

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

Amicus brief submitted to the International Tribunal for the Law of the Sea by the UN Special Rapporteurs on Human Rights & Climate Change (Ian Fry), Toxics & Human Rights (Marcos Orellana), and Human Rights & the Environment (David Boyd)

30 May 2023

TABLE OF CONTENTS

- I. EXECUTIVE SUMMARY 1
- II. EXPERIENCE AND QUALIFICATIONS OF THE UN RAPORTEURS 4
 - a. Dr. Ian Fry: UN Special Rapporteur on Human Rights & Climate Change 4
 - b. Dr. Marcos Orellana: UN Special Rapporteur on Toxics & Human Rights 4
 - c. Dr. David Boyd: UN Special Rapporteur on Human Rights & the Environment 5
- III. UNCLOS MUST BE INTERPRETED AND APPLIED IN A MANNER CONSISTENT WITH INTERNATIONAL ENVIRONMENTAL LAW AND INTERNATIONAL HUMAN RIGHTS LAW 5
 - a. The text of UNCLOS cannot be interpreted and applied without reference to international environmental law and international human rights law 5
 - b. International human rights law should be informed by other fields of international law 7
 - c. The Tribunal should therefore interpret and apply UNCLOS using the approach of systemic integration..... 8
- IV. GREENHOUSE GAS EMISSIONS POLLUTE THE MARINE ENVIRONMENT 8
- V. CLIMATE CHANGE-RELATED POLLUTION OF THE MARINE ENVIRONMENT THREATENS PROTECTED RIGHTS 9
 - a. The climate crisis impairs the effective enjoyment of human rights 9
 - b. The human rights of vulnerable populations are disproportionately impacted by the climate crisis 11
 - c. Protected rights..... 12
 - i. Climate crisis-related pollution of the marine environment threatens the human right to life..... 13
 - ii. Climate crisis-related pollution of the marine environment threatens the human right to self-determination..... 14
 - iii. Climate crisis-related pollution of the marine environment threatens the human right to home, privacy and family life..... 15
 - iv. Climate crisis-related pollution of the marine environment threatens the human right to a clean, healthy and sustainable environment 16

v.	Climate crisis-related pollution of the marine environment threatens the human right to food.....	17
vi.	Climate crisis-related pollution of the marine environment threatens the human right to livelihood, including to customary fishing practices	18
vii.	Climate crisis-related pollution of the marine environment threatens the cultural rights of minorities and Indigenous peoples	18
d.	Human rights in the context of mitigation and adaptation measures	19
VI.	STATE OBLIGATIONS UNDER UNCLOS IN THE CONTEXT OF THE CLIMATE CRISIS	20
a.	States must respect the right to science in the fulfillment of their obligations under UNCLOS	20
b.	States must rapidly reduce greenhouse gas emissions, in line with the principle of prevention and human rights standards, including the right to science	21
c.	States must develop and implement international rules, standards, and recommended practices and procedures to ensure the full enjoyment of human rights by individuals and communities affected by the climate crisis.....	23
d.	States must apply the precautionary principle to activities that may result in pollution of the marine environment through greenhouse gas emissions	24
e.	States must comply with international human rights and environmental law when carrying out mitigation and adaptation measures	25
f.	States must provide appropriate remedies for the violation of protected rights in the context of the climate crisis.....	27
VII.	CONCLUSION.....	28

I. EXECUTIVE SUMMARY

1. The UN Special Rapporteurs on Human Rights & Climate Change (Dr. Ian Fry),¹ Toxics and Human Rights (Dr. Marcos Orellana),² and Human Rights & the Environment (Dr. David Boyd)³ (together, the “UN Rapporteurs”) make this submission to the International Tribunal for the Law of the Sea (“ITLOS”) pursuant to Orders 2022/4 and 2023/1 issued by the President and Registrar of ITLOS and Article 133 of the Rules of the Tribunal (ITLOS/8, 25 Mar. 2021).⁴
2. The Commission of Small Island States on Climate Change and International Law requested an Advisory Opinion from ITLOS on the following questions:

What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea (“UNCLOS”), including under Part XII:

 - (a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or 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? (the “Request”)
3. The oceans are an integral element of the global climate system, and UNCLOS is the global constitution for the oceans. It is a living instrument whose interpretation and application are critical to tackling effectively present and future challenges to the marine environment, including the existential threat of the climate crisis.
4. The connection between climate change and the oceans has been recognized by the Conference of Parties of the United Nations Framework Convention on Climate Change (“UNFCCC”). The Report of the Conference of Parties regarding the 25th Session

¹ U.N. Human Rights Council, *Resolution adopted by the Human Rights Council on 8 October 2021*, U.N. Doc. A/HRC/RES/48/14, Special Rapporteur on the promotion and protection of human rights in the context of climate change.

² U.N. Human Rights Council, *Resolution adopted by the Human Rights Council on 6 October 2020*, U.N. Doc. A/HRC/RES/45/17, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

³ U.N. Human Rights Council, *Resolution adopted by the Human Rights Council on 22 March 2018*, U.N. Doc. A/HRC/RES/37/8, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

⁴ This submission does not constitute a waiver, express or implied, of the privileges and immunities of the United Nations and its officials and experts pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.

commended the efforts of the President to highlight the importance of the oceans to climate change:⁵

Commends the efforts of the President of the Conference of the Parties at its twenty-fifth session to highlight the importance of the ocean, including as an integral part of the Earth’s climate system, and of ensuring the integrity of ocean and coastal ecosystems in the context of climate change.

5. UNCLOS, international human rights law, and international environmental law, while addressing distinct areas of international law, share common purposes that are particularly relevant to the questions posed to the Tribunal. The three legal regimes work together systemically to require States to protect and respect the human rights of potentially affected individuals and communities as part of States’ obligations to prevent, reduce and control pollution of the marine environment and to protect and preserve the marine environment in the context of the climate crisis.
6. The UN Rapporteurs respectfully submit this amicus brief to assist ITLOS in its response to the Request. The brief makes the following submissions:
 - (a) UNCLOS should be interpreted through an approach which systemically integrates international human rights and international environmental law. This approach is required by the plain text of UNCLOS and by the Vienna Convention on the Law of Treaties.
 - (b) Greenhouse gas emissions amount to pollution of the marine environment under UNCLOS. They threaten a range of human rights, *inter alia* rights to life; self-determination; home, privacy, and family life; a clean, healthy, and sustainable environment; food; livelihood; and culture. These threats are compounded for vulnerable populations, including Indigenous peoples, small island developing states, and coastal communities.
 - (c) States have obligations to respect, protect and fulfill rights where threats to such rights are foreseeable and serious. This threshold is met by pollution of the marine environment through greenhouse gas emissions.
 - (d) States’ responses to the climate crisis, including mitigation, adaptation and financing measures, must be consistent with human rights standards, including those derived from the right to benefit from the progress of science (“**right to science**”).
 - (e) Specifically, States owe the following obligations:

⁵ See Report of the Conference of the Parties on its twenty-fifth session, held in Madrid from 2 to 15 December 2019, FCCC/CP/2019/13Add.1, ¶ 30.

- (i) Wealthy and other high-emitting States must rapidly reduce greenhouse gas emissions, in line with the principle of prevention and human rights obligations (including the right to science);
- (ii) States must implement measures that comply with international rules, standards, and recommended practices and procedures promulgated by competent international organizations regarding activities that may result in pollution of the marine environment through greenhouse gas emissions;
- (iii) States must develop and implement international rules, standards, and recommended practices and procedures to ensure the full enjoyment of human rights by individuals and communities affected by the climate crisis;
- (iv) States must apply the precautionary principle to activities that may result in pollution of the marine environment through greenhouse gas emissions;
- (v) States must comply with international human rights law and international environmental law in the application of mitigation and adaptation measures regarding activities that may result in pollution of the marine environment through greenhouse gas emissions; and
- (v) States must provide appropriate remedies for the violation of protected human rights from activities that result in pollution of the marine environment through greenhouse gas emissions.

7. As set out in Section II, the UN Rapporteurs are uniquely qualified to advise on these issues. The UN Rapporteurs have written extensively about the climate crisis, water governance, and other environmental challenges, emphasizing their connection with human rights.⁶ The UN Rapporteurs respectfully request that ITLOS treat this submission as part of the case file of Case No. 31 and make it publicly available through the ITLOS website and other channels.

⁶ See, e.g., 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*, U.N. Doc. A/74/161 (July 15, 2019); 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 and the global water crisis; water pollution, water scarcity and water-related disasters*, U.N. Doc. A/HRC/46/28 (Jan. 19, 2021); David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment) and Marcos Orellana (Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes), *The right to a clean, healthy and sustainable environment: non-toxic environment*, U.N. Doc. A/HRC/49/53 (Jan. 12, 2022); Ian Fry (Special Rapporteur on the promotion and protection of human rights in the context of climate change), *Promotion and protection of human rights in the context of climate change*, U.N. Doc. A/77/226 (July 26, 2022).

II. EXPERIENCE AND QUALIFICATIONS OF THE UN RAPORTEURS

8. UN Special Rapporteurs are part of the special procedures system of the UN Human Rights Council. They are independent experts from across the world appointed by the UN Human Rights Council to contribute to the fulfillment of human rights in areas related to their professional expertise. UN Special Rapporteurs undertake country visits, act on cases of reported violations and infringements through communications with implicated States and businesses, and contribute to the development of international human rights standards. They work closely with the Office of the High Commissioner for Human Rights and report annually to both the UN Human Rights Council and the UN General Assembly.

a. Dr. Ian Fry: UN Special Rapporteur on Human Rights & Climate Change

9. The mandate of the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change (“**Special Rapporteur on Climate Change**”) was established in 2021. The mandate includes studying and identifying how the adverse effects of climate change affects the full and effective enjoyment of human rights; identifying challenges to States’ efforts to protect human rights while addressing the effects of climate change; and raising awareness of the human rights affected by climate change.

10. Dr. Ian Fry is the Pacific Regional Representative to the UN for the International Council on Environmental Law, a member of the IUCN World Commission on Environmental Law, and a member of the Australasian Association for Pacific Studies, the International Studies Association, and the International Association for Small Island States. He worked for the Tuvalu government for over 21 years and served as their Ambassador for Climate Change and Environment from 2015 to 2019. Dr. Fry commenced his term as the Special Rapporteur on Climate Change in March 2022.

b. Dr. Marcos Orellana: UN Special Rapporteur on Toxics & Human Rights

11. The UN Human Rights Commission established a mandate to examine the human rights implications of exposure to hazardous substances and toxic wastes in 1995. The UN Human Rights Council expanded the mandate in 2011 to include the whole life cycle of hazardous products from manufacturing to final disposal, establishing a Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (“**Special Rapporteur on Toxics & Human Rights**”). The mandate includes examining emissions of hazardous substances from all sources; reporting on the adverse consequences of managing and disposing of hazardous wastes and substances in an unlawful manner; and studying the connections of science and policy as regards the risks to human rights posed by the lifecycle of hazardous substances and wastes.

12. Dr. Marcos Orellana has worked as a legal advisor to various UN agencies, governments, and non-governmental organizations, including to the Presidency of the 25th Conference of the Parties of the UNFCCC and as climate negotiator representing the eight-nation Independent Association of Latin America and the Caribbean in the negotiations of the

Paris Agreement on climate change. Dr. Orellana began his term as the Special Rapporteur on Toxics & Human Rights in August 2020.

c. Dr. David Boyd: UN Special Rapporteur on Human Rights & the Environment

13. The UN Human Rights Council created the mandate on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in 2011. The mandate was formalized as a Special Rapporteur in 2015 (“**Special Rapporteur on the Environment**”). The mandate includes studying the human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment; promoting good practices in rights-based approaches to environmental policymaking; and advancing the recognition and implementation of the right to a clean, healthy and sustainable environment.
14. Dr. David Boyd is a professor at the University of British Columbia in Canada, jointly appointed in the Institute for Resources, Environment and Sustainability and the School of Public Policy and Global Affairs. Dr. Boyd has submitted amicus briefs to more than a dozen national, regional, and international courts and tribunals, including the Supreme Courts of Brazil and Norway, the Constitutional Court of Ecuador, the European Court of Human Rights, the Inter-American Court of Human Rights, and the UN Human Rights Committee. Dr. Boyd began his term as the Special Rapporteur on the Environment in August 2018 and was reappointed in 2021 for a second three-year term.

III. UNCLOS MUST BE INTERPRETED AND APPLIED IN A MANNER CONSISTENT WITH INTERNATIONAL ENVIRONMENTAL LAW AND INTERNATIONAL HUMAN RIGHTS LAW

15. UNCLOS requires consideration of international human rights law and international environmental law in its interpretation and application. Such systemic integration is both a necessary requirement based in the text of UNCLOS, as well as a principle derived from customary international law more broadly.
 - a. **The text of UNCLOS cannot be interpreted and applied without reference to international environmental law and international human rights law**
16. Several UNCLOS provisions make express reference to relevant areas of international environmental law. For example, Articles 207, 212, and 213 require that States incorporate and refer to internationally agreed rules and standards when adopting legislation to prevent, reduce, and control pollution of the marine environment. Additionally, Article 237 provides that UNCLOS provisions do not override specific obligations assumed by States under marine environment-related special conventions and agreements.
17. The plain text of UNCLOS thus anticipates that UNCLOS operates against a backdrop of environmental rules and agreements, and that UNCLOS must be interpreted harmoniously alongside those norms. These UNCLOS provisions, among others, require consideration of States’ obligations under relevant legal instruments such as the UNFCCC and the Paris Agreement.

18. Similarly, several UNCLOS provisions impose obligations on States Parties that require consideration of applicable international human rights law. The definition of “pollution of the marine environment” in Article 1(4) includes consideration of “hazards to human health.” Articles 98 and 146 impose duties on States to protect human life, both on the high seas and in the context of activities taking place in the seabed, ocean floor, and ocean subsoil. Articles 73, 230, and 282, which codify safeguards for individual fishers or polluters, prohibit imprisonment or other forms of corporal punishment for fisheries violations, limiting penalties to fines and requiring that the State that arrests and detains any foreign fishing vessels promptly notify the flag State of the ships and release the crew upon posting of a reasonable bond or other financial security.
19. Additionally, UNCLOS Article 288 states that courts and tribunals under UNCLOS have jurisdiction over any dispute concerning the interpretation or application of UNCLOS as well as over “any international agreement related to the purposes” of UNCLOS. While this case is not a dispute within the terms of Article 288, the same principle is applicable by analogy in the exercise of the Tribunal’s advisory jurisdiction.
20. And UNCLOS Article 293(1) expressly requires that the interpretation and application of UNCLOS take into account other applicable international laws, provided that such laws are not incompatible with UNCLOS:

A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.
21. The approach of systemic integration of international law found in Articles 288 and 293(1) is consistent with Article 31(3)(c) of the Vienna Convention on the Law of Treaties (“VCLT”). Article 31(3)(c) requires that courts and tribunals, when interpreting international treaties, consider “any relevant rules of international law applicable in the relations between the parties”. The corpus of relevant rules includes not only treaties, but also general principles and rules of customary international law,⁷ such as harm prevention, precaution, non-regression, and the application of best available science.
22. Following Article 293(1), ITLOS has applied laws not incompatible with the express provisions of UNCLOS in several cases, including *M/V Saiga (No. 2)* and *M/V Virginia G*.⁸ In *M/V Saiga No. 2*, Guinean authorities arrested the captain of a Saint Vincent and the

⁷ For examples of international courts and tribunals drawing on general principles and customary international law, see *Oil Platforms (Iran v. U.S.)*, Preliminary Objections, 1996 I.C.J. 803 (Dec. 12), ¶ 41; *Prosecutor v. Anto Furundžija*, Case No IT-95-17/1-A, Judgment (Declaration of Judge Patrick Robinson), ¶ 283 (Int’l Crim. Trib. For the Former Yugoslavia July 21, 2000); *Pope & Talbot Inc v. Government of Canada*, Award in Respect of Damages by Arbitral Tribunal, 2002 Arbitrator Tribunal, at 4, ¶ 8 (May 31); *United States – Import prohibition of Certain Shrimp and Shrimp Products (Shrimp-Turtle Case)*, AB-1998-4, Report of the Appellate Body (12 Oct. 1998), ¶ 158; *Al-Adsani v. United Kingdom*, 34 Eur. Ct. H.R. 11 (2002).

⁸ *M/V SAIGA (No. 2) (St. Vincent v. Guinea)*, Case No. 2, Judgment of July 1, 1999, 2 ITLOS; *Guyana v. Suriname*, Case No. 2004-04, Award of the Arbitral Tribunal, 2007 PCA (Sept. 17); *M/V Virginia G Case (Pan./Guinea-Bissau)*, Case No. 19, Judgment of Apr. 14, 2014, 19 ITLOS.

Grenadines-flagged tanker supplying oil to fishing boats off the coast of Guinea. ITLOS applied principles of general international law, such as considerations of humanity:⁹

... although [UNCLOS] does not contain express provisions on the use of force in the arrest of ships ... use of force must be avoided as far as possible and, where force is unavoidable, it must not be beyond what is reasonable and necessary in the circumstances. Considerations of humanity must apply to the Law of the Sea as they do in other areas of international law.

23. Similarly, Annex VII tribunals have considered other areas of international law when interpreting and applying UNCLOS. For example, in the *South China Sea Arbitration*, the tribunal used Article 193 to incorporate a general principle of international law identified in a judgment of the ICJ that parties should not take steps to alter the status quo and aggravate a *sub judice* dispute to assess the parties' conduct in the course of dispute settlement proceedings.¹⁰

b. International human rights law should be informed by other fields of international law

24. Just as UNCLOS should be interpreted consistently with other fields of law, so too should international human rights law be interpreted harmoniously with international environmental law. This systemic approach has been clearly spelled out by the UN Human Rights Committee. In its recent General Comment 36 on Article 6 (the right to life) of the International Covenant on Civil and Political Rights, the Committee observed that:¹¹

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. Obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligations of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law.

25. The systemic approach of the UN Human Rights Committee is consistent with the approach and texts of modern international environmental treaties, which expressly refer to and incorporate human rights laws. For example, the UNFCCC and the Paris Agreement acknowledge that climate change is a “common concern of humankind” and that States should “respect, promote and consider their respective obligations on human rights.”¹²

⁹ M/V SAIGA (No. 2) (St. Vincent v. Guinea), Case No. 2, Judgment of July 1, 1999 at ¶ 155, 2 ITLOS.

¹⁰ See, e.g., Philippines v. China, Case No. 2013-19, Award In the Matter of the South China Sea Arbitration, 2016 PCA (July 12), ¶ 1173.

¹¹ Human Rights Committee, General Comment No. 36, CCPR/C/GC/36, 3 Sept. 2009, para. 62.

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

c. The Tribunal should therefore interpret and apply UNCLOS using the approach of systemic integration

26. The texts of UNCLOS and the VCLT, and the jurisprudence of ITLOS, the UNCLOS Annex VII tribunals and the UN Human Rights Committee all augur in favor of incorporating international human rights law (as well as international environmental law) when determining State obligations under UNCLOS. This holistic approach avoids fragmentation of international law.¹³ The preferred interpretive approach is one of systemic integration,¹⁴ which requires determining the precise relationship between two or more rules and principles that are both valid and applicable in respect of a particular situation.¹⁵

IV. GREENHOUSE GAS EMISSIONS POLLUTE THE MARINE ENVIRONMENT

27. The climate crisis—caused by the anthropogenic release of greenhouse gases—satisfies the definition of “pollution of the marine environment” in UNCLOS Article 1(4).¹⁶ The world’s oceans have absorbed more than 90% of the additional energy trapped by the greenhouse effect and approximately 30% of anthropogenic carbon dioxide from the atmosphere.¹⁷ Between 1971 and 2018, the oceans absorbed an astounding 396 zettajoules of energy.¹⁸ This absorption has heated, deoxygenated, and acidified the marine environment.¹⁹ In 2023, surface ocean temperatures reached the highest level in the four decades since data collection began, according to the US National Oceanic and Atmospheric Administration.²⁰
28. The pace of ocean heating is accelerating.²¹ Past emissions have already committed the global ocean to significant future heating of two to eight times that which has been experienced over the last 50 years.²²
29. The Intergovernmental Panel on Climate Change (“IPCC”) has reported extensively on the adverse impacts of climate change on the marine environment.²³ Sea levels are rising,²⁴

¹³ Report of the International Law Commission on the work of its fifty-eighth session, Chapter XII Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law, 2006, 177-184.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Article 1(4) defines “pollution of the marine environment” as “the introduction by man, directly or indirectly, of substances or energy into the marine environment ... which results or is likely to result in such deleterious effects as harm to living resources as marine 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.”

¹⁷ IPCC, *Report of Working Group I (Physical Science Basis), AR6: Summary for Policymakers*, ¶ A.4.2; IPCC Working Group II, AR5, p. 1658.

¹⁸ IPCC, *Report of Working Group I (Physical Science Basis), AR6*, p. 938.

¹⁹ Ocean temperatures were 0.88°C [0.68°C-1.01°C] higher in 2011-2022 than in 1850-1900. IPCC (2023) AR6, Summary for Policymakers, pg. 4.

²⁰ F. Harvey, 2023, “Record ocean temperatures put Earth in ‘uncharted territory’ say scientists”, *The Guardian*, 26 April 2023. <https://www.theguardian.com/environment/2023/apr/26/accelerating-ocean-warming-earth-temperatures-climate-crisis>

²¹ Cheng, L. J., and Coauthors, 2023: Another year of record heat for the oceans. *Adv. Atmos. Sci.*, 40(6), 963–974,

²² *Id.* ¶ B.5.1.

²³ IPCC, *AR6 Synthesis Report of the IPCC Sixth Assessment Report: Climate Change 2023*, paras B.1.4, B.2.1.

²⁴ IPCC (2023) AR6, Summary for Policymakers, pg. 5.

endangering coastal communities with floods, salinization, storm surges, and erosion.²⁵ Sea level rise is an existential threat to many communities, threatening both communal and national self-determination, especially in low-lying and small island developing States. Rising oceans have already forced some coastal communities to relocate in Fiji, the United States, and elsewhere.²⁶ Increased temperatures and acidification destroy coral reefs, threaten fisheries, and impact food production.²⁷ The deoxygenation of ocean waters reduces growth, changes behavior, and increases disease and mortality of marine organisms including fish, crustaceans, and shellfish – vital food sources for many communities.²⁸ Many impacts are already irreversible, while others are approaching the point of irreversibility.²⁹

V. CLIMATE CHANGE-RELATED POLLUTION OF THE MARINE ENVIRONMENT THREATENS PROTECTED RIGHTS

a. The climate crisis impairs the effective enjoyment of human rights

30. International legal instruments recognize that the climate crisis impairs effective enjoyment of human rights. The Preamble to the Paris Agreement provides that all States:

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, persons with disabilities, and people in vulnerable situations.

31. In 2010, the Conference of Parties to the UNFCCC acknowledged that climate change interferes with the effective enjoyment of human rights, stating that “[p]arties should, in all climate related actions, fully respect human rights”.³⁰ In the 2022 Implementation Plan issued by the most recent COP (27th session), UNFCCC States parties acknowledged that:³¹

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 a clean, healthy and sustainable environment, 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[.]

32. The climate crisis is a significant area of concern for UN human rights bodies. Since 2008, the UN Human Rights Council has adopted several resolutions recognizing that climate

²⁵ *Id.* paras. B.3.1, B.7.2.

²⁶ Special Rapporteur Dr. Boyd has observed first-hand such relocations caused by climate change, such as in Fiji during a mission trip in 2018.

²⁷ IPCC (2023) AR6, paras. A.2.4, B.3.2.

²⁸ IPCC (2023) AR6, Summary for Policymakers, pg. 5-6.

²⁹ IPCC (2023) AR6, Summary for Policymakers, pg. 5-6.

³⁰ Decision 1/CP.16, para. 8, FCCC/CP/2010/7/Add.1.

³¹ U.N. Framework Convention on Climate Change, Sharm el-Sheikh Implementation Plan, Decision -/CP.27 (20 Nov. 2022).

change constitutes an immediate and far-reaching threat to people and communities around the world, with implications for the full enjoyment of human rights, particularly those of the world's most vulnerable people.³² In 2009, the Office of the United Nations High Commissioner for Human Rights issued a landmark study concluding that climate change affects the enjoyment of a wide range of rights and vulnerable groups.³³ This was followed in 2014 by a statement issued by 27 UN Special Rapporteurs and Independent Experts concluding that “there can no longer be any doubt that climate change interferes with the enjoyment of human rights recognized and protected by international law”.³⁴ Special Rapporteurs on the Environment and on Climate Change have detailed the specific impacts of climate change on a range of protected rights.³⁵

33. Treaty bodies have consistently emphasized that States’ human rights obligations include the obligation to prevent foreseeable and serious violations of human rights caused by greenhouse gas emissions, and to provide remedies where such rights are violated.³⁶
34. The UN Committee on Economic, Social and Cultural Rights has warned States that failing to prevent foreseeable human rights harm caused by climate change or failing to mobilize the maximum available resources in an effort to do so, could constitute a breach of the obligation to respect, protect and fulfill human rights.³⁷
35. In 2019, five UN treaty bodies issued a Joint Statement on Human Rights and Climate Change, observing that “[f]ailure to take measures to prevent foreseeable harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations”.³⁸ The treaty bodies emphasized that “human rights mechanisms have an important role to play in ensuring that States avoid taking measures that could accelerate climate change, and that they dedicate the maximum available resources to the adoption of measures aimed at mitigating climate change”.³⁹

³² Human Rights Council Res. 7/23 (Mar. 28, 2008), 18/22 (Oct. 17, 2011), 26/27 (July 15, 2014), 29/15 (July 22, 2015), 32/33 (July 18, 2016), 35/20 (July 7, 2017) and 38/4 (July 16, 2018).

³³ A/HRC/10/61, 15 Jan. 2009.

³⁴ U.N. Office of the High Comm’r for Human Rights, *A new climate change agreement must include human rights protections for all* (17 October 2014), https://www.ohchr.org/sites/default/files/Documents/HRBodies/Sp/SP_to_UNFCCC.pdf

³⁵ A/HRC/31/52; A/74/161; A/77/226.

³⁶ See General Comment No. 36, para. 62; *Billy v. Australia*, (2019) CCPR/C/135/D/3624/2019, ¶ 8.12 (observing that Australia’s failure to implement adaptation measures adequate to counter rising sea levels amounted to a failure to protect against “foreseeable and serious violations of private and family life and the home”) and ¶ 8.14 (finding that complainants’ right to culture was violated where impacts “could have reasonably been foreseen by the State party”); *Sacchi v. Argentina*, (2019) CRC/C/88/D/104/2019, ¶ 10.6 (“[f]ailure to take measures to prevent foreseeable human rights harm caused by climate change or to regulate activities contributing to such harms could constitute a violation of States’ human rights obligations”).

³⁷ Comm. on Econ., Soc. and Cultural Rights, *Climate change and the International Covenant on Economic, Social, and Cultural Rights*, U.N. Doc. E/C.12/2018/1* (8 Oct. 2018).

³⁸ The Comm. on the Elimination of all Forms of Discrimination against Women, the Comm. On Econ., Soc. and Cultural Rights, the Comm. on the Protection of the Rights of All Migrant Workers and Members of their Families, the Comm. on the Rights of the Child, and the Comm. on the Rights of Persons with Disabilities, *Joint Statement on Human Rights and Climate Change*, U.N. Doc. HR1/2019/1 (14 May 2020), para. 1.

³⁹ *Id.*

36. As noted in para. 24 above, the UN Human Rights Committee has recognized the climate crisis as among “the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”.⁴⁰ In *Billy v. Australia*, concerning a complaint brought by Indigenous residents of Australia’s Torres Strait Islands, the Committee found that Australia had violated several of the complainants’ rights by failing to adequately protect them from the worst effects of the climate crisis.⁴¹ And in *Sacchi v. Argentina*, the UN Committee on the Rights of the Child observed that States may owe obligations under the UN Convention on the Rights of the Child where they fail to protect children’s rights from threats that are both serious and foreseeable.⁴²

b. The human rights of vulnerable populations are disproportionately impacted by the climate crisis

37. While the climate crisis—including its pollution of the marine environment—threatens the human rights of all citizens globally, it disproportionately impacts the human rights of individuals and communities in vulnerable situations. It is well-established that marginalized and vulnerable populations, including children, women, Indigenous peoples, racial and ethnic minorities, migrants, refugees, internally displaced persons, informal settlers, persons in detention, persons in situations of homelessness, peasants, fisherfolk, persons with disabilities, and older persons,⁴³ bear a disproportionate brunt of environmental harm.⁴⁴ As noted above, this vulnerability is acknowledged in the Paris Agreement and the COP27 Implementation Plan.

38. The impact of the climate crisis on children and young people is particularly stark. It is twofold: as the UN Committee on the Rights of the Child has observed, children are “particularly impacted by the effects of climate change, both in the terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime”.⁴⁵ Not only will young people bear the brunt of climate change by living further into a warmer future, but they are also more vulnerable to climate impacts in the present, through both physical⁴⁶ and mental health impacts.⁴⁷

39. Furthermore, the impacts of the climate crisis on the marine environment disproportionately affect those communities that rely on oceans as a source of food,

⁴⁰ General Comment No. 36, para. 62.

⁴¹ See *Billy v. Australia*, CCPR/C/135/D/3624/2019.

⁴² See *Sacchi v. Argentina*, CRC/C/88/D/104/2019.

⁴³ See Balakrishnan Rajagopal (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), *Towards a just transformation: climate crisis and the right to housing*, A/HRC/52/28, December 23, 2022; Saad Alfarargi (Special Rapporteur on the right to development), *Climate action at the national level*, A/HRC/48/56, July 2, 2021; and Lancet, 2022, 400: 1619-54, *The 2022 report of the Lancet on health and climate change: health at the mercy of fossil fuels*, noting that “annual heat-related deaths in people older than 65 years [have increased] by 68% from 2000-04 to 2017-21.” See also A/67/299, A/75/207, A/66/285, A/HRC/49/61, and A/HRC/44/30.

⁴⁴ UN Special Rapporteur on human rights and the environment and UN Special Rapporteur on human rights and toxics, *The Right to a Clean, Healthy and Sustainable Environment: Non-toxic Environments*, A/HRC/49/53.

⁴⁵ See *Sacchi, et al. v. Argentina, et al.*, p. 12.

⁴⁶ UNICEF, *Unless we act now. The impact of climate change on children*. 2015. p. 22

⁴⁷ Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, 2022, *Impacts, Adaptation and Vulnerability: Summary for Policymakers*, B.4.4, p. 15.

livelihood, recreation, and culture. In many cases, coastal communities include marginalized or vulnerable populations. This is particularly the case in small island and low-lying developing States,⁴⁸ as well as in Indigenous communities who rely on customary fishing rights, practices, and traditions. The impacts of the climate crisis on the marine environment multiply existing threats to the rights of these populations.⁴⁹

c. Protected rights

40. The climate crisis degrading the marine environment impacts a wide range of human rights. The Report published by the Special Rapporteur on Climate Change, Dr. Fry, in July 2022, concluded:

We are faced with a global crisis in the name of climate change. Throughout the world, the rights of people are being denied as a consequence of climate change. This includes a denial of the right to, inter alia, life, health, food, development, self-determination, water and sanitation, work, adequate housing and freedom from violence, sexual exploitation, trafficking and slavery.⁵⁰

41. Multiple UN Special Rapporteurs, including the UN Special Rapporteurs making the present submission, have compiled evidence showing the impact of climate change degrading the marine environment on protected rights. Recent reports published by the other UN Special Rapporteurs increasingly have focused on the impairment of rights caused by climate change, such as thematic and special reports on impairment of the rights to safe drinking water and sanitation;⁵¹ the rights to associate, strike, and bargain collectively at all levels, including over matters related to climate change and just transitions;⁵² the right to development;⁵³ climate change and poverty;⁵⁴ and the right to housing.⁵⁵ UN Special Rapporteurs have also written on the impact of climate change on

⁴⁸ HRC Res 50/57 ¶ 4, A/HRC/50/57, May 6, 2022. See also A/HRC/52/28 ; Pedro Arrojo Agudo (Special Rapporteur on the human rights to safe drinking water and sanitation), *Special thematic report on climate change and the human rights to water and sanitation*, Jan. and Mar. 2022.

⁴⁹ See *Billy v. Australia* para. 8.3.

⁵⁰ A/77/226 para. 88.

⁵¹ See, e.g., Pedro Arrojo Agudo (Special Rapporteur on the human rights to safe drinking water and sanitation), *Special thematic report on climate change and the human rights to water and sanitation (Part I: Outlining the impacts of climate change on the human rights to water and sanitation around the world, Part II: The impacts of climate change on the human rights to water and sanitation of groups and population in situations of vulnerability, Part III: A rights-based approach to adaptation, mitigation, finance, and cooperation)*, Jan. and Mar. 2022.

⁵² See Clement Nyaletsossi Voule (Special Rapporteur on the rights to freedom of peaceful assembly and of association), *Exercise of the rights to freedom of peaceful assembly and of association as an essential to advancing climate justice*, A/76/222, July 23, 2021, at para. 90(g).

⁵³ See A/HRC/48/56.

⁵⁴ Philip Alson (Special Rapporteur on extreme poverty and human rights), *Climate change and poverty*, A/HRC/41/39, July 17, 2019.

⁵⁵ A/HRC/52/28. See also Raquel Rolnik (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), *The right to adequate housing*, A/64/255, Aug. 6, 2009

food,⁵⁶ internal displacement,⁵⁷ cross-border displacement,⁵⁸ cultural rights,⁵⁹ violation against women and girls,⁶⁰ trafficking in persons,⁶¹ migration,⁶² and Indigenous peoples.⁶³

42. The rights discussed in more detail below are merely illustrative and non-exhaustive. They are being discussed to bring to the Tribunal's attention the content of certain rights and the link between pollution of the marine environment caused by greenhouse gas emissions and the impairment of those rights. The UN Special Rapporteurs also discuss relevant decisions and case law from human rights bodies related to the impairment of those rights in the context of climate change, submitted in the spirit of being helpful to the Tribunal in responding to the Request.

i. Climate crisis-related pollution of the marine environment threatens the human right to life

43. Article 6 of the International Covenant on Civil and Political Rights provides that “[e]very human being has the inherent right to life”. This right is owed by each State to “all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control”.⁶⁴ It includes “the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death”.⁶⁵ Furthermore, “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 ... even if

⁵⁶ Hilal Ever (Special Rapporteur on the right to food), *Right to food*, A/70/287, Aug. 5, 2015.

⁵⁷ Cecilia Jimenez-Damary (Special Rapporteur on the human rights of internally displaced persons), *Human rights of internally displaced persons*, A/75/207, July 21, 2020 and Chaloka Beyani (Special Rapporteur on the human rights of internally displaced persons), *Protection of and assistance to internally displaced persons*, A/66/285, Aug. 9, 2011.

⁵⁸ Ian Fry (Special Rapporteur on the promotion and protection of human rights in the context of climate change), *Providing legal options to protect the human rights of persons displaced across international borders due to climate change*, A/HRC/53/34, Apr. 18, 2023.

⁵⁹ Karima Bennouna (Special Rapporteur on the field of cultural rights), *Field of cultural rights*, A/75/298, Aug. 10, 2020.

⁶⁰ Reem Alsalem (Special Rapporteur on violence against women and girls, its causes and consequences), *Violence against women and girls in the context of the climate crisis, including environmental degradation and related disaster risk mitigation and response*, A/77/136, Jul. 11, 2022.

⁶¹ Siobhán Mullally (Special Rapporteur on trafficking in persons, especially women and children), *Addressing the gender dimensions of trafficking in persons in the context of climate change, displacement and disaster risk reduction*, A/77/170, Jul. 15, 2022.

⁶² François Crépeau (Special Rapporteur on the human rights of migrants), *Human rights of migrants*, A/67/299, Aug. 13, 2012.

⁶³ UN Special Rapporteur on the rights of indigenous peoples, *Report of the Special Rapporteurs on the rights of indigenous peoples*, A/HRC/36/46, November 1, 2017 and Victoria Tauli-Corpuz (Special Rapporteur on the rights of indigenous peoples), *Regional consultation on the rights of indigenous peoples in Asia*, A/HRC/45/34/Add.3, Sept. 4, 2020.

⁶⁴ General Comment No. 36, para. 63.

⁶⁵ *Billy v. Australia*, para. 8.3.

such threats and situations do not result in the loss of life”.⁶⁶ It is a “duty to take positive measures”, including obligations of due diligence.⁶⁷

44. In *Billy v. Australia*, the UN Human Rights Committee considered whether Australia’s alleged failure to protect complainants from the effects of climate change amounted to a violation of Australia’s obligations under Article 6 of the International Covenant on Civil and Political Rights. The Committee concluded that, on the particular facts of that case, Australia had not violated the right to life of the complainants. This was because the devastating impact of rising sea levels had not yet exposed them “to a situation of physical endangerment or extreme precarity that could threaten their right to life, including their right to live in dignity”.⁶⁸ The Committee nevertheless observed that in the next 10-15 years, “the effects of climate change may expose individuals to a violation of their rights under article 6” if States do not take adequate mitigation and adaptation measures.⁶⁹ Such an outcome is particularly likely where an entire country, such as a small island developing State, is at risk of being submerged.⁷⁰
45. The Committee observed that under those circumstances, the pollution of the marine environment created by greenhouse gas emissions threatens the right to life.⁷¹ States have an obligation to take effective measures to mitigate climate change, enhance the adaptive capacity of vulnerable populations, and prevent foreseeable loss of life.⁷² This includes threats to loss of life resulting from pollution of the marine environment, including flooding and sea level rise, intensified extreme weather events, and malnutrition and illness resulting from impacts on fisheries and shellfish.⁷³

ii. Climate crisis-related pollution of the marine environment threatens the human right to self-determination

46. Self-determination is a fundamental right recognized in Article 1 of the UN Charter, as well as Article 1 of the International Covenant on Civil and Political Rights. The right to self-determination includes the right of a people not to be deprived of its own means of subsistence.⁷⁴ It also requires States to promote the realization of self-determination,

⁶⁶ *Billy v. Australia*, para. 8.3.

⁶⁷ General Comment No. 36, para. 21.

⁶⁸ *Billy v. Australia*, para. 8.6.

⁶⁹ *Billy v. Australia*, para. 8.7, citing *Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016) para. 9.9.

⁷⁰ *Billy v. Australia*, para. 8.7.

⁷¹ See General Comment No. 36, para. 62, cited in para. 24 above.

⁷² UN Special Rapporteur on Human Rights and the Environment, A/74/161, para. 28. See also *Billy, Sacchi*.

⁷³ See discussion in *Frequently Asked Questions on Human Rights and Climate Change*, Office of the UN High Commissioner on Human Rights, Fact Sheet 38, pages 3-5, available at https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf.

⁷⁴ Human Rights Committee, General Comment No. 12, 13 Mar. 1984 on the right to self-determination, para. 6; CERD General Recommendation No. 21 (1996).

including for those outside their own territories.⁷⁵ As the Office of the United Nations High Commissioner for Human Rights has observed:⁷⁶

While the right to self-determination is a collective right held by peoples rather than individuals, its realisation is an essential condition for the effective enjoyment of individual human rights. Climate change not only poses a threat to the lives of individuals but also to their ways of life and livelihoods, and to the survival of entire peoples.

47. The right to self-determination is dramatically affected by rising sea levels, as well as other impacts of climate change-related pollution of the marine environment. This pollution threatens the viability of small island developing States as territory is eroded and submerged. The habitability of remaining territory is threatened by salinization, flooding, extreme weather events, and the loss of marine life. The right to self-determination may also be violated where States or peoples are no longer able to freely dispose of their natural resources.⁷⁷ Importantly, such impacts threaten not only States' rights to self-determination, but also the right of other collective entities (such as Indigenous peoples). The Office of the United Nations High Commissioner for Human Rights has therefore concluded that "States have a duty to take action, individually and jointly, to address and avert threats to the right to self-determination, by mitigating climate change".⁷⁸

iii. Climate crisis-related pollution of the marine environment threatens the human right to home, privacy and family life

48. Article 17 of the International Covenant on Civil and Political Rights provides 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 or reputation." In *Billy v. Australia*, the UN Human Rights Committee found that extensive seawall construction by Australia was insufficient to discharge this obligation. Other climate impacts on the marine environment—including the reduction of marine resources used for food; the inundation of villages and burial lands; salinification of traditional gardens; the decline of nutritionally and culturally important marine species; coral bleaching; and ocean acidification—amounted to unaddressed violations of the right to private life, family and home.⁷⁹ Such impacts were both foreseeable and also serious, in light of "their intensity or duration and

⁷⁵ *Id.*

⁷⁶ *Frequently Asked Questions on Human Rights and Climate Change*, Office of the UN High Commissioner on Human Rights, Fact Sheet 38, page 5, available at https://www.ohchr.org/sites/default/files/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf. See also A/HRC/10/61.

⁷⁷ See Tekau Frere, Clement Yow Mulalap & Tearinaki Tanielu, *Climate Change and Challenges to Self-Determination: Case Studies from French Polynesia and the Republic of Kiribati*, 129 Yale L. Journal Forum 648 (2020).

⁷⁸ *Id.*, page 6.

⁷⁹ *Billy v. Australia*, para. 8.12.

the physical or mental harm that they cause”.⁸⁰ These circumstances gave rise to a violation of Article 17.

iv. Climate crisis-related pollution of the marine environment threatens the human right to a clean, healthy and sustainable environment

49. The right to a clean, healthy and sustainable environment (“**right to a healthy environment**”) has been recognized by resolutions of both the UN Human Rights Council and UN General Assembly.⁸¹ No States opposed either resolution.
50. The right to a healthy environment is also recognized in regional human rights systems and domestic legal orders. Article 24 of the African Charter on Human and Peoples’ Rights recognizes the right of all peoples to a “general satisfactory environment favourable to their development”. The Inter-American Court of Human Rights has recognized that a freestanding environmental right is incorporated through the principle of progressive development enshrined in Article 26 of the American Convention on Human Rights, as well as being expressly recognized in Article 11 of the Protocol of San Salvador.⁸² The right is also recognized in the constitutions, legislation, judicial decisions or treaty obligations of at least 155 UN Member States.⁸³
51. The substantive elements of the right include “a safe climate, clean air, clean water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems”.⁸⁴ As the UN Special Rapporteur on the Environment has observed, “[t]he failure of States to take adequate steps to address climate change can constitute a violation of the right to a healthy environment”.⁸⁵ This conclusion is supported by case law from domestic courts and commissions.⁸⁶
52. The marine environment is an essential component of the environment more broadly. It is a place where many communities live, play, work, and derive basic needs. The pollution of the marine environment through greenhouse gas emissions interferes with the rights of these individuals and communities to a clean, healthy and sustainable environment. Where

⁸⁰ *Billy v. Australia*, para. 8.12. See also *Benito Oliveira et al. v. Paraguay* (CCPR/C/132/D/2552/2015); General Comment No. 23, CCPR/C/21/Rev.1/Add.5, 8 Apr. 1994.

⁸¹ UN Human Rights Council, 2021, A/HRC/48/13; UN General Assembly, 2022, “The human right to a clean, healthy and sustainable environment”, A/76/300.

⁸² The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. ¶¶ 56-57 (Nov. 15, 2017).

⁸³ A/HRC/40/55.

⁸⁴ A/74/161.

⁸⁵ *Ibid.* para. 44.

⁸⁶ See e.g., Supreme Court of Colombia, *Demanda Generaciones Futuras v. Minambiente*, Decision of 5 Apr. 2018, and High Court at Lahore, *Leghari v. Federation of Pakistan*, W.P. No. 25501/201, Decision of 4 Apr. 2015. Supreme Court of the Netherlands, *Urgenda Foundation v. State of the Netherlands v. Urgenda*, no. 19/00135, Decision of 20 Dec. 2019, Supreme Court of Brazil, *PSB et al. v. Brazil*, Decision of 1 July 2022, Supreme Court of the State of Hawai‘i, *In the Matter of the Application of HAWAI‘I ELECTRIC LIGHT COMPANY, INC.*, SCOT-22-0000418, Decision of 13 Mar. 2023, and Commission on Human Rights of the Philippines 2022, National Inquiry on Climate Change Report, May 2022, Case No. CHR-NI-2016-0001.

such interference is foreseeable and serious, States may be in breach of their obligations derived from this right.

v. Climate crisis-related pollution of the marine environment threatens the human right to food

53. The right to food is recognized by the Universal Declaration on Human Rights and protected under Article 11 of the International Covenant on Economic, Social and Cultural Rights. It requires States to take positive measures to safeguard individuals' access to nutrition. As the Committee on Economic, Social and Cultural Rights has held, “[t]he right to adequate food shall ... not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients”.⁸⁷
54. Pollution of the marine environment caused by greenhouse gas emissions compromises access to food. Fisheries, shellfish and seaweed are a major source of nutrition for many individuals and communities, including vulnerable communities reliant on non-commercial fishing or customary fishing rights. The IPCC has documented the impact of climate change on fisheries and fishing communities.⁸⁸ There is a strong correlation between countries with a low human development index and a strong dependence on marine resources, suggesting that “less developed economies” are more vulnerable to the marine impacts of climate change.⁸⁹ Particularly vulnerable groups include the disabled, women, young people, and especially Indigenous peoples, who often derive a large proportion of nutrition from seafood.⁹⁰
55. The UN Human Rights Council highlighted the impact of climate change on the right to food in a resolution passed in 2019.⁹¹ Likewise, the UN Special Rapporteur on the Environment has observed that “[i]n the oceans, temperature changes, bleaching of coral reefs and ocean acidification are affecting fisheries”, and consequently threatening the right to food.⁹² The UN Special Rapporteur on Climate Change has similarly observed that the agriculture and fisheries sectors in small island developing States are particularly vulnerable to “the compounded effects of extreme events and slow-onset events”.⁹³ In sum, the impact of the climate crisis on the right to food is both serious and foreseeable.

⁸⁷ General Comment 12 (Twentieth session, 1999) on the right to adequate food (art.11), Committee on Economic, Social and Cultural Rights, para 6.

⁸⁸ See, e.g., IPCC Special Report on the Ocean and Cryosphere in a Changing Climate (2019) (Chapter 4, “Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities”); see also IPCC Working Group II Contribution to the Sixth assessment Report of the Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (2022).

⁸⁹ Maire et al, *Current Biology* 31, 4132–4138, *Micronutrient supply from global marine fisheries under climate change and overfishing*, Sept. 27, 2021.

⁹⁰ Michael Fakhri (Special Rapporteur on right to food), *The right to food in the context of international trade law and policy*, 22 July 2020, para 75.

⁹¹ Human Rights Council, U.N. Doc A/HRC/RES/40/7 (Mar. 21, 2019).

⁹² A/74/161, para. 64.

⁹³ A/77/236, para. 39.

vi. Climate crisis-related pollution of the marine environment threatens the human right to livelihood, including to customary fishing practices

56. Article 7 of the International Covenant on Economic, Social and Cultural Rights protects the right of everyone to work that ensures a decent living, as well as safe and healthy working conditions. Article 11 recognizes 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.”⁹⁴
57. Many individuals and communities in coastal environments depend on the oceans for their livelihoods. This includes livelihoods derived from fisheries. The loss of coastal fisheries, discussed in Section IV(a) above, threatens not only the right to food, but the right to an adequate standard of living for communities that are economically dependent upon those resources. Coastal activities and industries ranging from fishing to tourism to shipping and transportation are also vulnerable to sea level rise and other climate-change impacts on the coastal environment.⁹⁵
58. UNCLOS protects traditional fishing rights and coastal fishing communities.⁹⁶ As already noted, the UNCLOS definition of “pollution of the marine environment” refers to the introduction by human beings of substances or energy that is likely to result in deleterious effects such as harm, *inter alia*, on fishing and other legitimate uses of the sea.⁹⁷ Article 51 requires States to recognize traditional fishing rights and to adopt appropriate measures in order to “maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield”,⁹⁸ while at the same time promoting the utilization of the living resources of the ocean through development of systems to manage the fishing industry.⁹⁹
59. Obligations owed to coastal fishing communities are reflected not only in the International Covenant on Economic, Social and Cultural Rights, but also in UNCLOS, and should be interpreted harmoniously. The adverse impacts of the climate crisis on fishing communities, and in particular, communities with traditional and customary fishing rights, may amount to a violation of obligations under both UNCLOS and international human rights law.

vii. Climate crisis-related pollution of the marine environment threatens the cultural rights of minorities and Indigenous peoples

60. The pollution of the marine environment derived from greenhouse gas emissions poses particular risks for Indigenous peoples and minorities.¹⁰⁰ The cultural rights of persons

⁹⁴ ICESCR, Art. 11.1.

⁹⁵ IPCC Special Report on the Ocean and Cryosphere in a Changing Climate (2019) (Chapter 4, “Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities”) at 380-82.

⁹⁶ UNCLOS, Arts. 51, 61, 69.2(a), 69.4, 70.3(a).

⁹⁷ UNCLOS, Art. 1

⁹⁸ UNCLOS, Art. 61

⁹⁹ UNCLOS, Art. 62

¹⁰⁰ Special Rapporteur in the field of cultural rights, *Report on climate change and culture*, A/75/298.

belonging to minorities are protected by Article 27 of the International Covenant on Civil and Political Rights, which provides that:

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

61. Interpreted in light of the UN Declaration on the Rights of Indigenous Peoples, the UN Human Rights Committee has concluded that Article 27 “enshrines the inalienable right of indigenous peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity.”¹⁰¹
62. Sea level rise, extreme weather events, ocean heating and acidification jeopardize Indigenous peoples’ food security, traditional livelihoods, cultural practices, and self-determination. These dangers are “magnified by the close relationship that many indigenous peoples have with the environment and their traditional lands, resources and territories”.¹⁰²
63. In *Billy v. Australia*, the UN Human Rights Committee concluded that Australia had failed to satisfy its obligations under Article 27 by failing to protect Indigenous Torres Strait Islanders against the effects of rising sea levels. This included impacts on traditional fishing and farming, and cultural ceremonies unique to these islands. The Committee applied a foreseeability test, finding that these impacts had been foreseeable for some time. The Committee thus concluded that “the State party’s failure to adopt timely adequate adaptation measures to protect the authors’ collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State party’s positive obligation to protect the authors’ right to enjoy their minority culture”.¹⁰³

d. Human rights in the context of mitigation and adaptation measures

64. States’ international law obligations include significant mitigation and adaptation measure. Nevertheless, some mitigation and adaptation measures may have negative effects on the marine environment, and consequently on the human rights of individuals communities. This includes the application of technologies associated with atmospheric changes and geoengineering, as well as human rights impacts from deep seabed exploration and mining for minerals that could be used in battery production for electric vehicles and other forms of electrical storage.¹⁰⁴ Even as such measures may contribute to overall climate mitigation

¹⁰¹ *Billy v. Australia*, para. 8.13.

¹⁰² HRC Res 50/57 ¶ 6. See also the Report of the UN Special Rapporteur on Human Rights and the Environment, A/74/161, para. 48.

¹⁰³ *Billy v. Australia*, para. 8.14.

¹⁰⁴ Report of the Special Rapporteur on human rights in the context of climate change, *Promotion and protection of human rights in the context of climate change*, U.N. Doc. A/77/226, 26 July 2022, para. 16.

and adaptation, they may nevertheless have localized or other environmental effects that violate the rights of individuals and communities.

VI. STATE OBLIGATIONS UNDER UNCLOS IN THE CONTEXT OF THE CLIMATE CRISIS

a. States must respect the right to science in the fulfillment of their obligations under UNCLOS

65. The human right to enjoy the benefits of scientific progress (“**right to science**”) is recognized in Article 27(1) of the Universal Declaration of Human Rights and is protected by Article 15 of the International Covenant on Economic, Social and Cultural Rights. The right to science includes, among other things, the right to “share in scientific advancement and its benefits”¹⁰⁵ and to “enjoy the benefits of scientific progress and its applications”.¹⁰⁶
66. The obligation to respect, protect and fulfill this right to science requires that governments respond to the climate crisis using the best available science.¹⁰⁷
67. The importance of scientific knowledge is integral to the interpretation and application of UNCLOS. Several UNCLOS provisions expressly refer to the role and importance of science, including scientific knowledge, the need for scientific information, and the role of scientific standards in state obligations. For example, Articles 61 (*Conservation of the living resources*), 119 (*Conservation of the living resources of the high seas*), and 234 (*Ice-covered areas*) require that States take into account the best available scientific evidence to conserve living resources and preserve and protect the marine environment. Additionally, Article 201 (*Scientific criteria for regulations*) requires that States establish “appropriate scientific criteria” to prevent, reduce, and control pollution of the marine environment.
68. Indeed, certain State obligations under UNCLOS can only be understood with reference to adequate scientific knowledge. Judge Jin-Hyun Paik has noted that:¹⁰⁸

The very definition of “pollution of the marine environment” in article 1, paragraph 1(4), of UNCLOS is essentially a scientific one, developed by the Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP). Thus the determination of “significant pollution” (article 220), “substantial pollution”, “serious harm to the marine environment” or “significant and harmful changes to the marine environment” would not be possible without scientific fact-finding and assessment.

¹⁰⁵ UDHR, Article 27.

¹⁰⁶ ICESCR, Article 15. *See further* CESCR General Comment 25 (2020).

¹⁰⁷ For a discussion of the right to science in the environmental context, see Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, *Right to science in the context of toxic substances*, A/HRC/48/61 (July 26, 2021).

¹⁰⁸ Judge Jin-Hyun Paik, Keynote Speech Disputes involving scientific and technical matters and ITLOS, p.2.

b. States must rapidly reduce greenhouse gas emissions, in line with the principle of prevention and human rights standards, including the right to science

69. As set out *supra*, greenhouse gas emissions amount to atmospheric pollution of the marine environment. As provided for in Article 212 of UNCLOS, States therefore have an obligation to minimize their release “to the fullest possible extent”.¹⁰⁹ This obligation operates together with the general duty of States under Articles 193 and 194(1) to “protect and preserve the marine environment” and to “prevent, reduce and control pollution of the marine environment from any source”.¹¹⁰
70. Following the approach of systemic integration set out in Part III, this obligation should be carried out consistently with States’ obligations under international human rights and environmental law, which are engaged where the adverse climate impacts on human rights are foreseeable and serious.¹¹¹ While the precise threats to human rights will depend on circumstances of individual cases, as Part IV demonstrates, the standard of foreseeability and seriousness is potentially engaged in relation to a wide variety of adverse impacts on human rights and circumstances arising from pollution of the marine environment.
71. These obligations under UNCLOS and international human rights law can be applied harmoniously alongside international environmental law. States owe international environmental law duties to prevent transboundary environmental harm. This principle of harm prevention has been recognized by the International Court of Justice as part of customary international law,¹¹² and is engaged where activities within the jurisdiction or control of a State pose a risk of significant environmental damage in another State.¹¹³ In such contexts, a State is “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”.¹¹⁴ Where States identify that activities within their territory or control may result in negative environmental impacts for another State, they must investigate the extent of such harm through an environmental impact assessment; notify and consult in good faith with the potentially affected State; and prevent or mitigate the risk.¹¹⁵
72. The Paris Agreement identifies a global mitigation goal of limiting “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” in order to

¹⁰⁹ UNCLOS, Art. 212.

¹¹⁰ Emphasis added.

¹¹¹ General Comment No. 36, para. 62; *Billy v. Australia*; *Sacchi v. Argentina*.

¹¹² *Pulp Mills on the River Uruguay* (Arg. v. Uru.), Judgment, 2010 I.C.J. (April 20), ¶ 101 (*Pulp Mills* case), quoting *Corfu Channel* (U.K. v. Alb.), Judgment, 1948 I.C.J. (Mar. 25).

¹¹³ See Stockholm Declaration Principle 21; *Pulp Mills* case.

¹¹⁴ See *Pulp Mills* case.

¹¹⁵ *Construction of a Road in Costa Rica along the San Juan River* (Nicar. v. Costa Rica), Judgment, 2015 I.C.J. (Dec. 16), p. 707.

“significantly reduce the risks and impacts of climate change”.¹¹⁶ This includes significant risks and impacts on the marine environment.

73. Many of the impacts on the marine environment arising from greenhouse gas pollution meet the threshold of “significant harm.” As the Inter-American Court of Human Rights has noted in the context of harmonizing international human rights and environmental law, “*any* harm to the environment that may involve a violation of the rights to life and to personal integrity ... must be considered significant harm.”¹¹⁷ Unlike some other forms of environmental harm, with presently available technologies the impact of greenhouse gas emissions on the marine environment can only be prevented or mitigated through reductions in emissions themselves.
74. The primary obligation of States is therefore to urgently reduce greenhouse gas emissions to the fullest possible extent. In line with the UNFCCC and the Paris Agreement, such reductions should be carried out through cooperation between States, and in line with principles of equity and common but differentiated responsibilities and respective capabilities. States in the Global North must take the lead in rapidly reducing their emissions and provide support to less developed countries in order to enhance their capacity to reduce emissions or at least minimize increases in emissions. In line with the principle of non-regression and the requirements of the Paris Agreement, States must not weaken their climate reduction commitments, and must strengthen them over time.
75. Integrating the best available climate science with the obligation to rapidly reduce greenhouse gas emissions provides important insights into the specific actions required. Burning fossil fuels and biomass (73.2 percent) and agriculture and deforestation (18.4 percent) account for 91.6 percent of global emissions.¹¹⁸ Therefore wealthy States and other high emitters must phase out fossil fuels, end deforestation and transform industrial agriculture in order to fulfill their obligations. Exploration for and development of additional fossil fuel reserves and the expansion of fossil fuel infrastructure are incompatible with wealthy States’ obligations under international human rights law, international environmental law, and UNCLOS.
76. Furthermore, States should regulate public and private entities within their jurisdictions to ensure they identify reductions in greenhouse gas emissions, and then take the necessary steps to achieve those reductions. This obligation is consistent with the jurisprudence of the UN Human Rights Committee, which has observed that States’ obligations include a “due diligence obligation to take reasonable, positive measure that do not impose disproportionate burdens on States in response to reasonably foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State”.¹¹⁹ Such an obligation is also expressly set out in UNCLOS Article 206:

¹¹⁶ Paris Agreement to the United Nations Framework Convention on Climate Change Article 2(a), Dec. 12, 2015, T.I.A.S. No. 16-1104

¹¹⁷ OC-23/17, paras. 1-4. [emphasis added]

¹¹⁸ See <https://ourworldindata.org/emissions-by-sector>

¹¹⁹ General Comment No. 36, para. 21.

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

77. Due diligence undertaken to identify reductions in greenhouse gas emissions should be informed by the best available scientific knowledge concerning the full extent of impacts of greenhouse gas emissions on the marine environment. This due diligence obligation is at the core of the harm prevention principle. The Special Rapporteur on the Environment has called on States to legislate due diligence requirements for private entities carrying out activities which carry environmental risk.¹²⁰
78. ITLOS has recognized that what constitutes satisfactory due diligence may change over time:¹²¹

The content of due diligence obligations may not easily be described in precise terms. Among the factors that make such a description difficult is the fact that ‘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 risks involved in the activity.

79. Scientific evidence clearly demonstrates that the adverse impacts of the climate crisis are accelerating.¹²² Accordingly, States need to conduct due diligence with regard to new or future activities that could pollute the marine environment as a result of greenhouse gas emissions, but also with regard to existing activities that are polluting or could pollute the marine environment as a result of greenhouse gas emissions.

c. States must develop and implement international rules, standards, and recommended practices and procedures to ensure the full enjoyment of human rights by individuals and communities affected by the climate crisis

80. In accordance with Article 197 of UNCLOS, States must cooperate directly with each other or through international organizations to formulate and then implement international rules, standards and recommended practices and procedures to ensure that emissions of greenhouse gases polluting the marine environment do not impair the enjoyment of human rights. The obligations imposed on States under Article 197 are consistent with the finding of the UN Human Rights Committee that for States to comply with the obligation to protect

¹²⁰ A/HRC/49/53, para. 55.

¹²¹ Advisory Opinion, Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, February 1, 2011, para. 117.

¹²² IPCC, 2023, AR6: Summary for Policymakers

the right to life, they must “develop and implement substantive environmental standards”.¹²³

81. Some of the substantive standards are set out in relevant treaties. For example, the Paris Agreement commits each Party to reflect the “highest possible ambition” in its nationally determined contribution to the Agreement’s long-term temperature goal.¹²⁴
82. Courts and tribunals frequently decide whether States have satisfied their human rights obligations by assessing progress of those States vis-à-vis established standards. For example, in *Xákmok Kásek Indigenous Community*, the Inter-American Court of Human Rights assessed whether an Indigenous community had been afforded the right to life enshrined in the American Convention on Human Rights by reference to, *inter alia*, non-binding, international standards articulated by the World Health Organization regarding access to a specified quantity and quality of water.¹²⁵
83. The Tribunal should find that, in accordance with Article 197, States must implement the international rules, standards and recommended practices and procedures articulated in relevant agreements, such as the Paris Agreement and the UNFCCC. Additionally, five UN treaty bodies have found that States must “dedicate the maximum available resources to the adoption of measures aimed at mitigating climate change.”¹²⁶ The Tribunal should require States to use “maximum available resources” to fulfill their obligations under UNCLOS regarding the impact of greenhouse gas emissions degrading the marine environment.

d. States must apply the precautionary principle to activities that may result in pollution of the marine environment through greenhouse gas emissions

84. The precautionary principle is a key concept in international environmental law. It provides that “[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”.¹²⁷
85. The Second Chamber of ITLOS has noted “a trend towards making this approach part of customary international law”, and considered its application may be required by VCLT Article 31(3)(c).¹²⁸ The principle is increasingly common in international environmental

¹²³ General Comment No. 36, para. 62.

¹²⁴ Paris Agreement to the United Nations Framework Convention on Climate Change Article 4.3, Dec. 12, 2015, T.I.A.S. No. 16-1104.

¹²⁵ Corte IDH, *Caso Comunidad Xákmok Kásek c. Paraguay*, Serie C, No 214, para 195. The Court concluded that “the measures taken by the State [...] have not been sufficient to provide the members of the Community with water in sufficient quantity and of adequate quality, and this has exposed them to risks and disease.” (¶ 196).

¹²⁶ *Joint Statement on Climate Change and Human Rights*, The Committee on the Elimination of all Forms 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, September 2019, ¶ 7.

¹²⁷ Rio Declaration on Environment and Development 1992, Principle 15.

¹²⁸ Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Request for Advisory Opinion Submitted to the Seabed Disputes Chamber), Case No. 17, Advisory Opinion of Feb. 1, 2011, 17 ITLOS, ¶ 135.

agreements, including the recently concluded Draft Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (the “**BBNJ Treaty**”).¹²⁹ Relatedly, Article 3.3 of the UNFCCC provides that “[t]he Parties shall take precautionary measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects”.¹³⁰

86. The principle also has been recognized by the UN Human Rights Committee as essential to the realization of the human rights obligations of States in the context of environmental degradation.¹³¹ The UN Committee on Cultural, Economic and Social Rights has noted that a human rights-consistent approach to scientific uncertainty requires application of the precautionary principle.¹³² The principle is widely recognized in the decisions of many international fora, instruments, and regional courts applying both international environmental law and international human rights law.
87. The principle requires that, in the absence of scientific uncertainty, States should act cautiously and diligently, and avoid steps that may cause harm to human health or the environment.¹³³ For example, scientific uncertainty regarding the complex causal nexus between greenhouse gases emitted from States and harms to the marine environment should not be a basis for finding that States do not owe mitigation and adaptation obligations.
88. States must apply a precautionary approach to activities that may pollute the marine environment through the emission of greenhouse gases. As already discussed, States must carry out due diligence to determine whether activities are causing or will cause pollution of the marine environment through the emission of greenhouse gases, and regulate to ensure that private entities within their jurisdiction or control do the same. Uncertainty must never be a basis for deciding not to take mitigation or adaptation measures. In instances of uncertainty, States should err on the side of refraining from carrying out polluting activities themselves, including through State-owned enterprises, or approving such activities by third parties, particularly businesses.

e. States must comply with international human rights and environmental law when carrying out mitigation and adaptation measures

89. In addition to rapidly reducing greenhouse gas emissions, States must ensure that mitigation and adaptation measures comply with human rights standards. States’

¹²⁹ UNCLOS, Art. 5(d).

¹³⁰ United Nations Framework Convention on Climate Change, Art. 3.3.

¹³¹ General Comment No. 36, para. 62.

¹³² See Comm. on Econ., Soc. and Cultural Rights, General Comment No. 25 (2020), para. 56. See also Venice statement on the right to enjoy the benefits of scientific progress and its application.

¹³³ Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, *Right to science in the context of toxic substances*, A/HRC/48/61, (July 26, 2021), para. 62.

obligations apply equally to the rights of populations within the State's territory, as well as in respect of the rights of individuals and communities outside that State's territory.¹³⁴

90. States undertaking mitigation and adaptation measures must comply with international environmental and human rights law obligations. This is required by the ordinary application of international human rights law. Also, the Paris Agreement states that “[p]arties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”.¹³⁵
91. In ensuring compliance with human rights standards, States should be guided by the Framework Principles on Human Rights and the Environment.¹³⁶ Compliance requires:
 - (a) Applying the principle of prevention where there is a risk of significant transboundary harm. States must carry out an assessment to identify such risks; notify, consult, and cooperate with neighboring States; and take all possible steps to prevent or minimize any resulting harm.
 - (b) Applying the principle of precaution. Where there exists uncertainty as to the risks of the application of new mitigation and adaptation measures or technologies, States should err on the side of protecting the rights of at-risk populations.
 - (c) Ensuring that all mitigation and adaptation measures utilize the best available science, both in the application and implementation of such measures, and in the decision-making processes which determine whether such measures are deployed.
 - (d) Ensuring that decision-making in respect of mitigation and adaptation measures respects the rights of all peoples, including vulnerable populations. States should develop policies to ensure that decision-making processes comply with rights of non-discrimination, access to information, public participation, and access to justice.

¹³⁴ General Comment No. 36 (on the right to life), UN Doc. CCPR/C/GC/36 (Oct. 30, 2018), ¶¶ 22, 63 (States' obligations extend to activities within the State which have “a direct and reasonably foreseeable impact on the right to life of individuals outside their territory”). *See also* African Commission on Human and Peoples' Rights, General Comment No. 3, 18 Nov. 2015, para. 14 (in relation to the right to life, defining extraterritorial jurisdiction as whether a State's activities could “reasonably be foreseen to result in an unlawful deprivation of life”); European Court of Human Rights, *Andreou v. Turkey*, no. 45653/99 (2009) (applying a “direct and immediate cause” standard). *See also* Committee on the Rights of the Child in *Sacchi et al.*

¹³⁵ Paris Agreement to the United Nations Framework Convention on Climate Change preamble, Dec. 12, 2015, T.I.A.S. No. 16-1104. .

¹³⁶ UN Doc. A/HRC/37/59. These Principles distill standards from a wide range of environmental and international law instruments and jurisprudence. The commentary to these principles (at para. 54) relevantly notes that simply because “a State is ... taking actions in response to climate change does not excuse it from complying with its human rights obligations”.

f. States must provide appropriate remedies for the violation of protected rights in the context of the climate crisis

92. A violation of a protected human right requires a remedy. The obligation to provide effective remedies is clearly enshrined in Article 2(3) of the International Covenant on Civil and Political Rights.¹³⁷ The Framework Principles on Human Rights and Environment confirm that “States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment”.¹³⁸
93. The right to an effective remedy depends on adequate access to justice. States should ensure that individuals and communities whose rights have been violated as a result of greenhouse gas marine pollution have access to tribunals that are impartial, independent, affordable, transparent and fair; review claims in a timely manner; are adequately resourced; incorporate a right of appeal; and are able to issue binding decisions on interim measures, compensation, restitution, and reparation.¹³⁹ Standing requirements before such tribunals should be construed broadly.¹⁴⁰ As part of this obligation, States should also ensure that victims of marine pollution have access to remedies against private actors.¹⁴¹
94. Furthermore, in the context of transboundary environmental harm, the provision of an effective remedy requires cooperation between States.¹⁴² Cooperation would be consistent with States’ obligations under Article 197 of UNCLOS.
95. Effective remedies compensate for harm or provide protection against future harm. These include the provision of adequate compensation for harm suffered; meaningful engagement to conduct needs assessments for future measures; implementation of measures necessary to protect individuals and communities; and implementing programs to monitor and review the effectiveness of measures implemented, and resolve deficiencies.¹⁴³ Such remedies must not be restricted to adaptation measures, and should instead include a combination of mitigation actions, adaptation measures, and compensation for loss and damage.

¹³⁷ ICCPR Art. 2(3).

¹³⁸ Framework Principle 10.

¹³⁹ See para. 29 of the Commentary to the Framework Principles.

¹⁴⁰ See para. 30 of the Commentary to the Framework Principles.

¹⁴¹ See para. 28 of the Commentary to the Framework Principles.

¹⁴² Framework Principle 13.

¹⁴³ *Billy v. Australia*, para. 11.

VII. CONCLUSION

96. The oceans are an integral element of the global climate system. The obligations established in UNCLOS for the protection of the marine environment directly concern the global climate crisis. The protection of the marine environment is critical to effectively addressing the climate emergency and the wide range of human rights whose fulfilment depend on healthy oceans.
97. At the same time, climate mitigation action should not result in harm to the marine environment or compromise the effective enjoyment of human rights. Adverse impacts of climate change on the marine environment, such as sea level rise, loss of statehood and self-determination; and ocean acidification, reduced fisheries and food insecurity are already resulting in devastating climate change-related human rights impacts. With each passing year, these adverse impacts on the marine environment and associated human rights are worsening. To address marine pollution and the climate emergency, the norms and obligations established in UNCLOS, international human rights law and international environmental law must be applied using an approach of systemic integration. UNCLOS is a stronger and more effective instrument when interpreted and applied in light of human rights norms and obligations, including the right to science and the right to a clean, healthy and sustainable environment.

Respectfully submitted:



Ian Fry

Special Rapporteur on
Human Rights & Climate
Change



Marcos Orellana

Special Rapporteur on Toxics
& Human Rights



David Boyd

Special Rapporteur on
Human Rights & the
Environment

LEGAL REPRESENTATIVES FOR SUBMITTING PARTIES

SUSAN KATH
SAMUEL BOOKMAN
VANCE CENTER FOR INTERNATIONAL JUSTICE
42 W. 44th Street
New York, NY 10036
skath@nycbar.org
sbookman@nycbar.org

VIREN MASCARENHAS
MILBANK LLP
55 Hudson Yards
New York, NY 10001
vmascarenhas@milbank.com
+1 (212) 530-5502

CHRIS TAUFATOFUA
MILBANK LLP
100 Liverpool Street
London, EC2M 2AT
ctaufatofua@milbank.com
+44 20 7615 3039