules of general

¹¹¹⁸ *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99, para. 137. The same conclusion was reached, by reference to articles 30 and 31 of the Articles on Responsibility of States for Internationally Wrongful Acts, by the Grand Chamber of the European Court of Human Rights in *Case of Georgia v. Russia (I)*, ECtHR (Grand Chamber) Application No. 13255/07, Judgment (31 January 2019), para. 54 ([link](#)).

international law). *Third*, it would be possible that a State having displayed the Relevant Conduct can avail itself of a ground (e.g. a circumstance precluding wrongfulness) which justified, legally, their conduct. Such grounds would operate with respect to breaches of specific rules rather than in general, and the State(s) invoking it would have the onus to establish it. *Fourth*, it is also conceivable that a State may have already reduced its GHG emissions so deeply that the level of diligence displayed makes its conduct no longer be in breach of one or more applicable obligations. This would effectively amount to having ceased to display the Relevant Conduct. In such case, however, cessation would not erase or in any way diminish the obligation of reparation.

566. The Court could clarify the obligations of cessation and reparation in relation to the Relevant Conduct as such, namely as they result for any State which has displayed or displays the Relevant Conduct in breach of its international obligations. The Republic of Vanuatu submits that the obligations of cessation and reparation resulting from such breach would be as explained in the following sections.

(4) Obligation of cessation of the Relevant Conduct

567. States must cease to display the Relevant Conduct, unless they can justify it or excuse it by reference to exceptional circumstances that would preclude its wrongfulness. Compliance with this obligation entails, in essence, stopping practices that directly contribute to greenhouse gas emissions and climate change--such as fossil fuel extraction, emission-intensive industrial processes and deforestation--and restoring compliance with the obligations set out in Part IV of this Written Statement.
568. The importance of cessation is evident from the significant harm to the climate system and other parts of the environment that has already manifested as a result of the Relevant Conduct, including human rights violations being suffered by peoples and individuals. It is further underscored by the projections of the IPCC reports¹¹¹⁹ and the pathways identified in the Production Gap¹¹²⁰ and Emissions Gap reports

¹¹¹⁹ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.6 (“All global modelled pathways that limit warming to 1.5°C (>50%) with no or limited overshoot, and those that limit warming to 2°C (>67%), involve rapid and deep and, in most cases, immediate greenhouse gas emissions reductions in all sectors this decade”), statement C.2 (“Deep, rapid and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce projected losses and damages for humans and ecosystems (very high confidence) ... and deliver many co-benefits, especially for air quality and health (high confidence). Delayed mitigation and adaptation action would lock-in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages (high confidence). Near-term actions involve high up-front investments and potentially disruptive changes that can be lessened by a range of enabling policies (high confidence)”) ([link](#)), see also statement C.3.2 (“Net zero CO₂ energy systems entail: a substantial reduction in overall fossil fuel use, minimal use of unabated fossil fuels”) ([link](#)).

¹¹²⁰ United Nations Environment Programme, *Production Gap Report 2023: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises* (November 2023), p. 27 (“to stay on track to achieve net-zero CO₂ emissions by mid-century and limit long-term warming to 1.5°C, global

of the UNEP.¹¹²¹ The IPCC concluded in its Special Report 2018 that to be on a pathway “with no or limited overshoot of 1.5°C” global net anthropogenic CO₂ emissions would need to decline by about 45% from 2010 levels by 2030 and reach net zero around 2050.¹¹²² The IPCC’s Summary for Policymakers of its 2022 Working Group 3 Report added that in a no or limited overshoot pathway GHG emissions are reduced by 43 (34–60) per cent by 2030 relative to the 2019 level.¹¹²³ Making such deep GHG reductions, the IPCC found in its 2018 Special Report, would require “rapid and far-reaching transitions in energy, land, urban and infrastructure (including transport and buildings), and industrial systems”. These systems transitions “are unprecedented in terms of scale’ and ‘imply deep emissions reductions in all sectors.”¹¹²⁴ In this regard, the IPCC has identified many options across sectors that offer substantial potential for GHG mitigation by 2030 in the energy, land use, buildings, transport and industry sectors.¹¹²⁵

569. Delayed action has made cessation of the Relevant Conduct both more urgent and more demanding. The UNEP Emissions Gap Report 2023 makes this point forcefully:

“The consequences of the continued delay in stringent emission reductions are evident when examining the past decade of Emissions Gap Reports. As highlighted in the Emissions Gap Report 2019 (UNEP 2019) the underlying data from the reports reveal that had serious climate action been initiated in 2010, the annual emission reductions necessary to achieve emission levels consistent with the below 2°C and 1.5°C scenarios by 2030 would have been only 0.7 per cent and 3.3 per cent on average, respectively (Höhne *et al.* 2020). **The lack of stringent emission reductions means that the required emission cuts from now to 2030 have increased significantly. To reach emission levels consistent with a below 2°C pathway in 2030, the cuts required per year are now 5.3 per cent from 2024, reaching 8.7 per cent per year on average for the 1.5°C pathway.** To compare, the fall in total global GHG emissions from 2019 to 2020 due to the COVID-19 pandemic was

production of all three fossil fuels needs to decline substantially between now and 2050, in parallel with other key climate mitigation strategies such as reducing fossil fuel demand, increasing renewable energy generation, and reducing methane emissions from all sources, including oil and gas production activities” ([link](#)).

¹¹²¹ United Nations Environment Programme, *Emissions Gap Report 2023 : Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023) ([link](#)).

¹¹²² Intergovernmental Panel on Climate Change, *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 (2018), statement C.1 ([link](#)).

¹¹²³ Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, statement C.1.1 ([link](#)).

¹¹²⁴ Intergovernmental Panel on Climate Change, *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 (2018)., statement C.2 ([link](#)).

¹¹²⁵ Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, Figure SPM.7 ([link](#)).

4.7 per cent (UNEP 2022).” (emphasis added)¹¹²⁶In such context, cessation of the Relevant Conduct would require, for a State having engaged in such conduct, the adoption and enforcement of necessary measures to reduce its emissions on average by 8.7 per cent per year, and no less than 5.3 per cent per year, from 2024. A specific requirement arising from the obligation of cessation is, moreover, that no new fossil fuel (coal, oil and gas) projects be pursued. According to a 2021 report from the International Energy Agency (IEA), “[b]eyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required”.¹¹²⁷

570. To be clear, it is not Vanuatu’s submission that taking measures to limit global warming to 1.5°C is sufficient to achieve cessation of the Relevant Conduct. It must be recalled that global warming of 1.5°C, as per the IPCC, “is not considered ‘safe’ for most nations, communities, ecosystems and sectors and poses significant risks to natural and human systems”.¹¹²⁸ Cessation of the Relevant Conduct thus requires more ambitious mitigation action than what is required under the IPCC’s pathways for achieving no or limited overshoot of 1.5°C.
571. In connection with the obligation of cessation, another point meriting attention concerns potential reliance on geoengineering and associated technologies in responding to climate change. There are two prominent categories of such technologies: Carbon Dioxide Removal (CDR) and Solar Radiation Modification (SRM). CDR refers to activities to remove carbon dioxide (*CO*₂) from the atmosphere and store it,¹¹²⁹ while SRM refers to “measures not related to greenhouse gas (GHG) mitigation that seek to limit global warming”,¹¹³⁰ including measures which seek to “*artificially intervene in the climate system by reflecting a*

¹¹²⁶ United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record. Temperatures reach new highs, yet world fails to cut emissions (again)* (November 2023), at p. 30 ([link](#)).

¹¹²⁷ International Energy Agency, *Net ZeroIT by 2050. A Roadmap for the Global Energy Sector* (May 2021), Summary for policymakers, at p. 10 ([link](#)).

¹¹²⁸ Intergovernmental Panel on Climate Change, *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*, Full Report (2018), pp. 44, 447 ([link](#)).

¹¹²⁹ IPCC Glossary, “Carbon Dioxide Removal (CRD)”: “*Anthropogenic activities removing carbon dioxide (CO₂) from the atmosphere and durably storing it in geological, terrestrial, or ocean reservoirs, or in products. It includes existing and potential anthropogenic enhancement of biological or geochemical CO₂ sinks and direct air carbon dioxide capture and storage (DACCS) but excludes natural CO₂ uptake not directly caused by human activities*” ([link](#)).

¹¹³⁰ IPCC Glossary, “Solar Radiation Modification (SRM)”: “*Refers to a range of radiation modification measures not related to greenhouse gas (GHG) mitigation that seek to limit global warming. Most methods involve reducing the amount of incoming solar radiation reaching the surface, but others also act on the longwave radiation budget by reducing optical thickness and cloud lifetime*” ([link](#)).

*part of incoming sunlight back out into space.*¹¹³¹ Geoengineering technologies seek to mitigate the effects of climate change but do not address its actual causes.

572. Vanuatu notes that these geoengineering technologies are speculative and counterproductive to the obligation of cessation. They are speculative because they have not been proven effective and feasible at scale to reduce the impacts of climate change.¹¹³² They are counterproductive to cessation because they divert attention and resources away from the urgent task of cutting emissions,¹¹³³ potentially delaying meaningful action to stop the Relevant Conduct and increasing losses and damage.¹¹³⁴ Geoengineering and other speculative technologies are also counterproductive in the sense that they carry inherent risks of *increasing* emissions and global temperatures.¹¹³⁵ The IPCC has highlighted that “*CDR deployed at scale is unproven, and reliance on such technology is a major risk in the ability to limit*

¹¹³¹ Aarti Gupta, Frank Bierman, Ellinore van Driel, Nadia Bernaz, Dhanasree Jayaram, Rakhyun E. Kim, Louis J. Kotze, Dana Ruddigkeit, Stacy D. VanDeveer and Margaretha Wewerinke-Singh, ‘Towards a Non-Use Regime on Solar Geoengineering: Lessons from International Law and Governance’ (2024) *Transnational Environmental Law*, 1-32, p. 2 ([link](#)). Several SRM technologies have been proposed, including for example: Cirrus cloud thinning (CCT); Marine cloud brightening (MCB); Stratospheric aerosol injection (SAI); see IPCC Glossary, Solar Radiation Modification (SRM) ([link](#)).

¹¹³² This is consistent with the position taken by the Advisory Committee, which has said that “[m]ost geoengineering technologies remain unproven, unavailable and unfeasible at scale” and that “[s]ince the hypothetical benefits of such technologies are still to be practically and scientifically proven, they are considered speculative”: Human Rights Council Advisory Committee, *Impact of new technologies intended for climate protection on the enjoyment of human rights*, 10 August 2023, A/HRC/54/47, para. 10 ([link](#)). In the context of the rights of children, see also Committee on the Rights of the Child, *General Comment No. 26 on Children’s Rights and the Environment with a Special Focus on Climate Change*, CRC/C/GC/26), p. 18 (“Mitigation measures cannot rely on removing greenhouse gases from the atmosphere in the future through unproven technologies. States should prioritize rapid and effective emissions reductions now in order to support children’s full enjoyment of their rights in the shortest possible period of time and to avoid irreversible damage to nature”) (emphasis added) ([link](#)).

¹¹³³ Human Rights Council Advisory Committee, *Impact of new technologies intended for climate protection on the enjoyment of human rights*, 10 August 2023, A/HRC/54/47, para. 12 ([link](#)). See also See D. McLaren, ‘Mitigation Deterrence and the “Moral Hazard” of Solar Radiation Management’ (2016) 4(12) *Earth’s Future*, pp. 596–602; K. Ellison, ‘Why Climate Change Sceptics Are Backing Geoengineering’, *Wired*, 28 Mar. 2008 ([link](#)).

¹¹³⁴ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement C.2 (“Delayed mitigation and adaptation action would lock-in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages (*high confidence*)”) ([link](#)).

¹¹³⁵ See Human Rights Council Advisory Committee, *Impact of new technologies intended for climate protection on the enjoyment of human rights*, 10 August 2023, A/HRC/54/47, para. 10 (“*NTCPs, as is the case of all other geoengineering technologies with the possible exception of some nature-based solutions, currently do not lower emissions, as they all increase carbon dioxide in the system if the overall emissions produced by constructing and operating the relevant facilities are taken into account*”) ([link](#)).

warming to 1.5°C”,¹¹³⁶ while SRM measures “face large uncertainties and knowledge gaps as well as substantial risks”.¹¹³⁷

573. Vanuatu further submits that the development and use of geoengineering and other speculative technologies are inconsistent with States’ existing obligations under customary international law and treaty law, including obligations that are, in substance, part of the obligation of cessation.¹¹³⁸ These obligations constrain and prohibit reliance on such technologies, including as follows:

- (a) *First*, by reason of the speculative nature of these technologies and the risks they present to the climate system and the environment, the development and use of such technologies will run counter to the precautionary approach and will not meet the duty of due diligence.¹¹³⁹
- (b) *Second*, reliance on such measures would violate States’ obligations under the UNFCCC, Kyoto Protocol and Paris Agreement. These agreements must be interpreted in light of the UNFCCC’s ultimate objective to achieve “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” in a timeframe allowing ecosystems to “adapt naturally

¹¹³⁶ Intergovernmental Panel on Climate Change, *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*, Full Report (2018), pp. 34, 96 ([link](#)). See also Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2022), statement B.5.4, SPM-19 (“Risks arise from some responses that are intended to reduce the risks of climate change, including risks from maladaptation and adverse side effects of some emission reduction and carbon dioxide removal measures (high confidence).”) ([link](#)).

¹¹³⁷ Intergovernmental Panel on Climate Change, *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 (2018), statement C.1.4 ([link](#)).

¹¹³⁸ These obligations exist alongside existing regulation under the Convention on Biological Diversity and in the context of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention, 1972) and its Protocol (1996), respectively. See Convention on Biological Diversity, *Decision X/33: Biodiversity and climate change*, 10th Conference of the Parties (COP-10), 29 October 2010, UN Doc. UNEP/CBD/COP/DEC/X/33, para. 8(w) ([link](#)). The governing bodies of the London Convention and its Protocol have called for extreme caution in relation to marine geoengineering technologies, having already reached agreement to ban ocean fertilization. See Resolution LC-LP.1, ‘On the Regulation of Ocean Fertilization’ (Adopted On 31 October 2008), The Thirtieth Meeting of the Contracting Parties to the London Convention and the Third Meeting of the Contracting Parties to the London Protocol, LC 30/16, 31 Oct. 2008 ([link](#)). See also Resolution LP.4(8), ‘On the Amendment to the London Protocol to Regulate the Placement of Matter for Ocean Fertilization and Other Marine Geoengineering Activities’ (Adopted on 18 October 2013), The Eighth Meeting of Contracting Parties to the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 ([link](#)).

¹¹³⁹ Domestic courts have raised concerns about the “irresponsible risks” that would emerge if States were to rely on such technologies in climate policy, finding that such reliance would contravene the precautionary principle: see *Urgenda Foundation v. State of the Netherlands*, Supreme Court of the Netherlands, ECLI:NL:HR, 20 December 2019 (Netherlands), para. 7.2.5 (“these new scenarios cannot be taken as a starting point for policy at this time without taking irresponsible risks by doing so. Taking such risks would run counter to the precautionary principle that must be observed when applying Articles 2 and 8 ECHR and Article 3(3) UNFCCC.”) ([link](#)).

to climate change”.¹¹⁴⁰ Speculative technologies such as SRM do not contribute to the stabilization of greenhouse gas concentrations. Instead, the serious risks associated with these technologies constitute “*dangerous anthropogenic interference with the climate system*,” directly contravening the stated objective of the UNFCCC and its subsidiary agreements. Moreover, the so-called “*termination shock*”¹¹⁴¹ that would likely occur upon the discontinuation of SRM would undermine the capacity of ecosystems to adapt naturally to climate change, further highlighting the incompatibility of these technologies with States’ obligations of cessation.

- (c) *Third*, reliance on geoengineering technologies such as CDR and SRM presents risks under the duty to protect the marine environment and art. 196(1) of the UNCLOS, which obliges governments to “*take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control ... which may cause significant and harmful changes thereto*”.
- (d) *Fourth*, reliance on geoengineering technologies such as CDR and SRM present significant risks of human rights violations, as recognized by UN Special Procedures¹¹⁴² and the UN Human Rights Council Advisory

¹¹⁴⁰ United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107, art. 2 ([link](#)), see Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162, preamble, arts 2(1)(a)(v), 12(2), 13(4)(a), (b), (e) ([link](#)), “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art 2, see also preamble, art 13(5) ([link](#)); Vienna Convention on the Law of Treaties (23 May 1969, entry into force 27 January 1980), 1155 U.N.T.S. 331, art. 31(1) ([link](#)).

¹¹⁴¹ “Termination shock” refers to the rapid rise of global temperatures that would occur if certain SRM techniques (such as stratospheric aerosol injection (SAI) and marine cloud brightening (MCB)) were adopted and then stopped: see Center for International Environmental Law et al., “Briefing for UNEA6 Delegates on Solar Radiation Modification” (February 2024) ([link](#)).

¹¹⁴² See Ian Fry (Special Rapporteur on the **promotion** and protection of human rights in the context of climate change), *Report on the promotion and protection of human rights in the context of climate change*, U.N. Doc. A/78/255, July 28, 2023, para. 16 (asserting that “[n]ew mitigation technologies associated with atmospheric changes and geoengineering also have the potential for significant human rights impacts”) ([link](#)); Ian Fry (Special Rapporteur on the promotion and protection of human rights in the context of climate change), *Initial planning and vision for the mandate*, UN Doc. No. A/HRC/50/3, June 24, 2022, paras. 52, 53 (noting that proposed technologies, such as CDR, stratospheric aerosol injection, and marine cloud brightening all have “potential negative impacts on the enjoyment of human rights” and that each “either currently contributes to human rights infringement or has the potential to infringe on the rights of individuals and communities”) ([link](#)); David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, July 15, 2019, U.N. Doc. A/74/161, para 83 (“Some proposed geoengineering strategies to mitigate climate change involve the large-scale manipulation of natural systems through measures such as fertilizing the oceans with iron, installing mirrors in outer space to reflect solar radiation, or shooting aerosols into the atmosphere (imitating the effects of large volcanic eruptions). These untested technological approaches could have massive impacts on human rights, severely disrupting ocean and terrestrial ecosystems, interfering with food production and harming biodiversity. These types of geoengineering strategies should not be used until their implications are much better understood.”) ([link](#)); see Tendayi E Achiume, *Ecological crisis, climate justice and racial justice* (Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), 25 October 2022, UN Doc A/77/549, October 25, 2022, para. 65 (noting that climate response measures potentially pose

Committee (‘Advisory Committee’).¹¹⁴³ The following rights are particularly at risk:

- i. Right to a clean and healthy environment: Geoengineering technologies may have “negative or catastrophic effects on weather patterns, biodiversity and ecosystems,”¹¹⁴⁴ impacting the essential quality of the natural environment and a “safe climate” protected by this right. The testing and use of such technologies can also violate the procedural dimension of this right, namely access to information, participation in decision-making and access to justice and effective remedies.¹¹⁴⁵ Furthermore, these technologies “*may expose [Indigenous peoples] to forced displacement and deprivation of their lands, culture and traditional livelihoods,*”¹¹⁴⁶ impairing their right to a clean and healthy environment, cultural rights, and the right to self-determination.
- ii. Right to an adequate standard of living (including the rights to food and water) and right to life: As the Advisory Committee notes, SRM technologies can be water-intensive, change precipitation patterns, pollute freshwater resources, and pose a threat to food and water security. CDR technologies require vast swathes of land and extensive water resources, potentially affecting food production and access to water. The potential adverse environmental impacts of these technologies could violate rights to food and water, particularly of those whose livelihoods rely on natural resources, and may also raise issues under the right to life.¹¹⁴⁷

significant risks to human rights) ([link](#)); Marcos Orellana, *The toxic impacts of some proposed climate change solutions – Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, 13 July 2023, UN Doc A/HRC/54/25, para. 71 (“There is a lack of scientific certainty about the efficiency of climate-altering engineering technologies, such as solar radiation modification, and they can have a wide range of potential impacts on the effective enjoyment of human rights. Pinning humanity’s hopes on future technologies should not be used to justify insufficient action to reduce greenhouse gas emissions and phase out fossil fuels”) ([link](#)).

¹¹⁴³ Human Rights Council Advisory Committee, *Impact of new technologies intended for climate protection on the enjoyment of human rights*, 10 August 2023, A/HRC/54/47, para. 7 ([link](#)).

¹¹⁴⁴ See Human Rights Council Advisory Committee, *Impact of new technologies intended for climate protection on the enjoyment of human rights*, 10 August 2023, A/HRC/54/47, para. 49 ([link](#)).

¹¹⁴⁵ See Human Rights Council Advisory Committee, *Impact of new technologies intended for climate protection on the enjoyment of human rights*, 10 August 2023, A/HRC/54/47, para. 49 ([link](#)).

¹¹⁴⁶ See Human Rights Council Advisory Committee, *Impact of new technologies intended for climate protection on the enjoyment of human rights*, 10 August 2023, A/HRC/54/47, para. 55 ([link](#)).

¹¹⁴⁷ See Human Rights Council Advisory Committee, *Impact of new technologies intended for climate protection on the enjoyment of human rights*, 10 August 2023, A/HRC/54/47, paras 48 and 51 ([link](#)).

iii. Rights associated with consultation and free, prior and informed consent:¹¹⁴⁸ The development and use of geoengineering technologies would violate these rights, because Indigenous peoples and other affected communities have not been systematically involved in technological planning or consulted about the testing of such technologies.¹¹⁴⁹

(e) *Fifth*, future generations are among those who are particularly affected by these speculative technologies. Violations of obligations to protect the human rights of future generations by States include the “failure to effectively regulate, and where appropriate prohibit, scientific research and activities that pose a reasonably foreseeable and substantial risk to the human rights of future generations, including ... geo-engineering”.¹¹⁵⁰ Any promotion of high-risk, but still mostly undeveloped, irreversible and speculative technologies in response to the climate crisis contradicts intergenerational equity and the rights of future generations.

574. In sum, the promotion or use of such technologies by States is not consistent with and should not be conflated with cessation. These technologies allow or even encourage the Relevant Conduct to continue, exacerbating harm to the climate system and other parts of the environment and posing a range of new risks. True cessation of the Relevant Conduct requires that States refrain from developing and

¹¹⁴⁸ The duty to consult meaningfully with potentially affected Indigenous and affected groups is firmly rooted in international human rights law and is grounded in core UN human rights treaties. See International Covenant on Civil and Political Rights, UNGA Res 2200A (XXI), 16 December 1966, , arts 1(1), 25, 27 ([link](#)); International Covenant on Economic, Social and Cultural Rights, UNGA Res 2200A (XXI), 16 December 1966, , arts 1(1), 1(2), 15(1) ([link](#)); International Convention on the Elimination of All Forms of Racial Discrimination, UNGA Res 2106 (XX), 21 December 1965, arts 2, 5 ([link](#)). The UN bodies established to monitor the implementation of these binding international legal treaties have clarified that consultation with indigenous peoples on matters that affect them is required in accordance with state obligations under those treaties: *See e.g.*, UN Committee on the Elimination of Racial Discrimination, *General Recommendation 23: Rights of indigenous peoples*, A/52/18 (Annex V), 1997 ([link](#)); Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, 21 December 2009, paras. 36-37 ([link](#)). The duty to consult has also been recognised in other conventions and human rights bodies: *E.g.*, International Labour Organization, *Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169)* (1989), art. 6(1)(a) ([link](#)); Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, 30 December 2009, para. 273 ([link](#)). The duty to consult finds prominent expression in the *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295, 2 October 2007 (“UNDRIP”), arts 19, 32(2) ([link](#)). UNDRIP can be understood as an authoritative understanding of the minimum content of the rights of Indigenous peoples drawn from existing international human rights law. In other words, it is a codification of already existing rights at international human rights law as applied to the condition and situation of Indigenous peoples. Accordingly, UNDRIP “*does not attempt to bestow indigenous peoples with a set of special or new human rights, but rather provides a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples*”: see United Nations Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN Doc A/HRC/9/9 (11 August 2008), paras. 85-86 ([link](#)).

¹¹⁴⁹ See Human Rights Council Advisory Committee, *Impact of new technologies intended for climate protection on the enjoyment of human rights*, 10 August 2023, A/HRC/54/47, para. 55 ([link](#)).

¹¹⁵⁰ Maastricht Principles on the Human Rights of Future Generations, 2023, Principle 19(f) ([link](#)).

using these technologies and prohibit their development and use, including by private parties such as corporations.¹¹⁵¹

575. Given the increasing prominence of geoengineering technologies in discussions on policy responses to climate change,¹¹⁵² Vanuatu respectfully invites the Court to reinforce the obligation of cessation as a legal consequence of the Relevant Conduct by explicitly recognizing that this obligation requires stopping the practices that cause significant harm to the climate system and other parts of the environment. Moreover, Vanuatu suggests that the Court explicitly recognizes that the obligation of cessation cannot be discharged using geoengineering technologies, and that reliance on such technologies in responding to climate change could constitute a distinct violation of States' obligations under international law.

(5) Obligation of non-repetition of the Relevant Conduct

576. Another legal consequence of wrongful conduct is the provision of appropriate assurances and guarantees of non-repetition by the responsible State, if circumstances so require. Such assurances or guarantees serve to restore and repair legal relationships affected by the breach, whereby “the focus is on the future, not the past”.¹¹⁵³
577. Vanuatu submits that in the present case, ensuring cessation and preventing recurrence of the Relevant Conduct requires that responsible States adopt specific measures to prevent non-state actors under their jurisdiction from causing further harm to the climate system and other parts of the environment.¹¹⁵⁴ Further, Vanuatu

¹¹⁵¹ This understanding is consistent with the calls by certain groupings of States for an international non-use agreement on SRM. See e.g. African Ministerial Conference on the Environment, Decision 19/5: Climate Change (19th sess, Addis Ababa, 17-18 August 2023) AMCEN/19/6, para. 15 (“*To express concerns with the promotion of technologies, particularly solar radiation management, and to call for a global governance mechanism for non-use of solar radiation management*”) (emphasis added) ([link](#)); European Parliament, Resolution of 21 November 2023 on the UN Climate Change Conference 2023 in Dubai, United Arab Emirates (COP 28), Res. 2023/2636, para. 92 (“*Notes that there is growing scientific and political interest in solar radiation modification (SRM) as a set of climate engineering approaches proposed to artificially reflect sunlight and cool the planet, such as stratospheric aerosol injection; stresses that SRM does not address the root cause of climate change and is not an alternative to mitigation efforts; notes the lack of scientific certainty on the effects and expresses concern about the global risks and adverse impacts of SRM on the environment and climatic and geopolitical stability; underlines, therefore, that a global approach is essential and that no countries should unilaterally experiment with this technology; takes note that a UN resolution on global governance has been blocked; calls on the Commission and the Member States to initiate a non-use agreement at international level, in accordance with the precautionary principle and in the absence of evidence of its safety and a full global consensus on its acceptability;*” (emphasis added)) ([link](#)). Further, a global group of over 490 academics from across regions, supported by over 1,900 civil society organizations, is calling upon governments and the United Nations (UN) to agree on an International Non-Use Agreement on Solar Geoengineering: see the list of over 490 academic signatories and numerous civil society supporters: <https://www.solargeoeng.org>.

¹¹⁵² Vanuatu also notes that recently, at UNEA-6, a proposal by Switzerland and Monaco (and co-sponsored by Georgia and Israel), to establish an expert group to consider SRM and geoengineering, was withdrawn ([link](#)).

¹¹⁵³ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 30, commentary, para. 11 ([link](#)).

¹¹⁵⁴ The Human Rights Committee has clarified that the obligation “to take measures to prevent the recurrence of a violation” may require changes in the State party’s laws or practice: UN Human Rights Committee, *General*

submits that the severity and scale of the harm caused by the Relevant Conduct, both to date and with increasing intensity into the future, demand legislative measures that criminalise the most grievous forms of the Relevant Conduct. These obligations may be partially fulfilled through legislative measures to criminalize environmental and ecological harm amounting to ecocide, both domestically and through international cooperation to establish an international crime of ecocide.¹¹⁵⁵ At all levels, the legislative measures must aim at ensuring that credible allegations of ecocide are investigated, those responsible are prosecuted, and victims are able to access redress.

578. Vanuatu further submits that, in framing any criminal offences for significant climate and environmental harm, States must be mindful of the special position of Indigenous Peoples and other traditional communities that rely on their ancestral territories for their material and cultural existence.¹¹⁵⁶ Accordingly, any assessments of the gravity of environmental damage, and whether they rise to the level required to attract criminal liability – be it for the crime of ecocide, or some other environmental crime – must recognise and treat as significant any destruction of the cultural and spiritual value of the climate and environment.¹¹⁵⁷ States must further ensure that the enactment of such laws in no way impairs the rights of Indigenous

Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add. 13, paras. 16-17 ([link](#)). Similarly, the Committee on Economic, Social and Cultural Rights has found that the obligation of offering guarantees of non-repetition may require legislative or administrative measures to ensure alignment of domestic law with the procedural principles and substantive obligations arising from the Committee on Economic, Social and Cultural Rights, Committee on Economic, Social and Cultural Rights, Views of the Committee on Economic, Social and Cultural Rights under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (fifty-fifth session), Communication no.2/2014 (*I.D.G. v. Spain*), 17 June 2015, E/C.12/55/D/2/2014, para. 17 ([link](#)).

¹¹⁵⁵ See Ecocide Law, *Legal Definition and Commentary 2021* (2021) ([link](#)). For the purpose of this definition, the Independent Expert Panel for the Legal Definition of Ecocide proposed that: (a) “*Wanton*” means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated; (b) “*Severe*” means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources; (c) “*Widespread*” means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings; and (d) “*Long-term*” means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time; (e) “*Environment*” means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space. The Alliance of Guardians of Mother Nature, consisting of nearly 200 Indigenous representatives from around the world, has called upon states to: “*Recognise the actions of corporate and governmental policies that result in the destruction, degradation, contamination, and toxic poisoning of the environment, ecosystems, and habitats as an eco-crime against the territorial integrity of Mother Earth – also called ecocide. This shall align with the initiative to bring provisions of international crime of ecocide to the International Criminal Court*”: The Declaration of the Alliance of Guardians and Children of Mother Earth: A Global Call to the States and Humanity for the Preservation of Life on the Planet and Future Generations, para. 9 (Oct. 2017) ([link](#)).

¹¹⁵⁶ This is consistent with the heightened obligations owed by States to such groups in the context of the right to a clean and healthy environment: (see Section 4.4.4.C.)

¹¹⁵⁷ The Independent Expert Panel for the Legal Definition of Ecocide proposal to criminalize severe and either widespread or long-term damage, defined “*severe*” as “*damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources.*” (emphasis added): Ecocide Law, *Legal Definition and Commentary 2021* ([link](#)).

Peoples or marginalized groups, including by not targeting, stigmatizing, stereotyping or profiling them.

579. The obligation to offer guarantees of non-repetition further requires responsible States to submit revised nationally determined contributions (NDCs) under the Paris Agreement to achieve and demonstrate restored compliance with their international obligations – thus displaying the highest possible mitigation ambition and, for developed States, full compliance with their obligations on finance, technology transfer and capacity-building to support climate action in developing States. Further still, it requires that responsible States take concrete measures at the domestic level to make their NDCs binding under domestic law and enable their effective enforcement.

(6) *Obligation of reparation: restitution*

580. Moving now to the sixth aspect in the operation of the general international law of State responsibility, the obligation of cessation does not release a responsible State from the obligation to make reparation.¹¹⁵⁸ Reparations can take the form of restitution, compensation or satisfaction, either singly or in combination.¹¹⁵⁹ Responsible States are required to make restitution to the extent that restitution is not materially impossible or out of proportion to the harm suffered.¹¹⁶⁰ Although some measure of restitution may, in some cases, be provided by the measures that achieve cessation and assurances of non-repetition, the two legal consequences remain distinct.¹¹⁶¹ The distinction is important in the present circumstances because ceasing the Relevant Conduct does not remove the concentrations of GHG in the atmosphere or the significant harm already caused, both to the climate system and — through climate change — to other parts of the environment. Cessation is forward-looking whereas restitution also looks at the past and attempts to “*wipe out*” the consequences of the breach. As stated by the commentary to Article 35 of ARSIWA:

“because restitution most closely conforms to the general principle that the responsible State is bound to wipe out the legal and material consequences of its wrongful act by re-establishing the situation that

¹¹⁵⁸ *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99, para. 137.

¹¹⁵⁹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 34 ([link](#)). See further *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 273; *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. 196 ([link](#)).

¹¹⁶⁰ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 35 ([link](#)).

¹¹⁶¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 30, commentary, paras. 7-8 ([link](#)).

would exist if that act had not been committed, it comes first among the forms of reparation”¹¹⁶²

581. It is not possible for a State or a group of States to either restore the climate system to its previous state or undo the associated loss and damage. However, there are some impacts of climate change caused by the Relevant Conduct of a specific group of States which can be addressed by means of restitution, both with respect to injured, specially affected and/or particularly vulnerable States and with respect to peoples and individuals of the present and future generations. Such restitution amounts, in some cases, to the effective discharge of the conduct required by a primary rule, which, as recalled in Article 29 of ARSIWA, is not affected by the internationally wrongful act. But the two bases of obligation — the primary rule and the secondary obligation of restitution — as well as the two sets of legal relationships arising from them remain distinct.¹¹⁶³
582. **Three main impacts can be addressed, in part, by means of restitution:** namely **support for the building of adaptive capacity; non-monetary redress for the human mobility**, including displacement and migration, caused by the adverse effects of climate change; and **the recognition of the sovereignty, statehood, territory and maritime spaces of small island developing States.**
583. *First*, regarding support, preambular paragraph 11 of Resolution 77/276 emphasizes the urgency of scaling up action and support to enhance adaptive capacity in developing countries that are particularly vulnerable to the adverse effects of climate change:

“Emphasizing the urgency of scaling up action and support, including finance, capacity-building and technology transfer, to enhance adaptive capacity and to implement collaborative approaches for effectively responding to the adverse effects of climate change, as well as for averting, minimizing and addressing loss and damage associated with those effects in developing countries that are particularly vulnerable to these effects”

This paragraph reflects the consensus of States at the 26th Conference of the Parties of the UNFCCC, held in Glasgow, United Kingdom, expressed in paragraphs 6 and 39 of the Glasgow Climate Pact:

“Emphasizes the urgency of scaling up action and support, including finance, capacity-building and technology transfer, to enhance adaptive capacity, strengthen resilience and reduce vulnerability to climate

¹¹⁶² Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, Article 35, commentary, para. 3 ([link](#)).

¹¹⁶³ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 29, commentary, para. 2 ([link](#)).

change in line with the best available science, taking into account the priorities and needs of developing country Parties”¹¹⁶⁴

“Reiterates the urgency of scaling up action and support, as appropriate, including finance, technology transfer and capacity-building, for implementing approaches to averting, minimizing and addressing loss and damage associated with the adverse effects of climate change in developing country Parties that are particularly vulnerable to these effects”¹¹⁶⁵

584. Provision of support is not only an obligation under the UNFCCC and the Paris Agreement but, more generally, it is an obligation resulting from the breach of the obligations identified in response to Question (a), including those arising from general international law. The scaling up and provision of such support is a form of restitution because it provides a way of enhancing the resilience of injured, specially affected and particularly vulnerable States to the adverse impacts resulting from the Relevant Conduct.
585. *Second*, in relation to displacement and migration, preambular paragraphs 10 and 8 of Resolution 77/276 respectively:

“Acknowledg[e] that, as temperatures rise, impacts from climate and weather extremes, as well as slow-onset events, will pose an ever-greater social, cultural, economic and environmental threat, [...]

*Not[e] with profound alarm that [...] 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, are already experiencing an increase in [such effects, including persistent drought and extreme weather events, land loss and degradation, sea level rise, coastal erosion, ocean acidification and the retreat of mountain glaciers, **leading to displacement of affected persons** and further threatening food security, water availability and livelihoods [...]” (emphasis added)*

The Summary for Policymakers of the IPCC’s 2023 Synthesis Report confirms the direct relation between the impacts of climate change and displacement:

“Climate and weather extremes are increasingly driving displacement in Africa, Asia, North America (high confidence), and Central and South America (medium confidence), **with small island states in the Caribbean and South Pacific being disproportionately affected relative to their small population size (high confidence).**” (emphasis added)¹¹⁶⁶

¹¹⁶⁴ Decision 1/CP.26 : Glasgow Climate Pact, FCCC/CP/2021/12/Add.1, para. 6 (the same text was adopted by the Meeting of the Parties of the Paris Agreement in Decision 1/CMA.3, para. 7) ([link](#)).

¹¹⁶⁵ Decision 1/CP.26 : Glasgow Climate Pact, FCCC/CP/2021/12/Add.1, para. 39 (the same text was adopted by the Meeting of the Parties of the Paris Agreement in Decision 1/CMA.3, para. 63) ([link](#)).

¹¹⁶⁶ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement A.2.5 ([link](#)).

A report submitted by the United Nations High Commissioner for Human Rights to the Human Rights Council notes, from the perspective of human rights, that:

“it is clear that climate change substantially contributes to human rights harms and related human movement. The adverse effects of climate change have a range of implications for the effective enjoyment of human rights. For example, in 2008, it was estimated that roughly half of the world’s hungry people relied on degraded lands that will suffer largely negative effects from climate change for their subsistence. It is also estimated that climate change will have a major impact on the people living without access to an adequate water supply. When people lack access to food, water and other necessities, in order to survive, they may attempt to move internally or across borders. The failure of Governments to undertake effective climate change mitigation and adaptation can be an additional push factor for mobility and can exacerbate the situation of the most vulnerable persons who are unable to move.” (emphasis added)¹¹⁶⁷

586. Restitution for the breaches arising from the Relevant Conduct could take the form of the specific measures recommended by the United Nations High Commissioner for Human Rights in paragraph 66 of this report. Of particular note, without limitation, are the following measures:

“Promote and expand safe, regular, dignified and accessible pathways for human mobility that respect and protect the rights of persons affected by climate change, including through specific protection mechanisms [...]

Refrain from returning migrants to territories affected by climate change that can no longer sustain them and steadfastly uphold the fundamental principle of non-refoulement and other international human rights law obligations, to provide protection for persons who are unable to return to their homes as a result of climate change [...]

Facilitate the integration of climate change-related migrants in host communities, the regularization of their legal status and their access to labour markets [...]”¹¹⁶⁸

587. *Third*, climate change has affected the very territory, maritime spaces and sovereignty of small island developing States. Preambular paragraph 8 of Resolution 77/276 “*notes with profound alarm*” that:

“those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least

¹¹⁶⁷ UN Human Rights Council, “Addressing Human Rights Protection Gaps in the Context of Migration and Displacement of Persons across International Borders Resulting from the Adverse Effects of Climate Change and Supporting the Adaptation and Mitigation Plans of Developing Countries to Bridge the Protection Gaps”, 23 April 2018, UN Doc A/HRC/38/21, para. 10 (footnotes omitted) ([link](#)).

¹¹⁶⁸ UN Human Rights Council, “Addressing Human Rights Protection Gaps in the Context of Migration and Displacement of Persons across International Borders Resulting from the Adverse Effects of Climate Change and Supporting the Adaptation and Mitigation Plans of Developing Countries to Bridge the Protection Gaps”, 23 April 2018, UN Doc A/HRC/38/21, para. 66, letters (c), (d) and (h) (footnotes omitted) ([link](#)).

developed countries and **small island developing States, are already experiencing an increase in such effects, including persistent drought and extreme weather events, land loss and degradation, sea level rise, coastal erosion**” (emphasis added).¹¹⁶⁹

In its 2023 Synthesis Report, the IPCC further clarified, with high confidence, that this loss and damage is unavoidable, even if GHG emissions are now limited. In other words, the harm is already done:

“Limiting global surface temperature does not prevent continued changes in climate system components that have multi-decadal or longer timescales of response (high confidence). Sea level rise is unavoidable for centuries to millennia due to continuing deep ocean warming and ice sheet melt, and sea levels will remain elevated for thousands of years (high confidence).”¹¹⁷⁰

588. Small island developing States like the Republic of Vanuatu are already facing the reality of loss of territory and maritime spaces, and a threat to their peoples’ self-determination and continued survival. For such harm, restitution can take the form of declaratory relief whereby the official territorial and maritime limits of the State are recognized. This is consistent with the 2021 Pacific Island Forum Leaders’ Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, which *inter alia*:

“*Record[s]* the position of Members of the Pacific Islands Forum that maintaining maritime zones established in accordance with the Convention, and rights and entitlements that flow from them, notwithstanding climate change-related sea-level rise, is supported by both the Convention and the legal principles underpinning it [...]

“*Proclaim[s]* that our maritime zones, as established and notified to the Secretary-General of the United Nations in accordance with the Convention, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise”¹¹⁷¹

¹¹⁶⁹ See also Intergovernmental Panel on Climate Change, *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* (2018) Summary for Policymakers, statement B.2.3 (“increasing warming amplifies the exposure of small islands, low-lying coastal areas and deltas to the risks associated with sea level rise for many human and ecological systems, including increased saltwater intrusion, flooding and damage to infrastructure”) ([link](#)).

¹¹⁷⁰ Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2023), statement B.3.1 ([link](#)).

¹¹⁷¹ Pacific Island Forum Leaders, Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, 6 August 2021 (signed by Australia, the Cook Islands, the Federated States of Micronesia, Fiji, French Polynesia, Kiribati, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, the Marshall Islands, Samoa, the Solomon Islands, Tonga, Tuvalu, and Vanuatu) ([link](#)). This instrument was preceded by the Leaders Declaration adopted at the Ninth Pacific Islands Leaders Meeting, on 2 July 2021, which asserted in para. 12 the importance of preserving maritime zones in the face of climate change-related

This position is the correct interpretation of the UNCLOS and its underlying principles, shared by most States.¹¹⁷² In Vanuatu's submission, States having engaged in the Relevant Conduct must expressly support this position to fulfil their obligation to provide restitution to small island developing States like Vanuatu. Similarly, recognition of small island developing States' continued sovereignty and statehood despite the effects of climate change is required of responsible States in fulfilment of their obligation to pursue restitution insofar as possible and not out of proportion.¹¹⁷³

(7) *Obligation of reparation: compensation for loss and damage*

589. As set out above, the general international law of State responsibility contains an obligation to make reparation.¹¹⁷⁴ Reparation can take the form of restitution or where restitution is materially impossible or out of proportion, it can take the alternative and/or additional form of compensation.¹¹⁷⁵ Where restitution and compensation fail to result in full reparations, States are obliged to provide measures of satisfaction.¹¹⁷⁶ The Court in the *Pulp Mills* case, recalled that:

“customary international law provides for restitution as one form of reparation for injury, restitution being the re-establishment of the situation which existed before occurrence of the wrongful act. The Court further recalls that, where restitution is materially impossible or involves a burden out of all proportion to the benefit deriving from it, reparation takes the form of compensation or satisfaction, or even both.”¹¹⁷⁷

sea-level rise, and it was followed by the Declaration of the Heads of State and Government of the Alliance of Small Island States, of 22 September 2021, which affirms in para. 41 that “maritime zones and the rights and entitlements that flow from them shall continue to apply without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise”. The Declaration of 6 August 2021 has been subsequently endorsed by the Dhaka-Glasgow Declaration of the Climate Vulnerable Forum, of 2 November 2021, and by the Declaration of the Seventh Meeting of the Organization of African, Caribbean and Pacific States Ministers in Charge of Fisheries and Aquaculture, of 8 April 2022.

¹¹⁷² According to the then Co-Chairs of the International Law Commission's Study Group on sea-level rise in relation to international law, “it is clear that, in [the] many submissions and statements, references to the issue of legal stability, whether explicit or implicit – including to the solution of fixed baselines and/or outer limits of maritime zones measures from them ... are the most numerous”: Bogdan Aurescu and Niliifer Oral, Co-Chairs of the International Law Commission's Study Group on sea-level rise in relation to international law, *Sea-level rise in relation to international law: Additional paper to the first issues paper* (2020), 13 February 2023, A/CN.4/761, para. 83 ([link](#)).

¹¹⁷³ Such recognition already appears in the text of some agreements, including Article 2(2)(b) of Australia-Tuvalu Falepili Union Treaty: “The Parties recognise [...] the statehood and sovereignty of Tuvalu will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of climate change-related sea-level rise” ([link](#)).

¹¹⁷⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 460; *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99, para. 137.

¹¹⁷⁵ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 273; *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, paras. 196-197 ([link](#)).

¹¹⁷⁶ Articles on Responsibility of States for Internationally Wrongful Acts, 12 December 2001, UNGA Res. 56/83, Annex, art 37 ([link](#)).

¹¹⁷⁷ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 273

590. The impacts of the Relevant Conduct result in both “*loss*”, understood as irreparable harm, and “*damage*”, understood as reparable harm. Loss includes, for instance, the disappearance of islands, destruction of marine and coastal ecosystems, and extinction of species. Damage includes, for instance, destruction of roads, mangrove forests, schools, buildings and natural habitats due to extreme events linked to climate change.
591. Losses do not lend themselves to restitution understood as re-establishment of the situation which existed before the wrongful act. Rising sea levels that are resulting in the loss of territory for small island developing States like Vanuatu, are ominously in course, and cannot be reversed. The IPCC in its 2021 Report found that:

“In the longer term, sea level is committed to rise for centuries to millennia due to continuing deep-ocean warming and ice-sheet melt and will remain elevated for thousands of years (*high confidence*).¹¹⁷⁸”

In the absence of meaningful possibilities for restitution for loss, States having engaged in the Relevant Conduct are obliged to provide compensation for the injury caused by the internationally wrongful act. Article 31 of ARSIWA provides that “*Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.*” The material damage caused by the Relevant Conduct can be assessed in economic terms for some aspects of loss, for instance, the costs of relocation of populations from sinking islands. However, other aspects of climate-induced loss, whether material or moral, that cause enduring moral and psychological injury to those who lose their culture, traditions and historical associations linked to their land, cannot be readily quantified in economic terms. Difficulties in assessment, however, do not preclude the award of compensation. In *Costa Rica v. Nicaragua*, the Court reasoned that:

“In respect of the valuation of damage, the Court recalls that the absence of adequate evidence as to the extent of material damage will not, in all situations, preclude an award of compensation for that damage [...].”¹¹⁷⁹

592. Damage caused by the Relevant Conduct, including to the environment as such, can be quantified and compensated. In *Costa Rica v. Nicaragua*, the Court further noted that:

“it is consistent with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to hold that compensation is due for damage caused

¹¹⁷⁸ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers* (2021), statement B.5.3 ([link](#)).

¹¹⁷⁹ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Compensation, Judgment*, I.C.J. Reports 2018, p. 15, para. 35.

to the environment, in and of itself, in addition to expenses incurred by an injured State as a consequence of such damage.”¹¹⁸⁰

593. The pressing need for support for vulnerable countries is also recognized in the context of the UNFCCC regime. The creation of the Loss and Damage Fund by Parties to the UNFCCC reflects an acknowledgment among States of:

“the urgent and immediate need for new, additional, predictable and adequate financial resources to assist developing countries that are particularly vulnerable to the adverse effects of climate change in responding to economic and non-economic loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, especially in the context of ongoing and ex post (including rehabilitation, recovery and reconstruction) action.”¹¹⁸¹

The 2023 UAE Consensus further acknowledged the “significant gaps, including finance, that remain in responding to the increased scale and frequency of loss and damage, and the associated economic and non-economic losses.”¹¹⁸²

594. The inevitable, continuous and ongoing harm caused by the Relevant Conduct has obliged vulnerable States to invest in responding and adapting to climate change, and averting, minimizing and addressing loss and damage. It is incumbent upon the States engaging in the Relevant Conduct to provide vulnerable countries, as both reparation and compensation, with adequate climate finance, technology transfer and capacity-building to enable them to adapt to the adverse effects caused by the Relevant Conduct, and to avert, address and minimize loss and damage flowing from the Relevant Conduct.
595. The imperative of providing support to vulnerable countries on the frontlines of climate impacts has long been a consensus position among States. The 1992 UNFCCC requires Parties to “*give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change [...]*” especially on, for example, “[s]mall island countries”, “[c]ountries with low-lying coastal

¹¹⁸⁰ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, I.C.J. Reports 2018, p. 15, paras. 34, 41-43.

¹¹⁸¹ Decision 2/CP.27, Funding arrangements for responding to loss and damage associated with the adverse effects of climate change, including a focus on addressing loss and damage FCCC/CP/2022/10/Add.1 (17 March 2023) ([link](#)). The funding arrangements were operationalized at COP-28 in the UAE. See Decision _/CP.28 and _/CMA.5, Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2–3 of decisions 2/CP.27 and 2/CMA.4, 13 December 2023 ([link](#)).

¹¹⁸² Decision _/CMA.5, Outcome of the global stocktake, 13 December 2023, para. 128 ([link](#)).

areas” and “[c]ountries with areas prone to natural disasters”.¹¹⁸³ The 2015 Paris Agreement notes that:

“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.”¹¹⁸⁴

The Paris Agreement further provides for “[c]ontinuous and enhanced international support” to be provided in relation to certain adaptation actions.¹¹⁸⁵ Such provision of support is subject to five-yearly collective assessments of progress (termed “global stocktake”).¹¹⁸⁶

596. That such support has been woefully inadequate so far was recorded in the 2023 UN Synthesis Report by the Co-Facilitators of the Technical Dialogue of the First Global Stocktake that found: “*Assessment of collective progress on adaptation has revealed an urgent need to rapidly scale up finance for adaptation, to meet the growing needs and priorities of developing countries.*”¹¹⁸⁷ The 2022 Sharm-el-Sheik Implementation Plan specifically “*urges developed country Parties to urgently and significantly scale up their provision of climate finance, technology transfer and capacity-building for adaptation so as to respond to the needs of developing country Parties as part of a global effort.*”¹¹⁸⁸
597. The need for developed countries to significantly scale up finance, technology transfer and capacity building is not just a consensus position among States in the UNFCCC regime, it is also required from States engaging in the Relevant Conduct to discharge their obligation of reparation for breach of other obligations towards vulnerable countries harmed by their conduct.

(8) *Obligation of reparation: satisfaction*

598. States that have engaged in the Relevant Conduct are obliged to provide satisfaction insofar as the injury cannot be remedied in full by restitution or compensation.¹¹⁸⁹ The concept of satisfaction, as recognized in international law, encompasses a

¹¹⁸³ United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107, art. 4(8) ([link](#)).

¹¹⁸⁴ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 7 (6) ([link](#)).

¹¹⁸⁵ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 7 (13) ([link](#)).

¹¹⁸⁶ “The Paris Agreement”, Decision 1/CP.21, 12 December 2015, FCCC/CP/2015/10/Add.1, 21, Annex, art. 7(14) ([link](#)).

¹¹⁸⁷ Technical dialogue of the first global stocktake, Synthesis report by the co-facilitators on the technical dialogue, FCCC/SB/2023/9 (8 September 2023), para. 44 ([link](#)).

¹¹⁸⁸ Decision 1/CP.27, Sharm-el-Sheik Implementation Plan, FCCC/CP/2022/10/Add.1 (17 March 2023), para. 22 ([link](#)).

¹¹⁸⁹ Articles on Responsibility of States for Internationally Wrongful Acts, 12 December 2001, UNGA Res. 56/83, Annex, art. 37(1) ([link](#)).

spectrum of measures aimed at acknowledging and remedying the breach. This includes but is not limited to, an expression of regret, a formal apology, and initiatives aimed at truth revelation.¹¹⁹⁰ Satisfaction can also take the form of a trust fund to manage compensation payments in the interests of the beneficiaries, or the award of symbolic damages for non-pecuniary injury.¹¹⁹¹ In Vanuatu's submission, the gravity of the moral and non-material injury resulting from the Relevant Conduct necessitate the provision of satisfaction, in addition to restitution and compensation. Such measures should not only aim to compensate for the physical and economic damages but also to mend the deep moral wounds inflicted upon affected communities and ecosystems.

599. Vanuatu submits that truth revelation regarding climate change is a fundamental component of satisfaction. This could entail, for example, scientific education campaigns that elucidate the drivers and repercussions of climate change, fostering awareness among citizens of responsible States about their role and the suffering and resilience of the affected peoples and individuals. Further, the restoration of victims' dignity through public acknowledgements or actions would constitute an essential step towards holistic redress.¹¹⁹² These types of satisfaction could take a collective and intergenerational form, highlighting the importance of addressing the human rights dimensions of climate change.
600. The statement by Mangau Iokai from Yakel Village, Tanna, Vanuatu, poignantly illustrates the cultural losses suffered by Indigenous communities due to climate change. The increasing difficulty in cultivating Yam due to erratic weather patterns represents not just a loss of food security but a profound erosion of cultural identity and heritage.¹¹⁹³ Mr. Iokai's concerns for the preservation of traditional knowledge for future generations highlight the urgent need for reparations that not only address the physical impacts of climate change but also honour and preserve the rich cultural legacies at risk. The establishment of memorials or scholarships, facilitated by international cooperation and funded by responsible States, could serve as a testament to the world's commitment to acknowledging and rectifying the cultural and human losses endured by communities like Yakel Village.

¹¹⁹⁰ Articles on Responsibility of States for Internationally Wrongful Acts, 12 December 2001, UNGA Res. 56/83, Annex, art. 37(2) ([link](#)).

¹¹⁹¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 37, commentary, para. 5 ([link](#)).

¹¹⁹² For example, see *Vicky Hernández et al. v. Honduras*, Merits, reparations and costs, Judgment of 26 March 2021, Inter-American Court of Human Rights, para. 204(11)-(12), see paras. 159-162, 163 (where the Court ordered the production of audio-visual material about the victims' situation with references to the facts of the case and with full involvement of the victim, and the establishment of a scholarship in the victim's name) ([link](#)). See also, in relation to truth revelation: *Case of Velásquez Rodríguez v. Honduras*, Judgment (Merits), Judgment of 29 July 1988, Inter-American Court of Human Rights (Ser. C) No. 4, para. 177 ([link](#)); *Case of the 19 Merchants v. Colombia*, Merits, Reparations and Costs, Judgment of 5 July 2004, Inter-American Court of Human Rights (Ser. C) No. 109, para. 261 ([link](#)); *Case of the Pueblo Bello Massacre v. Colombia*, Merits, Reparations and Costs, Judgment of 31 January 2006, Inter-American Court of Human Rights (Ser. C) No. 140 (2006), para. 219 ([link](#)).

¹¹⁹³ See Statement of Mangau Iokai, dated 12 January 2024 (**Exhibit H**), para. 43, see also paras. 16-32.

(9) *Legal consequences of serious breaches of obligations owed erga omnes or to the international community as a whole*

601. Beyond the obligations of responsible States to cease the wrongful conduct and make reparations, distinct legal consequences arise for serious breaches of obligations owed *erga omnes* or to the international community as a whole. In its Advisory Opinion on the *Construction of a Wall in Occupied Palestine Territory*, the Court examined the legal consequences arising for States other than Israel from Israel's violation of its obligation to respect the right of the Palestinian people to self-determination and international humanitarian law. In this respect, the Court noted that "*the obligations violated by Israel includ[ed] certain obligations erga omnes*"¹¹⁹⁴ and then characterized such obligations and the legal consequences of breaching them as follows:

"As the Court indicated in the Barcelona Traction case, such obligations are by their very nature 'the concern of all States' and, 'In view of the importance of the rights involved, all States can be held to have a legal interest in their protection' (Barcelona Traction, Light and Power Company, Limited, Second Phase, Judgment, I.C.J. Reports 1970, p. 32, para. 33). The obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law [...]

Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under **an obligation not to recognize the illegal situation** resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an **obligation not to render aid or assistance in maintaining the situation** created by such construction. It is also for all States, while respecting the United Nations Charter and international law, **to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.**" (emphasis added)¹¹⁹⁵

602. The three obligations arising for other States from a breach by a State of an obligation *erga omnes* are, therefore, the obligation not to recognize the illegal situation resulting from the violative conduct, not to render aid or assistance to the breaching State or States in maintaining the illegal situation, and to cooperate to put an end to the breach. These obligations, as arising from breaches of *erga omnes* obligations, are formulated in Article 41(1)-(2) of ARSIWA, according to which:

"1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.

¹¹⁹⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 155.

¹¹⁹⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, paras. 155 and 159.

2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation”.

Although Article 41 of ARSIWA concerns serious breaches of peremptory norms of international law, paragraph 3 of Article 41 expressly states that the consequences identified are “*without prejudice to the other consequences referred to in this Part and to such further consequences that a breach to which this chapter applies may entail under international law*”. The ILC commentary to Article 41(3) clarified that this paragraph “*reflect[ed] the conviction that the legal regime of serious breaches [was] itself in a state of development*”.¹¹⁹⁶

603. The Court has subsequently confirmed its views regarding the obligations arising for other States from breaches of obligations *erga omnes*.¹¹⁹⁷ Other international courts and tribunals have also confirmed that such is the state of general international law. In the specific context of obligations arising from human rights, the Grand Chamber of the European Court of Human Rights has referred to Article 41 of ARSIWA as a legal basis for the principle of non-recognition of situations arising from violations of human rights.¹¹⁹⁸ The Inter-American Court of Human Rights has confirmed that Article 41 of ARSIWA reflects customary international law and, in addition, that the obligations arising from certain human rights have a peremptory character, including the principle of equality and prohibition of non-discrimination, the principle of non-refoulement, and the prohibition to commit or tolerate serious, massive or systematic human rights violations.¹¹⁹⁹
604. In the present case, as demonstrated in Chapter IV, Section 4.4 and Chapter V, Section 5.2.3.C, the Relevant Conduct is in breach of certain obligations *erga omnes*, some of which – *inter alia* the obligation to refrain from largescale violations of human rights,¹²⁰⁰ such as the prohibition of racial discrimination,¹²⁰¹

¹¹⁹⁶ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 41, commentary, para. 14 ([link](#)).

¹¹⁹⁷ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, paras. 180-182.

¹¹⁹⁸ *Güzelyurtlu And Others v. Cyprus and Turkey*, European Court of Human Rights (Grand Chamber) Application No. 36925/07, Judgment, 29 January 2019, paras. 157-158 ([link](#)).

¹¹⁹⁹ *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and Scope of articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*, Inter-American Court of Human Rights, Series A No. 26, Advisory Opinion No. OC-26/20 (9 November 2020), paras. 102-106 (and references therein) ([link](#)).

¹²⁰⁰ *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and Scope of articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*, Inter-American Court of Human Rights, Series A No. 26, Advisory Opinion No. OC-26/20 (9 November 2020), paras. 103-104 ([link](#)).

¹²⁰¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 40, commentary, para. 4 ([link](#)); Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries, Yearbook of the International Law Commission, 2022, vol. II, Part Two, conclusion 23 and Annex, letter (e) ([link](#)).

and the obligation to respect the right to self-determination¹²⁰² – are widely recognized as peremptory norms of international law. Sections 5.2.3.G of this Chapter further demonstrated that the Relevant Conduct amounts to a serious breach of such obligations. As a result, in addition to the legal consequences of cessation and reparation arising for States which have displayed the Relevant Conduct, there are also legal consequences for all States.

605. Specifically, the obligation of non-recognition of the situation resulting from the illicit conduct displayed by specific States and by a specific group of States requires the **express recognition by all States of small island developing States’ maritime zones** established in accordance with the UNCLOS and the rights and entitlements that flow from them, notwithstanding climate change-related sea-level rise. It further requires the express recognition by all States of small island developing States’ **continued sovereignty and statehood** despite the effects of climate change.
606. All States must cooperate in good faith to bring the breach to an end. This obligation requires more than mere cooperation in the context of a specific treaty setting, such as the UNFCCC or the Paris Agreement, but **an obligation to cooperate to achieve a precise result, cessation of the Relevant Conduct and reparation of loss and damage**. In its Advisory Opinion on the Legality of Nuclear Weapons, the Court clarified that the obligation to cooperate to achieve a precise result is not “a mere obligation of conduct; [... but ...] an obligation to achieve a precise result — nuclear disarmament in all its aspects — by adopting a particular course of conduct”.¹²⁰³
607. As for the obligation not to render aid or assistance in maintaining the breach resulting from the Relevant Conduct, it **calls into question the lawfulness of all newly concluded or future infrastructure (e.g. pipelines) and supply agreements** that effectively expand reliance on fossil fuels and thereby increase or extend – contrary to the required cessation of the breach – GHG emissions from this source.

5.3.3. *Legal consequences with respect to “Peoples and individuals of the present and future generations affected by the adverse effects of climate change”*

608. The Court is also asked to clarify the legal consequences for States having displayed the Relevant Conduct “with respect to [...] (ii) *Peoples and individuals of the present and future generations affected by the adverse effects of climate change*”.

¹²⁰² *East Timor (Portugal v. Australia), Judgment*, I.C.J. Reports 1995, p. 90, para. 29; Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 40, commentary, para. 5 ([link](#)); Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries, Yearbook of the International Law Commission, 2022, vol. II, Part Two, conclusion 23 and Annex, letter (h) ([link](#)).

¹²⁰³ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 99.

This wording reflects the grass-roots demand from youth movements for more clarity regarding the connection between climate change and human rights not only in general but also, specifically, from the perspective of remedies and redress.

A. Characterization of the right-holders

(1) “Peoples and individuals ... of the present and future generations”

609. Given the variety of right-holders under the international law of human rights (individuals, children, women, indigenous and tribal peoples, minorities), the question identifies category (ii) by reference to the two key right-holders, namely “individuals” and “peoples”.

610. The terminology is general enough to encompass individuals in their different dimensions, including as children, women, migrant workers, persons with disabilities, members of minorities or other category of individuals benefiting from specific protection under international human rights law. The *Key Messages on Human Rights and Loss and Damage* of the Office of the High Commissioner for Human Rights explain that: “Persons in vulnerable situations may have reduced adaptive capacity making them particularly at-risk from human rights harms caused by climate change”.¹²⁰⁴ It then goes on to identify five categories of individual and collective rights that calls for particular attention in the context of loss and damage: women and persons with diverse gender identity; children; Indigenous Peoples; migrants; persons with disabilities.¹²⁰⁵ This list is, of course non-exhaustive. The wording used by Resolution 77/276 is intended to encompass all individuals, whether considered as such or from the perspective a certain category of human rights.

611. Similarly, the term “peoples” is general enough to encompass Indigenous and Tribal peoples as well as the people of a State or a people under colonial or foreign rule.¹²⁰⁶ The purpose of including a specific reference to “peoples” as right-holders is to

¹²⁰⁴ Office of the High Commissioner for Human Rights, *Key Messages on Human Rights and Loss and Damage*, November 2023, Key message 5 ([link](#)).

¹²⁰⁵ Office of the High Commissioner for Human Rights, *Key Messages on Human Rights and Loss and Damage*, November 2023, Key message 5 and its sub-categories ([link](#)).

¹²⁰⁶ Marcelo G Kohen, “Self-Determination” in Jorge E Viñuales (ed), *The UN Friendly Relations Declaration at 50 An Assessment of the Fundamental Principles of International Law* (Cambridge University Press, 2020) (**Exhibit ZM**), pp. 159–160 (“In order to determine who is the holder of the right to self-determination, international law follows a “territorial approach”. Undoubtedly, the right of self-determination applies to peoples in non-self-governing territories, including colonies, mandates or trust territories recognised as such by the relevant international organ ... Beyond the decolonisation context, the notion of a people applies to the entire population inhabiting an independent State, even when there are minorities within it. The exception to this is when the State itself recognises that it is composed of several peoples entitled to exercise their right of self-determination”); Gudmundur Alfredsson, “Peoples” in *Max Planck Encyclopedia of Public International Law* (“While territory is the main basis for the definition of a people, the definitions of the terms ‘minorities’, ‘indigenous peoples’, and ‘tribal peoples’ rely on common national, ethnic, linguistic, and/or religious characteristics of the groups and their desire to maintain and develop their communities. This differentiation is significant when it comes to the right of self-determination, as external self-determination opens the option of independence for peoples on the one hand and as internal self-determination may lead to self-government or autonomy for the groups on the other hand.”).

ensure that the specific cultural traits protected under human rights law are considered from the perspective of both the individual, including the individual as part of a specific group, and of the collective entity itself. This distinction is well established in international law. In its General Comment No 23 on the Rights of Minorities, the Human Rights Committee treats differently the right to self-determination under Article 1 of the International Covenant on Civil and Political Rights and the rights protected under Article 27 of this instrument:

“The [ICCPR] draws a distinction between the right to self-determination and the rights protected under article 27. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (Part 1) of the Covenant. Self-determination is not a right cognizable under the Optional Protocol. Article 27, on the other hand, relates to rights conferred on individuals as such and is included, like the articles relating to other personal rights conferred on individuals, in Part III of the Covenant and is cognizable under the Optional Protocol.”¹²⁰⁷

Moreover, even when considered as a collective entity, the terms “*peoples*” has more than one legally relevant meaning, as “*Peoples*” of States which have declared independence, “*Peoples*” of non-self-governing territories, “*Indigenous Peoples*”, “*Tribal Peoples*” and/or “*First Nations*” are also holders of specific human rights as a collective right-holder.¹²⁰⁸

612. Thus, the focus of the second category of victims of climate injustice is on all holders of human rights, whether individual or collective right-holders.
613. The specific reference to “*present and future generations*” removes the only remaining ambiguity. Indeed, the second category of victims of climate injustice includes all holders of human rights, whether individual or collective right-holders, whether in present or future generations. This is consistent with both the specialized

¹²⁰⁷ Human Rights Committee, General Comment No 23 on the Rights of Minorities (art. 27 of the Covenant) CCPR/C/21/Rev.1/ Add.5 (1994), para. 3.1.

¹²⁰⁸ Marcelo Kohén, “Self-determination”, in Jorge E. Viñuales (ed), *The UN Friendly Relations Declaration at 50. An Assessment of the Fundamental Principles of International Law* (Cambridge University Press, 2020) (**Exhibit ZM**), p. 161 (“*Certain populations within existing States, such as ‘indigenous peoples’, ‘tribal peoples’ and ‘first nations’ are holders of collective rights recognised by instruments such as the African Charter of Human and Peoples’ Rights, the International Labour Organization (ILO) 1989 Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, or the 2007 UN Declaration on the Rights of Indigenous Peoples. Yet, none of these instruments clearly confer a right to self-determination with the same scope as the one discussed so far on these other groups. art. 1(3) of the ILO Convention No. 69 expressly states that ‘The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to them under international law.’ Thus, the Convention preserves the understanding of the right to self-determination of peoples developed under the aegis of UN practice.*”). See *African Commission on Human and Peoples’ Rights v. Republic of Kenya (Ogiek case)*, African Court on Human and Peoples’ Rights, App 006/2012, Judgment (26 May 2017), paras. 197–99; UN General Assembly Resolution 61/295: United Nations Declaration on the Rights of Indigenous Peoples, 2 October 2007, A/RES/61/295, Arts. 3, 4, 46(1) ([link](#)).

writings on the subject,¹²⁰⁹ expert clarification efforts¹²¹⁰ and domestic constitutional practice.¹²¹¹ More recently, the Committee on the Rights of the Child stated plainly that “*The Committee recognizes the principle of intergenerational equity and the interests of future generations*”.¹²¹²

(2) “*affected by*”

614. The terms “*affected by*” used in Resolution 77/276 are also intended to be encompassing. This terminology, or an equivalent one, has been used in the practice of human rights treaty bodies. In *Chiara Sacchi et al. v. Argentina et al.*, the Committee on the Rights of the Child noted, indeed, that:

“The Committee considers that, as children, the authors are particularly impacted by the effects of 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” (emphasis added)¹²¹³

615. In its *Key Messages on Human Rights and Loss and Damage*, the Office of the High Commissioner for Human Rights uses the term “*affected by*” in three contexts. First, it does so to refer to:

“the rights of those who are often disproportionately **affected by** climate change such as women and girls, children, youth, older persons, persons with disabilities, Indigenous Peoples, minorities, migrants, rural workers, persons living in poverty and others in vulnerable situations” (emphasis added)¹²¹⁴

Subsequently, it uses these terms in relation to the obligation of States to “*mobilize maximum available resources to address the human rights impacts of loss and damage*” stating that:

¹²⁰⁹ Edith Brown Weiss, ‘Intergenerational equality’ in *Max Planck Encyclopedia of Public International Law* (“*The term ‘future generations’ refers to all those generations that do not exist yet. The present generation refers to all those people who are living today. The present generation encompasses multiple generations among those living today, but they are treated collectively as the present generation*”) ([link](#)).

¹²¹⁰ Maastricht Principles on the Human Rights of Future Generations, art. 1 ([link](#)) (“For the purposes of these Principles, future generations are those generations that do not yet exist but will exist and who will inherit the Earth. Future generations include persons, groups and Peoples”)

¹²¹¹ Renan Araújo and Leonie Koessler, “The Rise of the Constitutional Protection of Future Generations” LPP Working Paper Series N° 7 (2021), p. 4 (noting that future generations are recognised as a holder of legal interest in at least 41% of all constitutions as of 2021 (81 out of 196)) ([link](#)).

¹²¹² UN Committee on the Rights of the Child, *General Comment No. 26 on Children’s Rights and the Environment, with a Special Focus on Climate Change* (2023), para. 11.

¹²¹³ Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child, concerning Communication Nos. 104-107/2019: Chiara Sacchi et al. v. Argentina, Brazil, France, and Germany* (CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019), 11 November 2021, para. 10.13 ([link](#)).

¹²¹⁴ Office of the High Commissioner for Human Rights, *Key Messages on Human Rights and Loss and Damage*, November 2023, Key message 1 ([link](#)).

“States should establish domestic mechanisms to mobilize resources to address human rights harms caused by climate change and measurably advance the effective enjoyment of economic, social and cultural rights by those **affected**” (emphasis added)¹²¹⁵

And then again, it relies on this terminology three times in relation to the obligation to “*ensure equitable, cooperative action to address loss and damage*” recalling the obligations of States to “*ensur[e] meaningful and informed participation, particularly of those most affected by loss and damage ... ensur[e] that sufficient financial and other resources are directly accessible to the people and communities most affected by loss and damage*” and to exercise care to “*tailor international funding to the needs of the people and States most affected by climate change*”.¹²¹⁶ The focus is thus on individuals and peoples most affected by “*climate change*” and, more specifically, by “*loss and damage*”.

(3) “*the adverse effects of climate change*”

616. The “*adverse effects of climate change*” have been characterized earlier in this Chapter (see paragraph 550) by reference to both Article 1(1) of the UNFCCC¹²¹⁷ and the pre-existing scientific understanding of the term adverse “*impact*”.¹²¹⁸

617. However, in the context of human rights, it is important to note that it is widely acknowledged that climate change effectively has such adverse effects. Such recognition is found both in the work of the UN Human Rights Council, to which the preamble of Resolution 77/276 specifically refers, and in the practice of the Conference of the Parties of the UNFCCC.

618. Regarding the Human Rights Council, its latest Resolution on “Human rights and climate change” of 12 July 2023, provides:

“Emphasi[s]es that the adverse effects of climate change have a range of implications, both direct and indirect, that increase with greater global warming, for the effective enjoyment of human rights, including, inter alia, the right to life, the right to adequate food, the right to the enjoyment of the highest attainable standard of physical and mental health, the right to adequate housing, the

¹²¹⁵ Office of the High Commissioner for Human Rights, *Key Messages on Human Rights and Loss and Damage*, November 2023, Key message 3 ([link](#)).

¹²¹⁶ Office of the High Commissioner for Human Rights, *Key Messages on Human Rights and Loss and Damage*, November 2023, Key message 4 ([link](#)).

¹²¹⁷ This provision defines the adverse effects of climate change as “*changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or the operation of socio-economic systems or on human health and welfare*”.

¹²¹⁸ The IPCC Glossary defines the term “impact” as follows: “*The consequences of realized risks on natural and human systems, where risks result from the interactions of climate-related hazards (including extreme weather/climate events), exposure, and vulnerability. Impacts generally refer to effects on lives, livelihoods, health and well-being, ecosystems and species, economic, social and cultural assets, services (including ecosystem services), and infrastructure. Impacts may be referred to as consequences or outcomes and can be adverse or beneficial*”, IPCC Glossary ([link](#)).

right to self-determination, the rights to safe drinking water and sanitation, the right to work and the right to development, and recalling that in no case may a people be deprived of its own means of subsistence.

Expres[ses] concern that ... the **adverse effects of climate change are felt most acutely by those segments of the population that are already in vulnerable situations** owing to factors such as geography, poverty, gender, age, race, ethnicity, indigenous or minority status where applicable, national or social origin, birth or other status, and disability, among others.” (emphasis added)¹²¹⁹

619. In a convergent manner, the Conference of the Parties of the UNFCCC expressly referred to the work of the Human Rights Council on human rights and climate change to recognize the previous two aspects of the adverse effects of climate change on human rights:

“Noting resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability.”¹²²⁰

620. Moreover, as noted by reference to the Key Messages on Human Rights and Loss and Damage, the “*adverse effects of climate change*” are partly equated with “*loss and damage*” and, therefore, the right-holders in this second category of victims of climate injustice include those “*affected by*” loss and damage.

B. “Legal consequences ... with respect to” these right-holders

(1) *Instruments describing specific consequences of the breach of obligations arising from the affected rights*

621. It is well established that the legal consequences of a breach described in the ARSIWA are generally applicable irrespective of the primary rule that has been breached. However, Article 55 of the ARSIWA (“*Lex specialis*”) expressly recognizes that the general legal consequences that it describes “*do not apply where and to the extent that ... the content or implementation of the international responsibility of a State are governed by special rules of international law*”.

¹²¹⁹ *Human rights and climate change*, Human Rights Council Resolution 53/6, A/HRC/RES/53/6, 19 July 2023, preamble, paras. 17 and 18 ([link](#)).

¹²²⁰ Decision 1/CP.16 : The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, 29 November 2010, FCCC/CP/2010/7/Add.1, preamble, paragraph 7 ([link](#)).

622. The preamble of Resolution 77/276 clarifies the treaties, instruments and processes that can inform the Court’s answer of this question. They include:

“[Preambular paragraph 4] Human Rights Council resolution 50/9 of 7 July 2022 and all previous resolutions of the Council on human rights and climate change, and Council resolution 48/13 of 8 October 2021, as well as the need to ensure gender equality and empowerment of women”

“[Preambular paragraph 2] [UNGA] resolution 76/300 of 28 July 2022 on the human right to a clean, healthy and sustainable environment”

“[Preambular paragraph 5] 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”

“[Chapeau of the operative part] the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights [...] the rights recognized in the Universal Declaration of Human Rights”

623. Some of these instruments, in the light of the implementation by the relevant treaty bodies, may attach specific consequences to the violation of one or more of their provisions. Such consequences have been fleshed out in the practice of treaty bodies and special procedures, to which the Court “*ascribe[s] great weight*”.¹²²¹

624. There are three important legal consequences that arise from the violation of human rights, namely the obligation to provide an effective remedy in order to afford redress for the human rights violation,¹²²² the obligation to provide structural remedies,¹²²³ and the additional obligation arising from serious breaches of obligations owed *erga omnes* or to the international community as a whole.¹²²⁴ These consequences arise either as a *lex specialis* arising from their treaty context or as an application of the general content of State responsibility coloured by the nature of human rights remedies. Similarly, the right to a remedy, including to redress in connection with violations of human rights can be seen, depending on the perspective, as a primary rule of obligation or as a secondary obligation arising from the breach of a primary rule. In both cases, such conceptual distinctions must not

¹²²¹ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010, p. 639, para. 66.

¹²²² International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, art. 2(3); UN Human Rights Committee, *General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add. 13, paras. 15-16 ([link](#)); Committee on the Rights of the Child, *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, paras. 24-25 ([link](#)); *I.D.G. v. Spain*, ESCRC Communication No 2/2014, Decision (17 June 2015), para. 11.3 ([link](#)) (deriving the right to a remedy from International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3, art. 2(1)). See Dinah Shelton, “Human Rights, Remedies” in *Max Planck Encyclopaedia of Public International Law* (Last updated July 2006) (“A State that breaches its human rights obligations has the primary duty to afford redress to the victim of the violation.”) (**Exhibit ZH**).

¹²²³ UN Human Rights Committee, *General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add. 13, para. 17 ([link](#)).

¹²²⁴ See Section 5.3.2.B(7) of this Chapter.

detract from the requirement to provide a remedy and redress for breaches of human rights obligations.

625. The obligation to provide remedies and redress as well as to provide structural remedies are particularly relevant in the context of the violations of human rights entailed by loss and damage that has already occurred. The additional obligations for breaches of obligations *erga omnes* also stem from the violation of the right of peoples to self-determination.

(2) Remedies and redress for loss and damage

626. In its Report of 26 July 2022, the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change specifically notes that “*climate change has already harmed human physical and mental health*” and that “*in all regions, health impacts often undermine efforts for inclusive development*”.¹²²⁵ Moreover, for the Special Rapporteur, “*from a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation*”.¹²²⁶ Similarly, in its 2023 General Comment No. 26, the Committee on the Rights of the Child concluded that, “*through a human rights lens, the adverse impacts of climate change have led to significant losses and damages, in particular for those in the developing world*”¹²²⁷ and encouraged States “*to take note that, from a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation*”.¹²²⁸
627. The legal consequences of violations of human rights resulting from loss and damage include, specifically, cessation, the provision of redress, and the provision of structural remedies. This is broadly consistent with the following conclusion reached by Professor Martin Scheinin in his Expert Report:

“Having concluded above that the substantive scope of the full catalogue of human rights and both negative and positive State obligations in respect of them, gives rise to State obligations 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 (question a posed by the General Assembly), it is pertinent to close this Expert Report in respect of question (b). Breaches of those substantive obligations constitute internationally wrongful acts that give rise to

¹²²⁵ Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, Ian Fry (26 July 2022), A/77/226, paras. 26-28 ([link](#)).

¹²²⁶ Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, Ian Fry (26 July 2022), A/77/226, para. 26 ([link](#)).

¹²²⁷ Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 104 ([link](#)).

¹²²⁸ UN Human Rights Committee, *General comment no. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 106 ([link](#)).

claims by individuals, communities of individuals, including indigenous and other peoples, as well as by States acting as custodians of the human rights of their inhabitants. **Under general international law such wrongfulness in the past, at present, or in the future gives rise to State responsibility and involves legal consequences, including cessation, non-repetition and various forms of reparation (restitution, compensation and satisfaction).**¹²²⁹ (emphasis added)

628. The obligation of cessation has already been examined in relation to the first category of victims of climate injustice envisioned in the operative part of Resolution 77/276 (see Section 5.3.2.B(4) of this Chapter). It must be emphasized, in the present context, that in its General Comment No. 31, the Human Rights Committee observed, in relation to Article 2(3) of the International Covenant on Civil and Political Rights that the obligation of “[c]essation of an ongoing violation is an essential element of the right to an effective remedy”¹²³⁰ and further stressed “the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State Party’s laws or practices”.¹²³¹ Thus, the remedies have both a victim-specific and a structural dimension.
629. Again, what is required is *actual cessation* of the Relevant Conduct. Reliance on false solutions, such as SRM and CDR, is not consistent with and should not be conflated with cessation. To the contrary, as explained in section x above, such speculative and counterproductive technologies allow the Relevant Conduct to continue, thus intensifying the harm to the climate system and other parts of the environment and exacerbating the associated violations of human and peoples’ rights.
630. A range of victim- and situation-specific remedies have been identified by the Human Rights Committee in *Daniel Billy et al. v. Australia*. The Committee concluded that the respondent State had violated the ICCPR, and it fleshed out the specific legal consequences arising from this breach:

“Having found a violation of articles 17 and 27, the Committee does not deem it necessary to examine the authors’ remaining claims under article 24 (1) of the Covenant.

[...] **Pursuant to article 2(3)(a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide adequate compensation, to the authors for the harm that they have suffered; engage in**

¹²²⁹ Expert Report of Professor Martin Scheinin on International Human Rights Law Obligations of States in Respect of Climate Change (dated 31 December 2023) (**Exhibit C**), para. 42.

¹²³⁰ UN Human Rights Committee, *General comment no. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 15 ([link](#)).

¹²³¹ UN Human Rights Committee, *General comment no. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 17 ([link](#)).

meaningful consultations with the authors’ communities in order to conduct needs assessments; continue its implementation of measures necessary to secure the communities’ continued safe existence on their respective islands; and monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable. The State party is also under an obligation to take steps to **prevent similar violations in the future**” (emphasis added)¹²³²

These remedies respond to the violations of the rights to private and family life and to culture recognized in Articles 17 and 27 of the International Covenant on Civil and Political Rights.

631. In the landmark case *Urgenda Foundation v. State of the Netherlands*, the Supreme Court of the Netherlands clarified that prevention and the availability of redress mechanisms is not enough; actual redress must be provided:

“A remedy is considered effective ... if it will prevent or end the violation or if the remedy offers adequate redress for a violation that has already occurred. In the case of more serious violations, the available remedies must provide for both: the prevention or end of the violation as well as **redress**. National states are thus required to provide remedies that can effectively prevent more serious violations.” (emphasis added)¹²³³

The Supreme Court further noted that “*courts are ... obliged to ... attach consequences*” to a State’s breach of its positive obligations.¹²³⁴ As noted above, these consequences include an obligation on States to provide victims of human rights violations emanating from the Relevant Conduct with full reparation, aimed at restoring their rights and dignity.

632. In addition to victim- or situation-specific remedies, it is necessary to adopt measures “*beyond a victim-specific remedy ... to avoid recurrence of the type of violation in question*”.¹²³⁵ Known as structural remedies, these legal consequences target a system problem which arises, typically, from a historical asymmetry in the structure of relationships within the State, which is not and cannot be redressed by victim- or situation-specific remedies.¹²³⁶

¹²³² Views adopted by the Committee under art. 5 (4) of the Optional Protocol, concerning communication No. 3624/2019, Human Rights Committee CCPR/C/135/D/3624/2019, 22 September 2022, paras. 10-11 ([link](#)).

¹²³³ *Urgenda Foundation v. State of the Netherlands*, Supreme Court of the Netherlands, ECLI:NL:HR, 20 December 2019 (Netherlands), para. 5.5.2 ([link](#)).

¹²³⁴ *Urgenda Foundation v. State of the Netherlands*, Supreme Court of the Netherlands, ECLI:NL:HR, 20 December 2019 (Netherlands), para. 6.3 ([link](#)).

¹²³⁵ UN Human Rights Committee, *General comment no. 31: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 17 ([link](#)).

¹²³⁶ See Veronika Fikfak, “Structural Remedies: Human Rights Law”, in *Max Planck Encyclopedia of Public International Law*, paras. 4 and 8.

633. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law are relevant both in general to the question of loss and damage¹²³⁷ and, specifically, in relation to structural remedies. They provide, in Article 23(f)-(h), the following remedies:

“Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention: [...]

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; and

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law” (italics original)¹²³⁸

634. General Comment No. 26 from the Committee on the Rights of the Child clarifies the question from the perspective of climate change and the rights of the child:

“It is critical to acknowledge loss and damage as a third pillar of climate action, along with mitigation and adaptation. States are encouraged to take note that, from a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation. States should undertake measures, including through international cooperation, to provide financial and technical

¹²³⁷ UN General Assembly Resolution 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 15 December 2005, Doc A/RES/60/147, Annex ([link](#)). The application of the Basic Principles and Guidelines to the question of human rights and loss and damages is confirmed by the OHCHR’s Key Messages on Human Rights and Loss and Damage, Office of the High Commissioner for Human Rights, *Key Messages on Human Rights and Loss and Damage*, November 2023, Key message 2 (“Those experiencing loss and damage due to the adverse effects of climate change are entitled to access effective remedy. Action to address economic and non-economic loss and damage should include the following key elements provided for under international human rights law: equal and effective access to justice and to an effective remedy; adequate, effective and prompt reparation for harm suffered, in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, including as guided by the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (GA res. 60/147)”) ([link](#)).

¹²³⁸ UN General Assembly Resolution 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 15 December 2005, Doc A/RES/60/147, Annex, Title IX Reparation for harm suffered, art. 23, letters (f) to (h) ([link](#)).

assistance for addressing loss and damage that have an impact on the enjoyment of the rights under the Convention”¹²³⁹

In relation to ensuring effective remedies in the context of climate change, the Committee recognises that “[a]ppropriate reparation includes restitution, adequate compensation, satisfaction, rehabilitation, and guarantees of non-repetition”, both for the environment and the children concerned, as well as access to medical and psychological assistance.¹²⁴⁰ The Committee also indicates that remedial mechanisms should consider “the specific vulnerabilities of children to the effects of environmental degradation, including the possible irreversibility and lifelong nature of the harm” and that reparation should be “swift, to limit ongoing and future violations”.¹²⁴¹ To this end, the Committee encourages the creation of innovative forms of reparation, such as intergenerational committees, “in which children are active participants, to determine and oversee the expeditious implementation of measures to mitigate and adapt to the impacts of climate change”.¹²⁴²

635. In the same vein, a Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts urged State Parties to the UNFCCC:

“To consider formulating laws, policies and strategies, as appropriate, that reflect the importance of integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change and in the broader context of human mobility, taking into consideration their respective human rights obligations and, as appropriate, other relevant international standards and legal considerations”¹²⁴³

636. More recently, a Report of the UN Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change provided detail of what is required of States in relation to loss and damage and human rights.¹²⁴⁴ It states the overall need in the following terms “[a] significant omission in most climate change legislation is any reference to loss and damage and how it can be addressed”.¹²⁴⁵ Specifically, the Report identifies the following forms of redress:

¹²³⁹ Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 106 ([link](#)).

¹²⁴⁰ Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 89 ([link](#)).

¹²⁴¹ Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 89 ([link](#)).

¹²⁴² Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26, 22 August 2023, para. 89 ([link](#)).

¹²⁴³ Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, Decision 10/CP.24 (2018) Annex, para. 1(g), ([link](#)).

¹²⁴⁴ Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, Ian Fry (28 July 2023), A/78/255 ([link](#)).

¹²⁴⁵ Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, Ian Fry (28 July 2023), A/78/255, para. 15 ([link](#)).

“With respect to loss and damage, new climate change legislation should:

- (a) Support processes for international cooperation on loss and damage based on the principle of solidarity entailing a duty of assistance without expectation of reciprocity;
- (b) Create provisions for compensation, liability and reparations to ensure that major greenhouse gas polluters – countries and corporations alike – pay for the harm they are causing. This should include domestic and transnational liability;
- (c) Ensure that individuals are granted freedom of movement and given full legal rights as though they were refugees if they are displaced across international borders as a consequence of climate change;
- (d) Develop affordable insurance and risk-pooling mechanisms to assist the most vulnerable
- (e) Create mechanisms to assess, quantify and compensate for loss and damage for economic and non-economic losses, including human rights impacts;
- (f) Support the establishment of an international mechanism for processing loss and damage claims in an expedited manner.”¹²⁴⁶

In its response to Question (b)(ii), the Court may refer to this work to identify the legal consequences with respect to peoples and individuals of the present and future generations.

(3) *Legal consequences arising from the right to self-determination*

637. The right to self-determination is widely considered as a peremptory norm of international law, as well as entailing obligations *erga omnes*.¹²⁴⁷ As recalled in Sections 5.2.3.G and 5.3.2.B(7) of this Chapter, the Court has considered that a breach to such obligations¹²⁴⁸ and, specifically, to the right to self-determination,¹²⁴⁹ gives rise to additional legal consequences formulated in Article 41(1)-(2) of ARSIWA, according to which:

¹²⁴⁶ Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, Ian Fry (28 July 2023), A/78/255, para. 72 ([link](#)).

¹²⁴⁷ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, para. 29; Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, art. 40, commentary, para. 5 ([link](#)); Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries, Yearbook of the International Law Commission, 2022, vol. II, Part Two, conclusion 23 and Annex, letter (h) ([link](#)); *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95, paras. 180.

¹²⁴⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, paras. 155 and 159; *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99, para. 93.

¹²⁴⁹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95, paras. 180-182.

“1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.

2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation”.

638. The violation of the right to self-determination by States having displayed the Relevant Conduct has been explained in Chapter IV, Section 4.4.3.E, and Chapter V, Sections 5.2.3.C and G. The additional consequences resulting from such breach arise for third States, namely those States who have not themselves displayed the Relevant Conduct, but the discharge of such additional obligations is for the benefit of peoples whose right to self-determination has been breached.
639. In its Advisory Opinion on *Chagos*, the Court found that the United Kingdom had breached the obligation to respect the right to self-determination and, given the nature of this obligation, certain consequences arose for third States.¹²⁵⁰ Although the factual circumstances addressed in those advisory proceedings were different from the present case, the legal consequences identified by the Court are instructive.
640. The Court considered that, it was for the UN General Assembly to set the modalities of the completion of decolonization of Mauritius, all UN Members had to cooperate to implement such modalities.¹²⁵¹ In the present proceedings the breach of the obligation to respect the right to self-determination does not concern an incomplete process of decolonization but an encroachment on the very possibility for numerous peoples to continue to exercise their right to self-determination in their own territory as a result of the adverse impacts of climate change. The loss and damage experienced by these peoples, including through sea-level rise, extreme weather events and other impacts which render their territory uninhabitable is not “*natural*” but “*induced*” by the Relevant Conduct, as displayed by a specific group of States which, together, are responsible for having caused not just significant harm but the catastrophic harm to the climate system and other parts of the environment we know as climate change. Yet, like for the completion of decolonization, it is for the UN General Assembly “*to pronounce on the modalities required to ensure*” the continued enjoyment of the right to self-determination by such peoples, and “*all Member States must co-operate with the United Nations to put those modalities into effect*”.¹²⁵²
641. In the *Chagos* Advisory Opinion, the Court also concluded that:

¹²⁵⁰ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, paras. 180-182

¹²⁵¹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, para. 180.

¹²⁵² *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 95, para. 180.

“As regards the resettlement on the Chagos Archipelago of Mauritian nationals, including those of Chagossian origin, this is an issue relating to the protection of the human rights of those concerned, which should be addressed by the General Assembly during the completion of the decolonization of Mauritius”¹²⁵³

In the different factual circumstances of the present proceedings, it is not the resettlement into the people’s own territory but the resettlement away from it, although in both cases the unavailability of the people’s territory is due to a conduct in breach of the right to self-determination. As in *Chagos*, this is also an issue of human rights, as further confirmed by the ongoing work of the International Law Commission on Sea-level rise in relation to international law, which has identified as one of the three sub-topics to be addressed “*the protection of persons affected by sea-level rise*”.¹²⁵⁴ The Second issues paper prepared by the Co-Chairs of the Study Group on sea-level rise in relation to international law addressed this sub-topic as a matter where obligations arising from human rights as particularly relevant.¹²⁵⁵ It must be recalled that such obligations are themselves owed *erga omnes* with the ensuing legal consequences for third States.¹²⁵⁶ The UN General Assembly will need to address it together with the modalities required to ensure the continued enjoyment by the affected peoples of their right to self-determination. All States have an obligation to co-operate with the United Nations to ensure the full enjoyment of human rights by the affected peoples and individuals.

642. In the meantime, as noted by the Court in its Advisory Opinion on the *Construction of a Wall in Occupied Palestine Territory*:

“all States are under an obligation not to recognize the illegal situation resulting from [the breach arising from the Relevant Conduct] ... They are also under an obligation not to render aid or assistance in maintaining the situation [arising from such breach]”¹²⁵⁷

Just like as in the context of the first category of victims of climate injustice, identified in Question (b)(i) of the Resolution 77/276 (see Section 5.3.2.B(7)) of this Chapter), the obligation of non-recognition of the situation resulting from the

¹²⁵³ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95, paras. 181.

¹²⁵⁴ See Report of the International Law Commission (2023), chapter VIII, paras. 130 and 137 ([link](#)).

¹²⁵⁵ Sea-level rise in relation to international law. Second issues paper by Patrícia Galvão Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on sea-level rise in relation to international law, 19 April 2022, A/CN.4/752, p. 56 ([link](#)).

¹²⁵⁶ *Güzelyurtlu And Others v. Cyprus and Turkey*, European Court of Human Rights (Grand Chamber) Application No. 36925/07, Judgment, 29 January 2019, paras. 157-158 ([link](#)); *The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and Scope of articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*, Inter-American Court of Human Rights, Series A No. 26, Advisory Opinion No. OC-26/20 (9 November 2020), paras. 102-106 (and references therein) ([link](#)).

¹²⁵⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 159.

breach requires the recognition of the continued enjoyment by the affected peoples of their right to self-determination in the way it has been exercised, including independence and Statehood, and in the limits of their own territory and maritime spaces. Also, the obligation not to render aid or assistance in maintaining the breach calls into question the lawfulness of all newly concluded or future infrastructure (e.g. pipelines) and supply agreements that effectively expand reliance on fossil fuels, contrary to the required cessation of the breach.

5.4. Concluding submissions

643. For the foregoing reasons, the Republic of Vanuatu submits that the Relevant Conduct is attributable to States and it is, in principle, inconsistent with the duty of due diligence; the obligations arising from the rights recognized in the Universal Declaration of Human Rights; the principle of prevention of significant harm to the environment; the duty to protect and preserve the marine environment; the obligations arising from the right to self-determination; the duty to co-operate; the obligations arising from the principle of good faith; the obligations arising from the Charter of the United Nations and the subsequent interpretive practice under it, including the rights recognized in the Universal Declaration of Human Rights, the right of peoples to self-determination, the duty to co-operate and the obligations arising from the principle of good faith; the obligations arising from the rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; the obligations arising from the right to clean, healthy and sustainable environment as it relates to other rights and existing international law; the obligations arising from the UNFCCC and the Paris Agreement; the obligations arising from the United Nations Convention on the Law of the Sea; and the obligations arising from the Convention on the Rights of the Child. This breach triggers legal consequences with respect to the two categories of victims identified in Question (b), sub-paragraphs (i) and (ii). With respect to States in the first category of victims, the two basic legal consequences are the obligations of cessation (for those States – and the group thereof – which are still displaying the Relevant Conduct) and reparation (for all States which have displayed the Relevant Conduct in breach of their obligations, whether they have already ceased their unlawful behaviour or not). The obligation of cessation of the Relevant Conduct requires deep cuts in GHG emissions in accordance with the scientific consensus regarding what needs to be done and by when. The obligation of reparation entails, first and foremost, restitution when this is possible (including support for adaptive capacity; non-monetary redress for the human mobility, including displacement and migration, caused by the adverse effects of climate change; and recognition of sovereignty, statehood, territory and maritime boundaries despite sea-level rise). Reparation also entails compensation when restitution is not possible (including for both economic and non-economic loss and damage; and for damage caused to the environment in and of itself). In addition, there are particular consequences attached to serious breaches of certain

obligations owed *erga omnes* or to the international community as a whole. With respect to peoples and individuals in the second category of victims, the specific legal consequences include the obligation to provide an effective remedy in order to afford redress for the human rights violation, the obligation to provide structural remedies, and the additional obligations arising from serious breaches of obligations owed *erga omnes* or to the international community as a whole. These obligations entail specific consequences in relation to human rights violations resulting from loss and damage and from breach of the right to self-determination.

CHAPTER VI

GENERAL CONCLUSIONS

644. For the reasons provided in this Written Statement, the Republic of Vanuatu makes the following concluding submissions:

- A) The Court has jurisdiction to give the requested advisory opinion, there are no compelling reasons for the Court to decline to give its advisory opinion, and there are no grounds justifying the reformulation or restrictive interpretation of the questions put to the Court by the UN General Assembly in its request adopted by consensus.
- B) The Court can rely on scientific and State consensus on the causes and impact of climate change, expressed, *inter alia*, in the reports of the IPCC. Climate injustice, *i.e.* the disproportional impacts of climate change on those who have contributed the least, is part of this consensus. The specific situation of Vanuatu illustrates the meaning and harrowing consequences of climate injustice.
- C) In order to answer the two questions put to it, the Court should refer to the Relevant Conduct characterized in Resolution 77/276. This Relevant Conduct consists of acts and omissions of individual States – and of a specific group thereof – that have resulted over time in a level of anthropogenic GHG emissions from activities within their jurisdiction or control which have interfered with the climate system and other parts of the environment to an extent which amounts to at least significant harm to the latter, whether or not the anthropogenic GHG emissions of a given State over time are the only or the main cause of climate change, and whether or not they are the only or the main cause of the specific harm suffered by another State, people or individual.
- D) There is ample evidence regarding which specific States have displayed the Relevant Conduct and, taken together, have overwhelmingly caused climate change and its adverse effects. There is also ample evidence that at least from the 1960s, States with high cumulative GHG emissions knew or should have known, given the widely available scientific information, the implications of their conduct. Thus, there is a solid evidentiary basis for the Court to assess the obligations governing the Relevant Conduct and its legal consequences at the level of specific individual States, a specific

group of States or in general, without reference to one or more specific States or group thereof.

- E) The answer to Question (a) requires an examination of the entire corpus of international law, guided by the characterization of the Relevant Conduct provided by the General Assembly, having particular regard, without limitation, to the rules from treaties and general international law mentioned in the chapeau paragraph of the operative part.
- F) In this light, the following obligations arising from general international law specifically govern the acts and omissions of States underpinning the Relevant Conduct: the duty of due diligence; the obligations arising from the rights recognized in the Universal Declaration of Human Rights; the principle of prevention of significant harm to the environment; the duty to protect and preserve the marine environment; the obligations arising from the right to self-determination; the duty to co-operate and the obligations arising from the principle of good faith. These obligations are binding on all States and the Relevant Conduct is in breach of them.
- G) In addition, the following obligations arising from treaties in force also govern the Relevant Conduct of States which are parties to one or more of them: obligations arising from the Charter of the United Nations and the subsequent interpretive practice under it, including the rights recognized in the Universal Declaration of Human Rights, the right of peoples to self-determination, the duty to co-operate and the obligations arising from the principle of good faith; obligations arising from the rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; obligations arising from the right to clean, healthy and sustainable environment as it relates to other rights and existing international law; obligations arising from the UNFCCC and the Paris Agreement; obligations arising from the United Nations Convention on the Law of the Sea; and obligations arising from the Convention on the Rights of the Child. These obligations are binding on States parties to the relevant treaties and the Relevant Conduct is in breach of them.
- H) Furthermore, international human rights law and the principle of intergenerational equity create binding obligations for States towards future generations. These obligations are binding on all States and the Relevant Conduct is in breach of them.

- I) The Relevant Conduct is attributable to the State and it is, in principle, inconsistent with the duty of due diligence; the obligations arising from the rights recognized in the Universal Declaration of Human Rights; the principle of prevention of significant harm to the environment; the duty to protect and preserve the marine environment; the obligations arising from the right to self-determination; the duty to co-operate; the obligations arising from the principle of good faith; the obligations arising from the Charter of the United Nations and the subsequent interpretive practice under it, including the rights recognized in the Universal Declaration of Human Rights, the right of peoples to self-determination, the duty to co-operate and the obligations arising from the principle of good faith; the obligations arising from the rights enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; the obligations arising from the right to clean, healthy and sustainable environment as it relates to other rights and existing international law; the obligations arising from the UNFCCC and the Paris Agreement; the obligations arising from the United Nations Convention on the Law of the Sea; and the obligations arising from the Convention on the Rights of the Child. This breach triggers legal consequences with respect to the two categories of victims identified in Question (b), sub-paragraphs (i) and (ii).
- J) With respect to States in the first category of victims, the two basic legal consequences are the obligations of cessation (for those States – and the group thereof – which are still displaying the Relevant Conduct) and reparation (for all States which have displayed the Relevant Conduct in breach of their obligations, whether they have already ceased their unlawful behaviour or not). The obligation of cessation of the Relevant Conduct requires deep cuts in GHG emissions in accordance with the scientific consensus regarding what needs to be done and by when. Notably, reliance on geoengineering and speculative technologies is not cessation; and indeed, it is associated with further risks to the climate system and the environment and further breaches of international law. The obligation of reparation entails, first and foremost, restitution when this is possible (including support for adaptive capacity; non-monetary redress for the human mobility, including displacement and migration, caused by the adverse effects of climate change; and recognition of sovereignty, statehood, territory and maritime boundaries despite sea-level rise). Reparation also entails compensation when restitution is not possible (including for both economic and non-economic loss and damage; and for damage

caused to the environment in and of itself). In addition, there are particular consequences attached to serious breaches of certain obligations owed *erga omnes* or to the international community as a whole.

- K) With respect to peoples and individuals in the second category of victims, the specific legal consequences include the obligation to provide an effective remedy in order to afford redress for the human rights violation, the obligation to provide structural remedies, and the additional obligations arising from serious breaches of obligations owed *erga omnes* or to the international community as a whole. These obligations entail specific consequences in relation to human rights violations resulting from loss and damage and from breach of the right to self-determination.

Respectfully submitted by:

Ambassador Georges Maniuri
Representative of the Republic of Vanuatu

21 March 2024

Certification

I certify that the copies of documents annexed to this Written Statement are true copies of the original documents referred to.

21 March 2024

Ambassador Georges Maniuri

Representative of the Republic of Vanuatu

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2.	<p><i>Admissibility of Hearings of Petitioners by the Committee on South West Africa</i>, Advisory Opinion, I.C.J. Reports 1956, p. 23.</p> <p>Available at the following link: https://www.icj-cij.org/case/31/advisory-opinions (visited on 15 March 2024).</p>
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4.	<p><i>Aegean Sea Continental Shelf (Greece v. Turkey)</i>, I.C.J. Reports 1978, p. 3.</p> <p>Available at the following link: https://www.icj-cij.org/case/62/judgments (visited on 15 March 2024).</p>
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49.	<p><i>Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion</i>, I.C.J. Reports 2004, p. 136.</p> <p>Available at the following link: https://www.icj-cij.org/case/131/advisory-opinions (visited on 15 March 2024).</p>
50.	<p><i>Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion</i>, I.C.J. Reports 2019, p. 95.</p> <p>Available at the following link: https://www.icj-cij.org/case/169/advisory-opinions (visited on 15 March 2024).</p>
51.	<p><i>Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Separate Opinion of Judge Robinson</i>, I.C.J. Reports 2019.</p> <p>Available at the following link: https://www.icj-cij.org/case/169/advisory-opinions (visited on 15 March 2024).</p>
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	<p>Available at the following link: https://www.icj-cij.org/case/70/judgments (visited on 15 March 2024).</p>
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62.	<p><i>Obligations of States in respect of Climate Change, Advisory Opinion</i>, Order of 20 April 2023, General List No. 187.</p> <p>Available at the following link: https://www.icj-cij.org/case/187/orders (visited on 15 March 2024).</p>
63.	<p><i>Obligations of States in respect of Climate Change, Advisory Opinion</i>, Order of 4 August 2023, General List No. 187.</p> <p>Available at the following link: https://www.icj-cij.org/case/187/orders (visited on 15 March 2024).</p>
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No.	Document Name
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113.	<p><i>Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)</i>, PCA Case No. 2017-06, Award concerning the preliminary objections of the Russian Federation (21 February 2020).</p> <p>Available at the following link: https://pca-cpa.org/en/cases/149/ (visited on 15 March 2024).</p>
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No.	Document Name
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127.	<p><i>Hydro S.r.l. et al. v. Republic of Albania</i>, ICSID Case No. ARB/15/28, Award (24 April 2019).</p> <p>Available at the following link: https://www.italaw.com/cases/3958 (visited on 15 March 2024).</p>
128.	<p><i>In the matter of the Chagos Marine Protected Area Arbitration before an Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea (Mauritius v. UK)</i>, Permanent Court of Arbitration, Award (18 March 2015).</p> <p>Available at the following link: https://pca-cpa.org/en/cases/11/ (visited on 15 March 2024).</p>
129.	<p><i>In the matter of the South China Sea Arbitration before and Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea</i>, PCA Case No. 2013-19, Award (12 July 2016).</p> <p>Available at the following link: https://pca-cpa.org/en/cases/7/ (visited on 15 March 2024).</p>
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	<p>Available at the following link: https://www.italaw.com/cases/2258 (visited on 15 March 2024).</p>
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135.	<p><i>Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore)</i>, ITLOS Case no. 12, Order of 10 September 2003.</p> <p>Available at the following link: https://pca-cpa.org/en/cases/108/ (visited on 15 March 2024).</p>
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	Available at the following link: https://www.itlos.org/en/main/cases/list-of-cases/case-no-18/case-no-18-provisional-measures/ (visited on 15 March 2024).
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146.	<i>Noble Ventures, Inc. v. Romania</i> , ICSID Case No. ARB/01/11, Award (12 October 2005).

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152.	<p><i>Prosecutor v. Blaškić</i> (IT- 94/ 14- A), Judgment, 29 July 2004.</p> <p>Available at the following link: https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/IT-95-14-A/JUD125R0000193738.tif (visited on 15 March 2024).</p>
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No.	Document Name
162.	<p data-bbox="277 300 1374 394"><i>Société Générale In respect of DR Energy Holdings Limited and Empresa Distribuidora de Electricidad del Este, S.A. v. The Dominican Republic</i>, UNCITRAL, LCIA Case No. UN 7927, Award on Preliminary Objections to Jurisdiction (19 September 2008).</p> <p data-bbox="277 443 895 506">Available at the following link: https://www.italaw.com/cases/1039 (visited on 15 March 2024).</p>
163.	<p data-bbox="277 557 1318 586"><i>Soering v UK</i>, European Court of Human Rights Series A No 161, App No 14038/88 11 EHRR 439 (1989).</p> <p data-bbox="277 633 975 696">Available at the following link: https://hudoc.echr.coe.int/eng?i=001-57619 (visited on 15 March 2024).</p>
164.	<p data-bbox="277 748 1334 810"><i>Solicitud de Opinión Consultiva presentada por Colombia y Chile ante la Corte Interamericana de Derechos Humanos</i>, 9 de enero de 2023, pending.</p> <p data-bbox="277 857 1222 920">Available at the following link: https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634 (visited on 15 March 2024).</p>
165.	<p data-bbox="277 965 1406 1028"><i>Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan)</i>, Order of 27 August 1999, ITLOS Reports 1999.</p> <p data-bbox="277 1075 1150 1137">Available at the following link: https://www.itlos.org/en/main/cases/list-of-cases/case-no-3-4/ (visited on 15 March 2024).</p>
166.	<p data-bbox="277 1182 1358 1245"><i>The MOX Plant Case, Ireland v. United Kingdom of Great Britain and Northern Ireland</i>, Provisional Measures, ITLOS Case no. 10, Order of 3 December 2001.</p> <p data-bbox="277 1292 1142 1355">Available at the following link: https://www.itlos.org/en/main/cases/list-of-cases/case-no-10/ (visited on 15 March 2024).</p>
167.	<p data-bbox="277 1400 1406 1574"><i>The Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and Scope of articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)</i>, Inter-American Court of Human Rights, Series A No. 26, Advisory Opinion No. OC-26/20 (9 November 2020).</p> <p data-bbox="277 1621 1142 1684">Available at the following link: https://www.corteidh.or.cr/docs/opiniones/seriea_26_eng.pdf (visited on 15 March 2024).</p>
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169.	<p><i>The Queen, on the application of Western Sahara Campaign UK v. Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs</i>, European Court of Justice, Judgment of 27 February 2018, C-266/16.</p> <p>Available at the following link: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0266 (visited on 15 March 2024).</p>
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173.	<p><i>United States - Gasoline (Brazil and Venezuela v United States)</i> Appellate Body, WT/DS2/AB/R, WT/DS4/AB/R, Report No AB-1996-1, Doc No 96-1597 (29 April 1996) ITL 013 (WTO 1996), 16.</p> <p>Available at the following link: https://www.wto.org/english/tratop_e/dispu_e/2-9.pdf (visited on 15 March 2024).</p>
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178.	<p><i>X. v. Latvia</i>, European Court of Human Rights Application No. 27853/ 09, 26 November 2013.</p> <p>Available at the following link: https://hudoc.echr.coe.int/fre#%7B%22fulltext%22:%5B%22X%20v.%20Latvia%22%7D%22display%22:%5B%22%5D%22language%22:%5B%22ENG%22%5D%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%22itemid%22:%5B%22001-138992%22%7D (visited on 15 March 2024).</p>
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