INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
(CASE NO. 31)

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)

WRITTEN STATEMENT OF THE REPUBLIC OF NAURU

15 JUNE 2023

I. Introduction

1. The Commission of Small Island States on Climate Change and International Law ("Commission") filed on 12 December 2022 a request for an advisory opinion on the obligations of States Parties to the United Nations Convention on the Law of the Sea ("UNCLOS" or "Convention")[1] to combat climate change and its effects. It asks:

> What are the specific obligations of States Parties to [UNCLOS] including under Part XII:
> *(a)* to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?
> *(b)* to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?

2. The President of the Tribunal decided, in orders of 16 December 2022 and 15 February 2023, that 16 June 2023 was the time-limit for the submission of written statements.

3. The Republic of Nauru welcomes the initiative and leadership of the Commission in this vital matter and its positive engagement with Small Island Developing States.

4. Nauru is one of the world's smallest States and one of the least responsible for climate change. Its levels of CO_2 equivalent emissions were in 2014 estimated at 0.00019% of global emissions.[2] Yet, it is among the States most affected by climate change. By reason of its small size and limited natural resources, Nauru faces significant challenges caused by climate change.[3] It relies entirely on the ocean for its livelihood and development.[4] For Nauru the effects of climate change have the potential to impact coastal infrastructure, food and water security, public health and safety, and local ecosystems.[5] But climate change is already undermining and threatening Nauru's ability to deliver basic services to its population.[6] Although Nauru's baselines and existing maritime entitlements would remain unaltered in spite of sea-level rise,[7] the

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1 10 December 1982, 1833 U.N.T.S. 3.

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

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

4 Statement delivered by Ms Josie-Ann Dongobir, Chargé d'Affaires, Permament Mission of the Republic of Nauru to the United Nations, United Nations General Assembly, 77th Session.

5 Republic of Nauru, Updated Nationally Determined Contribution, 14 October 2021, p. 12.

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

7 *Maritime Delimitation in the Area between Greenland and Jan Mayen, I.C.J. Reports 1993*, p. 38, 74, para. 80; ILC, Sea-level rise in relation to international law, A/CN.4/761, 13 February 2023, para. 154.

effects of climate change pose serious security risks to the livelihoods of the people of Nauru and its very viability.[8]

5. If it was true more than twenty-five years ago, as the International Court observed in *Nuclear Weapons*, that "the environment is under daily threat",[9] it is all the more true today—perhaps nowhere more so than in the context of the marine environment. Climate change is threatening the vital needs of the population of States such as Nauru. But not only is climate change threatening catastrophic repercussions for the livelihood and well-being of Nauru's population: it is threatening to deprive the people Nauru of its means of subsistence.

6. The Convention—which by reason of the dignity of its object and the firmness of its purpose has earned the sobriquet "the Constitution of the Oceans"[10]—naturally sets about to counter such devastation to the marine environment. It does so with special regard to the States at the sharp end of climate change. As the States Parties affirmed in the Convention's Preamble, they were seeking to:

> "contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests of developing countries".[11]

7. The balance of this written statement is structured as follows. **Chapter II** sets out why the Tribunal has jurisdiction to give the advisory opinion requested, and that no compelling reasons militate against the exercise of that jurisdiction, which the Tribunal must exercise to its full extent (paragraphs 8–23). **Chapter III** sets out the applicable law, i.e. UNCLOS and other relevant rules of international law not incompatible with it, and that the Tribunal is empowered to consider incidentally other bodies of international law if this is necessary in order to interpret and apply the Convention (paragraphs 24–32). **Chapter IV** turns to Question I: it sets out the obligations under UNCLOS to take measures to prevent, reduce, and control pollution of the marine environment (paragraphs 33–50). **Chapter V** sets out the obligation in Article 192 in the context of climate change, and that, given the impact of climate change on human beings, its due diligence obligation will necessarily take colour from e.g. fundamental principles of international human rights law (paragraphs 51–66). **Chapter VI** concludes this written statement (paragraph 67).

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

9 *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, 241–42, para. 29.

10 T. Koh, "A Constitution for the Oceans" in *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea* (United Nations 1983) xxxiii, xxxvii; H. Corell, "Speech Delivered at the Inaugural Session of the Tribunal of the Law of the Sea" (1996–97) 1 ITLOS Yearbook 1, 13.

11 Fifth preambular recital, UNCLOS.

II. Jurisdiction

8. The Tribunal has jurisdiction to give the advisory opinion requested. This is apparent from the provisions of its Statute, its Rules, and from the Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law ("Agreement").[12] These instruments will be dealt with in turn.

9. Article 16 of the Statute of ITLOS provides that: "The Tribunal shall frame rules for carrying out its functions. In particular it shall lay down rules of procedure."

10. Article 21 of the Statute is in the following terms, in English and French respectively:

> "The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal."
>
> "*Le Tribunal est compétent pour tous les différends et toutes les demandes qui lui sont soumis conformément à la Convention et toutes les fois que cela est expressément prévu dans tout autre accord conférant compétence au Tribunal.*"

11. The Annexes of UNCLOS form an "integral part" of the Convention".[13] Article 21 of the Statute therefore enjoys, like any other provision of the Statute, "the same status as the Convention".[14] The jurisdiction that Article 21 confers on the Tribunal in respect of advisory opinions follows from the third element enumerated in Article 21:

> "all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal"
>
> "*toutes les fois que cela est expressément prévu dans tout autre accord conférant compétence au Tribunal*".

As is apparent from the wording of Article 21, those words:

> "should not be interpreted as covering only 'disputes', for if that were to be the case, article 21 of the Statute would simply have used the word 'disputes'. Consequently, it must mean something more than only 'disputes'. That something more must include advisory opinions, if specifically provided for in 'any other agreement which confers jurisdiction on the Tribunal.'"[15]

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12 31 October 2021; registered with the Secretariat of the United Nations for publications in the U.N.T.S..

13 Art. 318, UNCLOS.

14 *Request for Advisory Opinion submitted to by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, 20, para. 52.

15 *Ibid*., 20, para. 56.

12. As is also evident from the wording of Article 21, it is not that provision itself (or only that provision), so much as the agreement to which it refers, that confers jurisdiction on the Tribunal. This is apparent from the words "all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal". In the present proceeding, that other agreement is the Agreement, and in particular its Article 2.

13. Article 21 of the Statute makes reference to the "other agreement": Article 2(2) of the Agreement, in turn, makes reference back to Article 21 of the Statute. Article 2(2) of the Agreement provides that:

> "the Commission shall be authorized to request advisory opinions from the International Tribunal for the Law of the Sea ('ITLOS') on any legal question within the scope of the 1982 United Nations Convention on the Law of the Sea, consistent with Article 21 of the ITLOS Statute and Article 138 of its Rules."

14. Article 21 and the Agreement are, as the Tribunal put it in general terms in *Sub-Regional Fisheries Commission*, "interconnected and constitute the substantive legal basis of the advisory jurisdiction of the Tribunal".[16]

15. Nor is there any problem in relation to the requirements of Article 138 of the Rules. As regards the prerequisites that must be satisfied before the Tribunal is able to exercise its advisory function, Article 138(1) sets out that:

> "The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion."

16. These requirements are amply met in the present proceeding. They can be dealt with briefly. The Agreement is an international agreement concluded by States, which has been registered with the UN Secretary-General.[17] It is apparent from the provisions of the Agreement that it relates to the purposes of the Convention. The Agreement specifically provides, in its Article 2, for the submission to the Tribunal of a request of an advisory opinion. Finally, the questions it asks have been framed in legal terms. The questions "concern the interpretation of provisions of the Convention and raise issues of general international law"; this means that they "are by their very nature susceptible of a reply based on law".[18]

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16 *Ibid.*, 22, para. 58

17 See footnote 12 above.

18 *Request for Advisory Opinion submitted to by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, 24, para. 65; *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10, p. 25, para. 39, citing *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Advisory Opinion, I.C.J. Reports 2010*, p. 403, 415, para. 25; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, 18, para. 15.

17. Article 21 of the Statute provides that the jurisdiction extends to "all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal". Article 21 confers "a broad jurisdiction on the Tribunal".[19]

18. The Agreement specifies that the Commission "shall be authorized to request advisory opinions from the International Tribunal for the Law of the Sea ('ITLOS') on any legal question within the scope of the 1982 United Nations Convention on the Law of the Sea". Since the Agreement specifies with clarity that the Commission is authorized to request advisory opinions from the Tribunal on any legal question within the scope of the Convention, there is no doubt that the questions asked of the Tribunal have a "sufficient connection" with the purposes and principles of the Agreement.[20] The Tribunal has jurisdiction to entertain the request submitted to it by the Commission.

19. As regards the limits of that jurisdiction, Nauru wishes to emphasize that, if it is true that an international tribunal must not exceed the jurisdiction conferred upon it, it is, as the International Court of Justice has observed, no less true that it "must also exercise that jurisdiction *to its full extent*".[21] The duty of an international tribunal in jurisdictional matters is to determine, as a matter of law, the scope of its jurisdiction; in that regard, "[i]ts decision would be as much open to criticism for an under exercise of jurisdiction as for an excess of jurisdiction".[22]

20. Article 138 of the Rules, which provides that "the Tribunal may give an advisory opinion", is to the effect that the Tribunal has discretion as to whether or not to respond to a request for an advisory opinion.[23] This discretion exists in order to protect the integrity of the Tribunal's judicial function.[24] The position as regards the International Court is essentially also the position as regards the Tribunal: its answer to a request for an advisory opinion is an expression of its institutional role; it is something that, "in principle, should not be refused".[25] By answering the questions the Tribunal will,

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19 J. L. Jesus, in P. Chandrasekhara Rao and P. Gautier (eds.), *The Rules of the International Tribunal for the Law of the Sea: A Commentary* (Martinus Nijhoff 2006) 373, 394.

20 *Request for Advisory Opinion submitted to by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, 24, para. 68, citing *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996*, p. 66, 77, para. 22.

21 *Continental Shelf Libyan Arab Jamahiriya v Malta), I.C.J. Reports 1985*, p 13, 23, para. 19 (emphasis added); *Territorial and Maritime Dispute (Nicaragua v Colombia), I.C.J. Reports 2012*, p. 624, 671, para. 136; R. Kolb, *The International Court of Justice* (Hart 2013) 920.

22 C. McLachlan, "The Assault on International Adjudication and the Limits of Withdrawal" (2019) 68 ICLQ p. 499, 516.

23 *Request for Advisory Opinion submitted to by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, 25, para. 71.

24 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, 113, para. 64.

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

furthermore, assist the Commission, as well as the States Parties to the Convention, and contribute to the implementation of the Convention.[26]

21. It is not the case either that the factual or scientific issues will present the Tribunal with issues that are so complex or disputed that it should, on that basis, decline to respond to the request for an advisory opinion. What is decisive, here as it was in *Western Sahara* and *Chagos Archipelago*, is that the Tribunal has:

> "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".[27]

22. There can be no doubt that it has just that. A voluminous dossier has been submitted by the Commission; the Commission (representing numerous States) and a great number of other States have submitted written statements relevant to answering the questions. The scientific evidence put before the Tribunal has also been voluminous.

23. There are, in conclusion, no compelling reasons which would on a discretionary basis militate against the Tribunal accepting to exercise its jurisdiction in the present proceeding.[28]

III. Applicable Law

24. Article 138(3) of the Rules provides that, as regards the applicable law concerning the Tribunal's advisory jurisdiction in the present proceedings, the Tribunal shall "apply *mutatis mutandis* articles 130 to 137" of the Rules. These provisions set out the rules applicable to the Seabed Disputes Chamber in the exercise of its functions relating to advisory opinions. Article 130(1) of the Rules is in these terms:

> "In the exercise of its functions relating to advisory opinions, the Seabed Chamber shall apply this section and be guided, to the extent to which it

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2004, p. 134, 156, para. 44; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, 113, para. 64.

26 *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10, p. 24, para. 30; *Request for Advisory Opinion submitted to by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, 26, para. 77.

27 *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, 28–29, para. 46; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, 114, para. 72.

28 *Request for Advisory Opinion submitted to by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, 25, para. 71, citing *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, 235, para. 14.

> recognizes them to be applicable, by the provisions of the Statute and of these Rules applicable in contentious cases."

25. Article 23 of the Statute provides that: "The Tribunal shall decide all disputes and applications in accordance with article 293." In turn Article 293(1) of the Convention provides, under the title "Applicable law", that:

> "A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention."

26. In conclusion, the Agreement authorizes the Commission to request advisory opinions on any legal question "within the scope of the 1982 United Nations Convention on the Law of the Sea". The scope of the Convention for the purposes of the jurisdiction of the Tribunal is set by the Convention itself. It does so, as was seen above, in Article 293, which defines the scope to be "this Convention and other rules of international law not incompatible with this Convention". Therefore, the Convention and other relevant rules of international law not incompatible with it constitute the applicable law in the present proceeding.

27. Where a tribunal has primary jurisdiction to interpret and apply only the Convention, the jurisdiction of the Tribunal will, in the words of the Annex VII tribunal in *Chagos*, also extend to making such "ancillary determinations of law as are necessary" in order for the Tribunal properly to discharge that task.[29] The Annex VII tribunal in *Enrica Lexie* confirmed this approach to UNCLOS, in relation not to other international agreements, but instead to customary international law rules of immunity, the determination of which in that case necessarily arose "as an incidental question in the application of the Convention".[30] At times, tribunals will speak of this jurisdiction as being "ancillary"; at other times, they will call it "incidental". The meaning is, however, the same. The need for such incidental determinations is plain enough: it is necessary both for reasons of logic and for the coherence of international law and the various bodies of law that make up its legal system.

28. This principle of incidental questions originated in early arbitral decisions.[31] It was set out in classic form by the Permanent Court of International Justice in *German Interests in Polish Upper Silesia*: "the interpretation of other international agreements is indisputably within the competence of the Court if such interpretation must be regarded

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29 *Chagos Islands (Mauritius v United Kingdom)* (2015) 162 ILR 1, 157, para. 220.

30 *Enrica Lexie (Italy v India)*, Award, 21 May 2020, para. 809; also *Arctic Sunrise (The Netherlands v Russian Federation)* (Merits) (2015) 171 ILR 1, 82, para. 197.

31 e.g. *Guano (Chili/France)* (1901) 15 RIAA 77, 100; *Kunkel* (1925) 6 Rec. T.A.M. 974, 977.

as incidental to a decision on a point in regard to which it has jurisdiction".[32] The tribunal in *Gold Looted by Germany from Rome in 1943* similarly held that:

> "*Il est en effet établi par la jurisprudence qui s'est développée sur la base du droit des gens, qu'un juge ou arbitre international est compétent, non seulement pour interpréter le traité qui l'a institué, mais tous autres accords internationaux, si cette interprétation doit être considérée comme incidente à la décision d'un point sur lequel il est compétent.*"[33]

29. The same principle, essentially one of judicial logic that inheres in the judicial function, has been applied in advisory proceedings,[34] such as the International Court's advisory opinions in *Effects of Awards*[35] and *Namibia.*[36]

30. As is evident from *Effects of Awards* and *Namibia*, the application of the principle is largely the same in contentious and in advisory proceedings. There is, however, one difference. It is axiomatic that in contentious proceedings there is, on the one hand, a need for international tribunals to seek coherence as between bodies of international law but, on the other hand, there is also a need not to go beyond the consent of the States concerned.[37] This means, in the context of contentious proceedings, that:

> "On the one hand, a jurisdiction charged with applying a specific body of international law is … authorized to apply incidentally rules belonging to other bodies of international law, for the purpose of interpreting or applying a rule that is part of the legal rules on which it has primarily to pronounce. On the other hand, the impetus of coherence is tempered by that of consent".[38]

31. The last aspect—that the impetus to apply incidentally rules belonging to other bodies of international law is tempered by the principle of State consent—necessarily applies with less force in advisory proceedings than in contentious proceedings. Contentious proceedings result in a binding judgment. It is a concomitant of this fact that there are strict limits on the jurisdiction of the tribunal—lines in the sand drawn fastidiously by the principle of State consent. The fact that in advisory proceedings the reply is not

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32 *Certain German Interests in Polish Upper Silesia (Germany v Poland)*, PCIJ 1925, Ser. A, No. 6, p. 18.

33 *Gold Looted by Germany from Rome 1943* (1953) 12 RIAA 13, 35.

34 *Prosecutor v Tadic* (1995) 105 ILR 419, 462, para. 21.

35 *Effect of Awards of Compensation Made by the UN Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954*, p. 47, 56.

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, 45, para. 89 *et seq*.

37 P. Akhavan and E. Bjorge, "Between Consent and Coherence- Incidental Questions in an Imperfect World" (2022) 116 AJIL Unbound 164, 165–67.

38 *Ibid.*, 168–69, citing A. Cassese, "The *Nicaragua* and *Tadić* Tests Revisited in Light of the ICJ Judgment on *Genocide in Bosnia*" (2007) 18 EJIL 649, 662.

binding, but instead advisory, means that the position is a different one. As the International Court observed in *Peace Treaties*,

> "[t]he consent of States, parties to a dispute, is the basis of the Court's jurisdiction in contentious cases. The situation is different in regard to advisory proceedings … . The Court's reply is only of an advisory character: as such, it has no binding force. … The Court's Opinion is given not to the States, but to the organ which is entitled to request it".[39]

32. The Tribunal is, in other words, empowered to make any such incidental determinations of law as are necessary for it to interpret and apply the Convention, whether that involves incidental consideration of bodies of international law such as (*inter alia*) international human rights law, the corpus of international law relating to the environment, or other general international law. The Tribunal must do so exercising its jurisdiction to its full extent. This includes, for example, consideration of any subsequent agreements between the parties regarding the interpretation of UNCLOS or the application of its provisions; such a subsequent agreement will be an authentic means of interpretation of UNCLOS itself.[40] As the situation relating to the consent of States is different in regard to advisory proceedings as compared with contentious proceedings, the principle of consent does not temper the Tribunal's ability to exercise its jurisdiction, whether it be its primary or incidental jurisdiction.

IV. Question 1

33. The Intergovernmental Panel on Climate Change ("IPCC") has concluded that human activities are to blame for the highest atmospheric concentrations of greenhouse gases in millions of years. This in turn has driven warming of our planet at a rate never before witnessed in our history. Climate change is having a devastating impact on the marine environment.[41]

34. If, as time-honoured principle has it, "the land dominates the sea",[42] that domination is, in the context of climate change, sadly attested by the impact that human activities on

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39 *Interpretation of Peace Treaties, Advisory Opinion, I.C.J. Reports 1950*, p. 65, 71; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 134, 157–58, para. 47; also *Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Preliminary Objections*, 28 January 2021, para. 202.

40 ILC Yearbook 1964, vol. II, A/CN.4/167, 204, para. 13; ILC Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties, Draft Conclusion 3, commentary, paras 1–2.

41 See IPCC, *Contribution of Working Group II to the Sixth Assessment Report* (2022), Ch. 3, p. 380 *et seq*.

42 *Delimitation of the Maritime Boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, 28 April 2023, para. 108; *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 3, 51, para. 96; *Fisheries (United Kingdom v Norway), I.C.J. Reports 1951*, p. 116, 133; *Grisbadarna (Sweden/Norway)* (1909) 9 RIAA 147, 159.

land have on the sea. It is, as one eminent commentator put it more than twenty years ago, universally recognized that human activities on land presents "by far the most serious threat to the marine environment".[43]

35. The Preamble of UNCLOS provides that "the problems of ocean space are closely interrelated and need to be considered as a whole".[44] That is the spirit in which the obligations under UNCLOS to protect and preserve the marine environment in relation to the impact of climate change must be understood. No distinction can for present purposes be made between the various maritime zones.[45] But if the problems of ocean space are closely interrelated and must be considered as a whole, it is also necessary to consider the land and the sea as closely interrelated. The "living space" of the environment, to which the International Court referred in *Nuclear Weapons*,[46] provides the relevant broader context, of which ocean space is a part.

36. As the IPCC has evidenced, climate change is having nothing short of devastating consequences on the marine environment. This is so, in part, given the very great role played by the marine environment in absorbing excess heat and carbon dioxide caused by greenhouse gas emissions. The oceans, together with the marine cryosphere, store more than 90% of the excess heat that has, since the nineteenth century, accumulated in the climate system.[47] By reason of the absorption by the oceans of this excess heat, harmful physical and chemical changes occur: ocean warming, melting of the marine cryosphere, sea-level rise, changes to ocean and air currents, ocean stratification and deoxygenation. These phenomena in turn cause a great deal of harm, such as decline in biodiversity and abundance, destruction of marine habitats, food insecurity, lack of potable water, submergence and coastal communities, extreme weather events, destruction of cultural heritage.

37. Against that background, Question 1 refracts the obligations of the Convention through the specific lens of Article 1(1)(4) and its concept of "pollution of the marine environment". Pollution is broadly defined in Article 1(1)(4) of the Convention. Article 1(1)(4) defines "pollution of the marine environment" in the following terms:

> "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

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43 T. A. Mensah, "The International Legal Regime for the Protection and Preservation of the Marine Environment from Land-based Sources of Pollution" in A. Boyle and D. Freestone (eds.), *International Law and Sustainable Development* (OUP 1999) 297, 297.

44 Third preambular recital, UNCLOS.

45 The French text of the third preambular recital of UNCLOS has maritime "spaces" in the plural: "*Conscients que les problèmes des espaces marins sont étroitement liés entre eux et doivent être envisagés dans leur ensemble*" (underlined here), which emphasizes the need also to conceive of the different maritime zones as being closely interrelated.

46 *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, 241–42, para. 29.

47 IPCC, *Contribution of Working Group II to the Sixth Assessment Report* (2022), Ch. 3, p. 380 *et seq*.

> 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 of use of sea water and reduction of amenities."

38. Anthropogenic greenhouse gas emissions are covered by this definition.[48] The emission of greenhouse gases is caused by human activity. Greenhouse gases, mostly CO_2, trap the sun's heat and cause the temperature of the atmosphere to rise. A great deal of that heat is absorbed by the marine environment through the process of thermal transfer. This process, in turn, causes physical and chemical changes to the marine environment. It results in a range of harmful effects: destruction of ocean habitats and ecosystems; decline in biodiversity; submergence and outright destruction of coastal communities; changing and extreme weather; population displacement; decline in fishing and harvesting.

39. But anthropogenic greenhouse gas emissions also introduce, directly or indirectly, the substance of carbon into the marine environment. This occurs through the absorption by the oceans of the carbon dioxide that results from human activity. Carbon dioxide causes chemical changes in the marine environment; the consequence is similar to the range of results set out in the paragraph above.

40. Part XII of the Convention lays down obligations on States Parties to take measures to prevent, reduce, and control pollution of the marine environment. What is required is not only the adoption of rules and measures that are equal to meeting the obligation: it requires also a certain level of vigilance in their enforcement and in the administrative exercise of control of those, public as well as private entities, who are bound by them.

41. The core obligation under Part XII is indicated in Article 194(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."

42. As is apparent from its wording, Article 194(1) requires States Parties to take all necessary measures to prevent, reduce, and control greenhouse gas emissions. As Boyle has put it, "States have an obligation to control and reduce CO_2 emissions from any source likely to pollute the marine environment and cause harm to other States".[49] This requires, as a minimum, a State Party to adopt legislative and regulatory measures aimed at eliminating greenhouse gas emissions from all sources of marine pollution

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48 A. Boyle, "Climate Change, Ocean Governance and UNCLOS" in J. Barrett and R. Barnes (eds.), *Law of the Sea: UNCLOS as a Living Treaty* (BIICL 2016) 211, 218.

49 *Ibid.*, 219.

within the State's control, as well as that which results from the activities of actors, State as well as non-State ones, within the State's control. Further obligations necessarily include the obligation to cooperate, whether in international organizations or otherwise; to assist developing States to address marine pollution; and to provide effective recourse for the victims of such pollution.

43. Article 194(2) provides that:

> "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."

44. This provision extends the obligations that arise under Article 194(1) also to embrace transboundary harm caused by greenhouse gas emissions that originate from within the State's jurisdiction or control. Inherent in the obligation set out in Article 194(2) is that of conducting an environmental impact assessment with respect to activities likely to cause transboundary harm from greenhouse gas emissions.

45. Article 194(3) specifies that the measures taken in pursuance of Part XII "shall deal with *all sources of pollution* of the marine environment".[50] Similar, and more specific, obligations are set out in Articles 211, 217, 218, 220, and 222. Article 207(1) lays down an obligation to adopt laws and regulations to prevent, reduce, and control pollution of the marine environment from land-based sources, taking into account internationally agreed rules, standards, and recommended practices and procedures. Article 212(1) lays down the same obligation in relation to pollution of the marine environment from or through the atmosphere. Among these internationally agreed rules, standards, and recommended practices and procedures will be the provisions of the Paris Agreement.

46. In order to fulfil their obligations under Part XII, States Parties to the Convention must take all necessary measures to prevent, reduce, and control anthropogenic greenhouse gas emissions. This they must necessarily do on the basis of scientific knowledge. That scientific knowledge leaves no room for doubt: every increment of warming intensifies the risk and harms of climate change. Limiting the average global temperature to 1.5°C above pre-industrial levels would significantly reduce them.

47. This scientific knowledge was reflected, and given expression in legal terms, in the Paris Agreement.[51] In its Article 2(1)(a) the Paris Agreement provides it aims to strengthen the global response to the threat of climate change, including by:

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50 Emphasis added.

51 12 December 2015; registered with the Secretariat of the United Nations for publications in the U.N.T.S..

> "[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".

48. The Paris Agreement is a subsequent agreement between the Parties to UNCLOS regarding the interpretation of the Convention or the application of its provisions.[52] It is true that not every State Party to UNCLOS is a State Party to the Paris Agreement. That is not, however, necessary. What is necessary for there to be a subsequent agreement regarding the interpretation of the original treaty is the consent of the great majority of the treaty parties. This is apparent from the drafting history of Article 31(3)(a) of the Vienna Convention on the Law of Treaties, which in an earlier draft had "any later agreement between <u>all the parties</u> to the treaty and relating to its subject-matter".[53] This was changed to "any subsequent agreement between <u>the parties</u> regarding the interpretation of the treaty".[54] What is meant are "the parties as a whole".[55] In reality this means, in the case of multilateral conventions, that the subsequent agreement—in common with subsequent practice—must have the participation of "the great majority of the parties".[56] There can be no doubt that the Paris Agreement is a "subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions" in the sense of Article 31(3)(a) of the Vienna Convention.

49. As mentioned above, consideration of a subsequent agreement between the parties regarding the interpretation of UNCLOS or the application of its provisions will be an authentic means of interpretation of UNCLOS itself.[57]

50. The provisions of the Paris Agreement are authentic means for the interpretation of the provisions of UNCLOS. It follows that the term in Article 2(1)(a) of the Paris Agreement, of limiting the average global temperature to 1.5°C above pre-industrial levels, is among the specific obligations of States Parties to UNCLOS to prevent, reduce, and control pollution of the marine environment in relation to the deleterious effects likely to result from climate change.

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52 Art. 31(3)(a), Vienna Convention on the Law of Treaties ("VCLT"), 22 May 1969, 1155 U.N.T.S. 331.

53 ILC Yearbook 1964, vol. II, A/CN.4/167, 53 (underlined here).

54 Art. 31(3)(a) VCLT (underlined here).

55 ILC Yearbook 1966, vol. II, A/CN.4/SER.A/1966/Add.1, 222, para 15.

56 Sir Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice Vol. I* (Grotius 1986) 357.

57 ILC Yearbook 1964, vol. II, A/CN.4/167, 204, para. 13; ILC Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties, Draft Conclusion 3, commentary paras 1–2.

V. Question 2

51. If Question 1 refracts the obligations of the Convention through the lens of "pollution of the marine environment", Question 2 is general in its wording. It concerns the obligations under Article 192—as they relate to the protection and preservation of the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification—in their generality.

52. Under the title "General obligation" Article 192 provides that "States have the obligation to protect and preserve the marine environment." It applies to all States, not only to States Parties to UNCLOS.[58] The obligations is one of due diligence.[59] As is evident from the wording of Article 192, "*l'énoncé permet une lecture large de l'obligation comme requérant les mesures nécessaires à protéger l'environnement marin contre toute source de dégradation*".[60]

53. It is well established that Article 192 "imposes on all States Parties an obligation to protect and preserve the marine environment".[61] It is in keeping with its general nature that the content of the obligation on States Parties codified in Article 192 "is informed by the other provisions of Part XII and other applicable rules of international law".[62] Specific rules of international law applicable to the questions before the Tribunal, such as (*inter alia*) international human rights law, the corpus of international law relating to the environment, and other general international law, will therefore inform the content itself of the obligation laid down in Article 192. The same is the case with the specific obligation set out in Article 2(1)(a) of the Paris Agreement. To give one example, this means, as the Annex VII tribunal in *South China Sea* observed, that:

> "[t]he corpus of international law relating to the environment, which informs the content of the general obligation in Article 192, requires that States 'ensure

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58 N. Oral, "Implementing Part XII of the 1982 UN Law of the Sea Convention and the Role of International Courts" in N. Boschiero and others (eds.), *International Courts and the Development of International Law* (Asser 2013) 403, 405; M.H. Nordquist, N. Grandy, S. Rosenne, and Y. Yankov (eds.), *Virginia Commentary Vol. IV* (Martinus Nijhoff 1990) 39.

59 *Request for Advisory Opinion submitted to by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, 63; *South China Sea (Philippines v People's Republic of China)*(2015) 170 ILR 1, 571, para. 956; 572, para. 959; 574, para. 964.

60 C. Salpin, "La protection de l'environnement marin" in M. Forteau and J.M. Thouvenin (eds.) *Traité de droit international de la mer* (Pedone 2017) 786, 791.

61 *M/V "Louisa" (Saint Vincent and the Grenadines v Kingdom of Spain), Provisional Measures, Order of 23 December 2010, ITLOS Reports 2008*, p. 58, 70, para. 76; *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015*, p. 146, 160, para. 69; *Request for Advisory Opinion submitted to by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, 37, para. 120; *South China Sea (Philippines v People's Republic of China)*(2015) 170 ILR 1, 564, para. 941.

62 *South China Sea (Philippines v People's Republic of China)*(2015) 170 ILR 1, 564, para. 941.

that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control".[63]

54. The general obligation in Article 192 "extends both to 'protection' of the marine environment from future damage and 'preservation' in the sense of maintaining or improving its present condition".[64] It follows logically that Article 192 "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".[65]

55. Article 192 "applies to all maritime areas",[66] "both inside the national jurisdiction of States and beyond it".[67] This is in keeping with the Preamble of UNCLOS, which provides that "the problems of ocean space are closely interrelated and need to be considered as a whole".[68] The French text of UNCLOS, which uses the plural of maritime areas, makes it apparent that the Convention seeks in general to govern all maritime areas: "*Conscients que les problèmes des espaces marins sont étroitement liés entre eux et doivent être envisagés dans leur ensemble*".[69] Article 192 places upon the States Parties a general obligation "to protect and preserve the marine environment".[70] This holistic approach, which follows from Article 192 and the preamble, is particularly apposite in the context of climate change, which does not discriminate between maritime areas, nor between the terrestrial or maritime environment.

56. In the interpretation of the general obligation in Article 192, the specific obligation set out in Article 2(1)(a) of the Paris Agreement is an authentic means of interpretation. This means, in the present context, that the duty to limit the average global temperature to 1.5°C above pre-industrial levels is a part of the obligation in Article 192.

57. It is furthermore necessary to keep in mind that, as the International Court has observed, "the environment is not an abstraction but represents the living space, the quality of life

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63 *Ibid.*; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, 241–42, para. 29

64 *South China Sea (Philippines v People's Republic of China)*(2015) 170 ILR 1, 564, para. 941.

65 *Ibid*.

66 *Request for Advisory Opinion submitted to by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, 37, para. 120.

67 *South China Sea (Philippines v People's Republic of China)*(2015) 170 ILR 1, 563, para. 940.

68 Third preambular recital, UNCLOS; R. E. Fife, "Les regions polaires" in M. Forteau and J. M. Thouvenin (eds.), *Traité de droit international de la mer* (Pedone 2017) 501, 501.

69 See footnote 45 above.

70 Y. Tanaka, "Principles of International Marine Environmental Law" in R. Rayfuse (ed.), *Research Handbook on International Marine Environmental Law* (Elgar 2015) 31, 35.

and the very health of human beings, including generations unborn."[71] The connection between the marine environment, on the one hand, and the living space, the quality of life, and the very health of human beings, on the other, points in the direction of (*inter alia*) the fundamental principles of international human rights law. The obligation in Article 192 will be delineated both by the context in which it appears in UNCLOS and the practical context in which the obligation falls to be performed.[72] Given the deleterious impact climate change ultimately has on human beings, the general due diligence obligation in Article 192 will in the context of climate change necessarily take colour from fundamental principles of international human rights law.

58. As set out in the Convention's Preamble, part of the object and purpose of the Convention is to contribute to the maintenance of "justice and progress for all peoples of the world".[73] The States Parties sought to: "contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests of developing countries".[74] They were of the belief that the codification and progressive development of the law of the sea achieved in the Convention would "promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter".[75] The Preamble of the Charter reaffirms "faith in fundamental human rights"[76] and Article 1, which sets out the Purposes and Principles of the Charter, emphasizes the purpose of developing "friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples"[77] and the "respect for human rights and fundamental freedoms".[78] "Considerations of humanity must", as the Tribunal has consistently held, "apply in the law of the sea, as they do in other areas of international law."[79]

59. The most obviously apposite principle is the principle of general international law codified in Common Article 1 of the International Covenant on Civil and Political

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71 *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, 241–42, para. 29.

72 *South China Sea (Philippines v People's Republic of China)*(2015) 170 ILR 1, 564, para. 942.

73 First preambular recital, UNCLOS.

74 Fifth preambular recital, UNCLOS.

75 Seventh preambular recital, UNCLOS.

76 Second preambular recital, UN Charter.

77 Art. 1(2), UN Charter.

78 Art. 1(3), UN Charter.

79 *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v Guinea), ITLOS Reports 1999*, p. 10, 62, para. 155 (citing *Corfu Channel (United Kingdom v Albania), ICJ Reports 1949*, p. 4, 22); *M/V "Virginia G" (Panama/Guinea-Bissau), ITLOS Reports 2014*, p. 4, 101, para. 359; *The "Enrica Lexie" (Italy v India), Provisional Measures, Order of 24 August 2015, ITLOS Reports 2015*, p. 182, 204, para. 133.

Rights[80] and the International Covenant on Economic, Social and Cultural Rights.[81] Common Article 1, identically phrased in the two Covenants, provides in its first two sub-paragraphs:

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

60. The principle in Common Article 1, which makes up Part I of both Covenants, is a group right, rather than an individual right. As such, it precedes the individual rights in Part II of both of the two Covenants, and it is not subject to the jurisdictional limitations, set out in Article 2 of the Covenants, that apply to the individual rights in Part II.

61. As the International Court observed in *Chagos Archipelago*, "Article 1, common to the International Covenant on Civil and Political Rights and to the International Covenant on Economic, Social and Cultural Rights … reaffirms the right of all peoples to self-determination".[82] The Court further observed that "the right to self-determination, as a fundamental human right, has a broad scope of application".[83]

62. This fundamental human right is part of the "general international law in relation to human rights" to which the Annex VII tribunal in *Arctic Sunrise* considered itself competent to have regard in its interpretation and application of UNCLOS.[84] All the aspects of this peremptory norm of general international law,[85] codified in Common Article 1, are relevant in the present context. The part that is of the greatest relevance, however, is the disarmingly simple final provision: "In no case may a people be deprived of its own means of subsistence." Explaining this provision, one authority

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80 16 December 1966, 999 U.N.T.S. 171.

81 16 December 1966, 993 U.N.T.S. 3.

82 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, 133, para. 154.

83 *Ibid.*, 131, para. 144.

84 *Arctic Sunrise (The Netherlands v Russian Federation)*(2015) 171 ILR 1, 82, para. 197 (note the limits on the incidental jurisdiction correctly set out in para. 198: the Tribunal was not competent to "to apply directly provisions such as Article 9 and 12(2) of the ICCPR or to determine breaches of such provisions"; underlined here).

85 ILC Yearbook, vol. II, part 2, p. 113, para. 5(c); Draft Conclusions on Identification and Legal Consequences of Peremptory Norm of General International Law (*jus cogens*), with Commentaries (2022), A/77/10, para. 14.

observed that international law lays down a prohibition against any act that is "such as to call into question the independent existence of a people". As he explained:

> "This is a general principle resulting from the right of peoples to self-determination. Later on, it was explicitly formulated in Article 1 of the Covenants on Human Rights: 'In no case may a people be deprived of its own means of subsistence.'"[86]

63. The precept is "a legal principle of general application".[87] The Human Rights Committee made apparent in its General Comment No 12 that the principle that in no case may a people be deprived of its own means of subsistence is a right that "entails corresponding duties for all States and the international community".[88] It is routinely relied on in international life, by UN appointed bodies[89] and by States in their practice.[90]

64. The principle of general international law that in no case may a people be deprived of its own means of subsistence has, in different guises, played an important role in the law of the sea. In *Fisheries* the International Court thus laid stress on the importance of "the vital needs of the population".[91] In *Gulf of Maine* the Chamber of the Court similarly stressed the need to avoid that boundary delimitations should have "catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned".[92] It can also be found in State practice in the law of the sea.[93] In 1952 Chile, Ecuador, and Peru declared, in their Declaration on the

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86 B. Graefrath, "Responsibility and Damages Caused: Relationship between Responsibility and Damages" (1984) 185 Hague *Recueil* 92.

87 ILC Yearbook 2001, II, Part 2, 66, para. 8(a), A/CN./SER.A/1996/Add.1 (Part 2); also *Third Report on State Responsibility*, UNILCOR, 52nd Sess., Agenda Item 3, UN Doc. A/CN.4/507 (2000), 20, para. 39.

88 CCPR General Comment No 12: Article 1 (Right to Self-determination), 13 March 1984, para. 5.

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

90 e.g. Letter dated 28 September 2010 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the General Assembly, A/65/513, 14 October 2010, 2; Letter dated 23 October 2007 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General, A/62/505–S/2007/630, 27 October 2007, 2; S/PV.3864, 3864th meeting, Security Council, 20 March 1998, 8 (Libya); "Note verbal dated 29 January 1996 from the Permanent Mission of Iraq to the United Nations", E/CN.4/1996/119, 19 March 1996, para 41(d).

91 *Fisheries, I.C.J. Reports 1951*, p. 116, 142; A. Pellet and B. Samson, "La délimitation des espaces marins" in M. Forteau and J.M. Thouvenin (eds.) *Traité de droit international de la mer* (Pedone 2017) 565, 589.

92 *Delimitation of the Maritime Boundary in the Gulf of Maine Area, I.C.J. Reports 1984*, p. 246, 342, para. 237; also *Case Concerning Delimitation of Maritime Areas between Canada and the French Republic (St Pierre and Miquelon)* (1992) 95 ILR 645, 675, para. 84; *Maritime Delimitation in the Black Sea (Romania v Ukraine), I.C.J. Reports 2009*, p. 61, 126, para. 198; *Territorial and Maritime Dispute (Nicaragua v Columbia), I.C.J. Reports 2012*, p. 624, 706, para. 223.

93 e.g. League of Nations Committee of Experts for the Progressive Codification of International Law, C.196.M.70, Annex II, "Norway. Questionnaire No. 2 — Territorial Waters, Letter of 3 March 1927", 173 (Norway referring to the "means of subsistence" of its coastal population, "whose existence almost

Maritime Zone, that "Governments have the obligation to ensure for their peoples the necessary conditions of subsistence, and to provide them with the resources for their economic development."[94] They further emphasized the duty of Governments to prevent any exploitation of natural resources:

> "beyond the scope of their jurisdiction, which endangers the existence, integrity and conservation of these resources to the detriment of the peoples who, because of their geographical situation, possess irreplaceable means of subsistence and vital economic resources in their seas".[95]

65. The specific obligations of States Parties to UNCLOS to protect and preserve the maritime environment in relation to climate change impacts, such as Article 192, are informed by the general international law in relation to human rights, such that "in no case may a people be deprived of its own means of subsistence". This means that Article 192 necessarily is to the effect that all States Parties have an obligation to take such measures of protection and preservation of the marine environment in relation to climate change impacts that no people, whether of a Small Island Developing State such as Nauru or elsewhere, is deprived of its means of subsistence.

66. From this, too, it follows that limiting the average global temperature to 1.5°C above pre-industrial levels will, by necessity, be among the specific obligations of States Parties to UNCLOS to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification.

VI. Conclusion

67. For the reasons set out in this written statement, the Republic of Nauru invites the International Tribunal for the Law of the Sea to hold that it has jurisdiction to render the advisory opinion requested; to exercise its discretion to render the advisory opinion requested; to answer Question 1 taking account of Nauru's contentions set out above; and to answer Question 2 taking account of Nauru's contentions set out above.

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everywhere depends on fishery"); Letter dated 28 September 2010 from United Kingdom addressed to the President of the General Assembly, footnote 90 above, 2 (the United Kingdom relying on the principle that "in no case may a people be deprived of its own means of subsistence" in order to argue for what it considered to be the entitlement of the Falklands/Malvinas Islands Government to exploit economic resources within its own waters).

94 Consideration 1, Declaration on the Maritime Zone, 18 August 1952, 1006 U.N.T.S. 326.

95 *Ibid.*, Consideration 3.