

## **IUCN WCEL International, Regional and National Reports**

### **A Pivotal Point in Human History: The Use of the Law of the Sea and Related Fields of International Law and Processes by Pacific Small Island Developing States to Address “Pollution” of the Ocean from Excess Anthropogenic Greenhouse Gas Emissions**

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#### **Introduction**

Over the last several years, the countries that comprise the Pacific Small Island Developing States (“PSIDS”) have advocated for legal and institutional linkages in the ways that the international community addresses the Ocean and excess anthropogenic greenhouse gas (“GHG”) emissions, particularly in various international legal instruments and related international legal processes pertaining to the Ocean, climate change, and related natural phenomena. In the view of the PSIDS, the Ocean and excess anthropogenic GHG emissions are closely related and must be addressed by the international community in a holistic manner rather than handled in silos. Toward that end, the PSIDS and like-minded States have pursued a number of measures on the international level that aim to use the law of the sea and related subjects of international law to address excess anthropogenic GHG emissions. This report surveys those efforts.

[A note: The PSIDS traditionally consist of 12 Pacific island States with representation in the United Nations General Assembly—i.e., Fiji, Kiribati, the Marshall Islands, the Federated States of Micronesia, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. Cook Islands and Niue are sometimes considered to be part of the PSIDS depending



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on context, although neither country is a Member State of the United Nations General Assembly.]

### **Excess anthropogenic GHG emissions and the Ocean in the Pacific Small Island Developing States**

Excess anthropogenic GHG emissions have triggered climate change and related natural phenomena that are already major scourges throughout PSIDS and are poised to become even more devastating as the current century proceeds. The impacts of excess anthropogenic GHG emissions on the Ocean are particularly acute for the PSIDS, with their close and longstanding links to and reliance on the Ocean and its resources. According to a major study of the vulnerability of the PSIDS (among other countries in the Pacific) to climate change and related natural phenomena commissioned by the Government of Australia in 2014, and based on the findings of the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, the PSIDS are facing major disruptions in their natural environment due to excess anthropogenic GHG emissions, particularly in the Ocean.<sup>1</sup> Sea surface temperature is projected to rise by up to 3 degrees Celsius by 2090. The global average sea level could rise by nearly a full meter by the end of the century, with the Pacific likely to experience more severe sea-level rise than other regions. A significant majority of islands in PSIDS are low-lying islands and atolls averaging two to three meters in elevation above sea level. Due to Ocean acidification (as caused by the Ocean's absorption of carbon dioxide emitted into the air), the aragonite saturation state of the Ocean will likely be at 3.5 around 2030, which will be barely enough to support healthy coral reef development; and which will likely be below 3 by the end of the current century, devastating the coral reefs that are vital to the marine environments, economies, and socio-cultural livelihoods of the people of the PSIDS. Similarly, coral bleaching—caused by excessively warm Ocean temperatures, among other factors—will be more frequent and last longer by the end of the current century; with 2-degrees Celsius warming of the Ocean, coral bleaching is projected to occur every six months and last about six to eight months each occurrence by 2100. Cyclone/typhoon events will likely be more severe, as a warming Ocean provides super-charged energy for storm systems, and as a warming atmosphere retains more moisture that contributes to rainfall totals from storms. The PSIDS have experienced historically intense storms in the last several years, with Cyclones Pam and Winston in the South Pacific in 2015 and 2016, respectively, and Super-typhoon Maysak in the North Pacific in 2015 combining for 70 deaths and nearly \$2 billion in damage, including from storm surges. And, excess anthropogenic GHG emissions also change wind patterns, which, among other things, alters the height, periodicity,

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<sup>1</sup> For the data and projections cited in this sub-section, *see, generally*, CLIMATE VARIABILITY, EXTREMES AND CHANGE IN THE WESTERN TROPICAL PACIFIC: NEW SCIENCE AND UPDATED COUNTRY REPORTS 2014, Australian Bureau of Meteorology and Commonwealth Scientific and Industrial Research Organization (2014).



and directionality of waves in the Ocean. This has profound impacts on the longstanding tradition of instrument-free canoe navigation over the open Ocean in the Pacific, as has been practiced by the indigenous peoples and local communities of the PSIDS for millennia. Such navigation depends on, among other things, an intimate knowledge of waves—their directionality, height, and periodicity help signal, among other things, that land is nearby, even before a navigator is able to notice land by sight.<sup>2</sup>

### **“Pollution” under the 1982 United Nations Convention on the Law of the Sea**

Being people of the Ocean, and in light of the fact that excess anthropogenic GHG emissions impact the Ocean in significant and profound ways (as discussed above), the PSIDS have explored various ways in which to use the law of the sea—especially as codified in the 1982 United Nations Convention on the Law of the Sea (“UNCLOS”)—to spur more robust action by the international community to address excess anthropogenic GHG emissions. (All members of the PSIDS are States Parties to UNCLOS.) The PSIDS have found much support in the text of UNCLOS for this push.

According to article 192 of UNCLOS, “States have the obligation to protect and preserve the marine environment.”<sup>3</sup> Similarly, according to article 194 of UNCLOS, in relevant parts:

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

2. States shall take all measures necessary to ensure that ***activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment***, and that pollution arising from incidents or activities under their jurisdiction or control ***does not spread beyond the areas where they exercise sovereign rights*** in accordance with this Convention.

3. The measures taken pursuant to [Part XII of UNCLOS] shall deal with ***all sources of pollution of the marine environment***.<sup>4</sup>

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<sup>2</sup> See Kim Tingley, *The Secrets of the Wave Pilots*, THE NEW YORK TIMES, Mar. 17, 2016, available at <https://www.nytimes.com/2016/03/20/magazine/the-secrets-of-the-wave-pilots.html> (last accessed on Oct. 13, 2018).

<sup>3</sup> United Nations Convention on the Law of the Sea art. 192, Dec. 10, 1982, 1833 U.N.T.S. 397.

In article 1(1)(4), UNCLOS defines “pollution of the marine environment” to mean:

“the *introduction by man, directly or indirectly*, of *substances or energy* into the marine environment, including estuaries, which *results or is likely to result* in such deleterious effects as *harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.*”<sup>5</sup>

Anthropogenic GHG emissions (e.g., carbon dioxide) arguably qualify as “source[s]” of “substances” or “energy” that are “introduced by man, directly or indirectly . . . into the marine environment.” As demonstrated above, GHG emissions directly *and* indirectly impact the marine environment, including through Ocean warming and Ocean acidification. Additionally, such impacts “result[] or [are] likely to result[]” in “harm to living resources and marine life” (e.g., coral bleaching, disruptions of the marine food web that depends on healthy coral reefs and phytoplankton growth), “hazards to human health” (e.g., a warming Ocean super-charges storm events, which in turn devastate basic infrastructure services on land as well as cause human deaths), “hindrance to marine activities” (e.g., instrument-free traditional navigation over open Ocean, being reliant on, among other things, the height, periodicity, and directionality of waves), and “reduction of amenities” (e.g., eco-tourism based on healthy coral reefs, sport-fishing industries reliant on healthy fish stocks). Consequently, States Parties to UNCLOS are obligated to “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.”

Toward that end, UNCLOS identifies a number of steps that its States Parties must take to address pollution of the marine environment. Those steps include:

- Art. 207(1): “States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment *from land-based sources*, including rivers, estuaries, pipelines and outfall structures, taking into account *internationally agreed rules, standards and recommended practices and procedures.*”<sup>6</sup>

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<sup>4</sup> Id., at art. 194(1-3) (emphases added).

<sup>5</sup> Id., at art. 1(1)(4) (emphases added).

<sup>6</sup> Id., at art. 207(1) (emphases added).

- Art. 211(1): “States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment *from vessels*.”<sup>7</sup>
- Art. 212(1): “States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment *from or through the atmosphere, applicable to the air space under their sovereignty and to vessels flying their flag or vessels or aircraft of their registry*, taking into account internationally agreed rules, standards and recommended practices and procedures and the safety of air navigation.”<sup>8</sup>

All those steps pertain to anthropogenic GHG emissions. Such emissions come from, among other things, “land-based sources” (e.g., coal power plants, agricultural livestock, deforestation activities), “vessels” (e.g., commercial cargo ships), and pollution “from or through the atmosphere” (e.g., aviation).

Therefore, with respect to excess anthropogenic GHG emissions, all States Parties to UNCLOS are obligated to take all necessary measures to “prevent, reduce, and control” such forms of “pollution” from numerous sources under their “jurisdiction or control,” so as to avoid harms to the marine environment as a whole as well as to individual States and their natural environments. And, to the extent that article 192 (if not Part XII as a whole) of UNCLOS is customary international law, this obligation applies to all States, including the few that are not States Parties to UNCLOS.<sup>9</sup>

### **Drawing links between the Ocean and excess anthropogenic GHG emissions in international legal instruments and processes: A suite of initiatives**

Armed with the reasoning above, the PSIDS have pushed in various international legal instruments and processes over the last several years for clear links between protecting and

<sup>7</sup> Id., at art. 211(1) (emphasis added).

<sup>8</sup> Id., at art. 212(1) (emphasis added).

<sup>9</sup> The Award in the South China Sea arbitration between the Philippines and China asserts that “[t]he corpus of international law relating to the environment . . . informs the content of the general obligation in Article 192” of UNCLOS.” Award in the matter of the South China Sea arbitration before an arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea between the Republic of the Philippines and the People’s Republic of China ¶ 941, PCA Case No. 2013-19, ICGJ 495 (July 12, 2016). Also, Professor Tullio Treves, a former Judge on the International Tribunal Law of the Sea, has argued that “there is a presumption that the provisions of [UNCLOS] correspond to customary law,” although such a presumption is “rebuttable.” See also Tullio Treves, “Law of the Sea,” ¶ 58, Max Planck Encyclopedia of Public International Law (Apr. 2011).



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preserving the Ocean on the one hand and curbing excess anthropogenic GHG emissions on the other hand.

From 5 to 9 June 2017, the international community gathered at the United Nations (“UN”) in New York City to participate in the “United Nations Conference to Support the Implementation of Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development” (“UN Ocean Conference”). Sweden and Fiji presided over the UN Ocean Conference—a fitting honor for Fiji and the broader PSIDS, as it was the PSIDS that advocated for the adoption of Sustainable Development Goal 14 in the 2030 Agenda as well as the convening of the UN Ocean Conference. In paragraph 4 of the outcome document of the UN Ocean Conference—i.e., “Our ocean, our future: call for action”—the international community (inclusive of States) asserted the following:

“We are particularly alarmed by the adverse impacts of climate change on the ocean, including the *rise in ocean temperatures, ocean and coastal acidification, deoxygenation, sea-level rise, the decrease in polar ice coverage, coastal erosion and extreme weather events*. We acknowledge the *need to address the adverse impacts that impair the crucial ability of the ocean to act as climate regulator*, source of marine biodiversity, and as key provider of food and nutrition, tourism and ecosystem services, and as an engine for sustainable economic development and growth. We recognise, in this regard, the *particular importance of the Paris Agreement adopted under the UN Framework Convention on Climate Change*.”<sup>10</sup>

The reference to the Paris Agreement is key, if slightly misleading. As adopted by the twenty-first meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change in 2015, the landmark Paris Agreement contains only one direct reference to the Ocean: in its preamble, the Paris Agreement notes the “importance of ensuring the integrity of all ecosystems, including *oceans*, and the protection of biodiversity.”<sup>11</sup> Being preambular language, the reference to “oceans” does not impose direct legal obligations on the Parties to the Paris Agreement with specific regard to the Ocean. However, article 5(1) of the Paris Agreement arguably contains at least an indirect reference to the Ocean, insofar as the article says that “Parties should take action to conserve and enhance, as appropriate, *sinks and reservoirs* of greenhouse gases.”<sup>12</sup> To the extent that the Ocean is a sink for carbon dioxide

<sup>10</sup> “Our ocean, our future: call for action” ¶ 4, U.N. GAOR, 71st Sess., U.N. Doc. A/RES/71/312 (July 14, 2017) (emphases added).

<sup>11</sup> Paris Agreement preamble, U.N. Doc. FCCC/CP/2015/10/Add.1 (Dec. 12, 2015) (hereinafter “Paris Agreement”) (emphasis added).

<sup>12</sup> Id., at art. 5(1) (emphasis added).



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emitted into the atmosphere, the Parties to the Paris Agreement are strongly encouraged to “conserve and enhance” the Ocean’s capacity as a carbon sink. Science has shown that the Ocean’s ability to absorb carbon dioxide depends, in part, on the temperature of the Ocean—a colder Ocean absorbs more carbon dioxide, while a warmer Ocean absorbs less carbon dioxide.<sup>13</sup> In order to maintain the Ocean’s carbon balance and preserve the marine environment in accordance with that carbon balance, Parties to the Paris Agreement are strongly encouraged (if not obligated) to curb their excess carbon dioxide emissions, as such excess emissions lead to, among other things, a warmer Ocean whose ability to absorb carbon dioxide from the atmosphere is diminished. This strong encouragement is arguably an obligation (albeit an indirect one) for those Parties to the Paris Agreement that are also States Parties to UNCLOS, in light of the discussion above (as well as all other States that accept and/or are bound by the relevant provisions of UNCLOS as being customary international law).

In light of the clear links between the Ocean and excess anthropogenic GHG emissions, as highlighted by the Call for Action and strongly implied by the Paris Agreement, the PSIDS are currently advocating for an “Ocean Pathway” under the United Nations Framework Convention on Climate Change (“UNFCCC”). The Ocean Pathway is an effort to, among other things, create a new agenda item in the UNFCCC process (e.g., on the agenda of one of the subsidiary bodies of the UNFCCC, or perhaps on the agenda of the Conference of the Parties to the UNFCCC) focusing on the impacts of excess anthropogenic GHG emissions on the Ocean and calling on the Parties to the Paris Agreement to include the Ocean in their nationally determined contributions (i.e., the specific measures taken by all Parties to the Paris Agreement to mitigate their GHGs).<sup>14</sup> The Ocean Pathway initiative was formally launched during the twenty-third meeting of the Conference of the Parties to the UNFCCC in November 2017—a fitting opportunity, as Fiji was the President of the Conference (a first for a small island developing State). Fiji and the rest of the PSIDS are currently conducting consultations with other Parties to the UNFCCC as well as the rest of the international community in order to generate a critical mass of support to establish a new UNFCCC agenda item focused on the Ocean. This effort is bolstered by the pending adoption by the Intergovernmental Panel of Climate Change of a “Special Report on the Ocean and Cryosphere in a Changing Climate” in 2019.<sup>15</sup> The PSIDS and other small island developing States championed the Special Report in the face of stiff opposition.

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<sup>13</sup> See John Abraham, “Scientists study ocean absorption of human carbon pollution,” *THE GUARDIAN*, Feb. 16, 2017, available at <https://www.theguardian.com/environment/climate-consensus-97-per-cent/2017/feb/16/scientists-study-ocean-absorption-of-human-carbon-pollution> (last accessed on Oct. 13, 2018).

<sup>14</sup> See “The Ocean Pathway,” available at <https://cop23.com.fj/the-ocean-pathway/> (last accessed on Oct. 13, 2018).

<sup>15</sup> See “Special Report on the Ocean and Cryosphere in a Changing Climate,” Intergovernmental Panel on Climate Change, available at <https://www.ipcc.ch/report/srocc/> (last accessed on Oct. 13, 2018).



Although the Paris Agreement is a crucial instrument for the curbing of excess anthropogenic GHG emissions by the international community, it omits two major sources of GHG emissions: aviation and maritime shipping. For those two sectoral sources, the Conference of the Parties to the UNFCCC has deferred to the International Civil Aviation Organization (“ICAO”) and the International Maritime Organization (“IMO”) to take measures in their institutions to curb emissions from aviation and ships, respectively. Mindful of provisions in UNCLOS that call on UNCLOS States Parties to, among other things, work through relevant international institutions to curb “pollution” from shipping and aviation, the PSIDS have been active in the ICAO and the IMO in pushing for robust GHG emissions reduction schemes in the last few years. The Marshall Islands, in particular, has championed such schemes. In the ICAO, the Marshall Islands led the PSIDS in signaling early support for the emissions reduction scheme that the ICAO Members adopted in 2016<sup>16</sup>—i.e., the Carbon Offsetting and Reduction Scheme for International Aviation, which calls for achieving carbon-neutral growth in international aviation from 2020 onwards through a variety of reduction and offsetting measures that are pegged to carbon dioxide levels in 2020 and that become mandatory for ICAO Members to implement beginning in 2027 (except for least developed countries, small island developing States, and landlocked developing countries unless they volunteer to join).<sup>17</sup> GHG emissions from aviation account for about two percent of total global GHG emissions, a significant percentage that is larger than the share of a number of major developed countries, including Canada and South Korea—curbing GHG emissions from international aviation is a crucial component of the global effort against such emissions.

In the IMO, the Marshall Islands and other PSIDS have led the way with respect to curbing GHG emissions from maritime shipping. In 2017, the Marshall Islands, Tuvalu, Tonga, and Kiribati joined a number of other Members of the IMO (including Germany, the Netherlands, France, Sweden, and other Member States of the European Union) to form a so-called “High Ambition Coalition for Shipping” that has advocated for a robust IMO GHG emissions reduction scheme.<sup>18</sup> The efforts of the Coalition contributed to the decision of the Marine Environment Protection Committee of the IMO in April 2018 to adopt an initial strategy on the reduction of GHG

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<sup>16</sup> Ed King, “Pacific nations signal support for UN aviation emissions deal,” CLIMATE CHANGE NEWS, Sept. 12, 2016, available at <http://www.climatechangenews.com/2016/09/12/pacific-nations-signal-support-for-un-aviation-emissions-deal/> (last accessed on Oct. 13, 2018).

<sup>17</sup> “Consolidated statement of continuing ICAO policies and practices related to environmental protection – Global Market-based Measure (MBM) Scheme,” ICAO Assembly Resolution A39-3 (Oct. 2016).

<sup>18</sup> Moses Kouni Mose, “Pacific islands are on a collision course with the shipping industry,” Comment, CLIMATE CHANGE NEWS, May 15, 2017, available at <http://www.climatechangenews.com/2017/05/15/pacific-islands-collision-course-shipping-industry/> (last accessed on Oct. 13, 2018).



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emissions from ships.<sup>19</sup> The strategy calls for, among other things, the reduction of GHG emissions from ships by at least 50 percent by 2050 compared to 2008 levels and the total phasing out of GHG emissions from ships by the end of the current century.<sup>20</sup> The strategy is significant, in part because GHG emissions from shipping are projected to contribute to nearly 20 percent of global GHG emissions by 2050 if not curbed.<sup>21</sup> The strategy is slated for finalization and adoption by the IMO in 2023.

As the PSIDS have worked within existing international legal instruments and multilateral processes to draw links between the Ocean, the law of the sea, and international efforts to curb excess anthropogenic GHG emissions, the PSIDS have also been active in drawing these links in new international legal processes in the last several years. For one, the PSIDS have been active participants in the negotiations for an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (“BBNJ instrument”). During the Preparatory Committee phase of the negotiations for the BBNJ instrument, the PSIDS made a number of interventions from the floor as well as formal written submissions to the Chair of the Preparatory Committee that, among other things, link anthropogenic GHG emissions and the health and resilience of the Ocean and the biological diversity therein, particularly in areas beyond national jurisdiction. For example, the PSIDS submitted that the BBNJ instrument “could provide agreed general biodiversity protection guidelines or methodology to *take into account the impact on fish stocks of emerging issues such as the adverse impacts of climate change, pollution, or ocean acidification.*”<sup>22</sup> The PSIDS also submitted that, with respect to area-based management tools under the BBNJ instrument, including marine protected areas (“MPAs”), an MPA must “take into account . . . all activities that can have an impact on the ecosystem considered, as well as the need to *plan for the adverse effects of climate change and ocean acidification on ocean resilience.*”<sup>23</sup> The

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<sup>19</sup> See “UN body adopts climate change strategy for shipping,” IMO Briefing, April 13, 2018, available <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/06GHGinitialstrategy.aspx> (last accessed on Oct. 13, 2018).

<sup>20</sup> Id.

<sup>21</sup> See Josh Gabbatiss, “Carbon emissions from global shipping to be halved by 2050, says IMO,” THE INDEPENDENT, April 13, 2018, available at <https://www.independent.co.uk/environment/ships-emissions-carbon-dioxide-pollution-shipping-imo-climate-change-a8303161.html> (last accessed on Oct. 13, 2018).

<sup>22</sup> See “PSIDS Submission to the Second Meeting of the Preparatory Committee for the Development of an international legally binding instrument 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,” section 2.2, August 2016, available at [http://www.un.org/depts/los/biodiversity/prepcom\\_files/PSIDS\\_Submission\\_BBNJ.pdf](http://www.un.org/depts/los/biodiversity/prepcom_files/PSIDS_Submission_BBNJ.pdf) (emphasis added).

<sup>23</sup> Id., at section 6 (emphasis added).



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negotiations for the BBNJ instrument are currently taking place in the form of an intergovernmental conference (“IGC”), with four sessions slated to take place from this year to 2020. (The first session of the IGC took place in early September of this year.) Due in part to the active participation of the PSIDS in the negotiations for the BBNJ instrument, the Federated States of Micronesia was elected by the IGC to be one of the Vice Presidents of the IGC, representing the Asia-Pacific grouping of States.

In addition to their advocacy in the negotiations for the BBNJ instrument, the PSIDS aim to participate actively in the negotiations for the Global Pact for the Environment (“GPE”). The initiative for the GPE, as championed by the Macron administration in the Government of France, aims for the adoption of a new international instrument—ideally (but not necessarily) a legally binding instrument—that reflects and enshrines fundamental principles of international environmental law (e.g., the no-harm rule, precaution, polluter pays, public access to information) as well as engages in the progressive development of certain concepts in international environmental law (e.g., resilience, non-regression).<sup>24</sup> A self-styled Group of Experts for the GPE, composed of distinguished international law scholars and practitioners, produced a preliminary draft of the GPE in June 2017. Per the preamble of the GPE, in its preliminary draft form, the (eventual) Parties to the GPE “[a]ffirm[] the need to adopt a *common position and principles* that will inspire and guide the efforts of *all to protect and preserve the environment*.”<sup>25</sup> This language—echoing, among other things, the language in article 192 of UNCLOS on protecting and preserving the marine environment—as well as the general mission of the GPE present a clear opportunity for the PSIDS and like-minded States to push for closer links between the law of the sea and international climate change law (as well as other related sub-disciplines of international environmental law) through a single, potentially universal instrument. Toward that end, Fiji supported the Macron administration’s initiative from the outset, speaking up in support of the initiative during the Summit for the Global Pact for the Environment in September 2017 that launched discussions at the UN for the GPE;<sup>26</sup> and was one of the Group of Friends that produced the initial draft of the UN General Assembly resolution on the modalities for the process to finalize and adopt the GPE. The UN General Assembly adopted that resolution in May 2018 (albeit after significant modifications during informal consultations), officially launching a process that will feature, among other things, several meetings of an ad hoc

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<sup>24</sup> See, generally, “Toward a Global Pact for the Environment,” White Paper, Le Club des juristes, Sept. 2017, available at [https://www.leclubdesjuristes.com/wp-content/uploads/2017/05/CDJ\\_Pacte-mondial-pour-lenvironnement\\_Livre-blanc\\_UK\\_web.pdf](https://www.leclubdesjuristes.com/wp-content/uploads/2017/05/CDJ_Pacte-mondial-pour-lenvironnement_Livre-blanc_UK_web.pdf) (last accessed on Oct. 13, 2018).

<sup>25</sup> Id., at pg. 45 (emphases added).

<sup>26</sup> Maika Bolatiki, “Fiji to Protect Legacy of Paris Agreement: PM”, FIJI SUN, Sept. 21, 2017, available at <http://fijisun.com.fj/2017/09/21/fiji-to-protect-legacy-of-paris-agreement-pm/> (last accessed on Oct. 13, 2018).

open-ended working group in Nairobi, Kenya, in the first half of 2019 and the possible convening of an intergovernmental conference for the GPE thereafter.<sup>27</sup>

Perhaps the most striking example of efforts by the PSIDS to draw strong and clear links between the law of the sea, climate change law, and various other subjects of international law is the push by the PSIDS for the International Law Commission (“ILC”) to study the legal implications of sea-level rise. In October 2017, H.E. Ambassador Amatlain Kabua, the Permanent Representative of the RMI to the UN, on behalf of the PSIDS, delivered a statement in the Sixth Committee (i.e., the Legal Committee) of the 72<sup>nd</sup> Session of the UN General Assembly that, among other things, called on the ILC “to include legal implications of sea-level rise as a topic on its Long-Term Programme of Work as soon as possible, including consideration of questions which may be unique to atoll nations and other low-lying small island developing states.”<sup>28</sup> During the same Session, the Federated States of Micronesia delivered a statement in the Sixth Committee that aligned with the group statement delivered by Ambassador Kabua and expanded on the group statement by highlighting several subjects of international law that the ILC could study as part of the sea-level rise topic: the law of the sea (particularly, but not limited to, the impacts of sea-level rise on the drawing and permanence of maritime baselines and maritime zones), Statehood, human rights, and human migration.<sup>29</sup> The next year, inspired in part by the calls from the PSIDS, five Members of the ILC produced a syllabus for the topic “Sea-level rise in relation to international law” that mirrors many of the elements advanced by the PSIDS and envisions the establishment of a Study Group to examine those elements.<sup>30</sup> In August 2018, just a few months after the production of the syllabus and less than a year after the PSIDS statements in the Sixth Committee, the ILC decided to place the topic of “Sea-level rise in relation to international law” on its long-term programme of work.<sup>31</sup> The PSIDS and like-minded delegations will likely call on the ILC to move the topic to its current programme of

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<sup>27</sup> See “Toward a global pact for the environment,” U.N. GAOR, 72nd Sess., U.N. Doc. A/RES/72/277 (May 10, 2018).

<sup>28</sup> For the full text of the statement, *see* <http://statements.unmeetings.org/media2/16154559/marshall-islands-onbehalf-of-pacific-small-island-developing-states-.pdf> (last accessed on Oct. 13, 2018).

<sup>29</sup> For the full text of the statement, *see* <http://statements.unmeetings.org/media2/16154386/micronesia-federal-states-of-.pdf> (last accessed on Oct. 13, 2018).

<sup>30</sup> For the full syllabus, *see* Bogdan Aurescu, Yacouba Cissé, Patrícia Galvão Teles, Nilüfer Oral, and Juan José Ruda Santolaria, “Sea-level rise in relation to international law,” annex B, Report of the International Law Commission on its Seventieth Session, U.N. Doc. A/73/10 (Aug. 2018), available at [http://legal.un.org/docs/?path=../ilc/reports/2018/english/annex\\_B.pdf&lang=EFSRAC](http://legal.un.org/docs/?path=../ilc/reports/2018/english/annex_B.pdf&lang=EFSRAC) (last accessed on Oct. 13, 2018).

<sup>31</sup> Report of the International Law Commission on its Seventieth Session ¶ 29, U.N. Doc. A/73/10 (Aug. 2018), available at <http://legal.un.org/docs/?symbol=A/73/10> (last accessed on Oct. 13, 2018).



work as soon as possible in order to study the topic with urgency. To the extent that sea-level rise raises major legal implications for a wide range of international law subjects, it is conceivable that the international community will feel even more pressure to curb excess anthropogenic GHG emissions—being the main contributors to sea-level rise—in order to, among other things, avoid many of the legal implications of sea-level rise, including the potential alteration of maritime zones, the diminishment of human rights connected to the enjoyment of coastal areas that will be impacted by sea-level rise, the expansion of human migration in the face of sea-level rise, and even the loss of Statehood.

### **Conclusion**

In early October of this year, the Intergovernmental Panel on Climate Change formally adopted a Special Report “on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty.”<sup>32</sup> The Special Report compares the projections of potential impacts from excess anthropogenic GHG emissions in a world that has warmed at least two degrees Celsius above pre-industrial global averages to a world that has “only” warmed one and a half degrees Celsius.<sup>33</sup> The Paris Agreement calls on its Parties to take measures aimed at “[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.”<sup>34</sup> The Special Report on 1.5 °C asserts that if the world is to avoid crossing the 1.5 °C threshold, then global net anthropogenic carbon dioxide emissions must decline by 45% from 2010 levels by 2030 and reach net zero emissions around 2050.<sup>35</sup> To achieve this, according to the Special Report, there will need to be “*rapid and far-reaching transitions* in energy, land, urban and infrastructure (including transport and buildings), and industrial systems. . . . These systems transitions are *unprecedented* in terms of scale, but not necessarily in terms of speed, and imply *deep emissions reductions in all sectors*, a wide portfolio of mitigation options and a significant

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<sup>32</sup> “Global Warming of 1.5 °C: an IPCC special report on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty,” Summary for Policymakers, Intergovernmental Panel on Climate Change (Oct. 6, 2018), available at [http://report.ipcc.ch/sr15/pdf/sr15\\_spm\\_final.pdf](http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf) (last accessed on Oct. 13, 2018) (hereinafter “IPCC 1.5 SPM”).

<sup>33</sup> See, generally, *id.*

<sup>34</sup> Paris Agreement, *supra* note 11, at art. 2(1)(a) (emphasis added).

<sup>35</sup> IPCC 1.5 SPM, *supra* note 32, at pg. 15.



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upscaling of investments in those options.”<sup>36</sup> The PSIDS and other small island developing States pushed hard for the inclusion of language on 1.5 °C in the Paris Agreement as well as the production of the Special Report on 1.5 °C, precisely because warming above 1.5 °C will spell grave consequences for the PSIDS and other small island developing States.<sup>37</sup> It is not surprising, then, that the PSIDS and like-minded States are pushing hard on as many fronts and in as many sectors as possible to curb excess anthropogenic GHG emissions. Their efforts in linking such emissions with the Ocean, the law of the sea, and other subjects of international law are key components of this push. It is all hands on deck now, in this, a pivotal point in human history.

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<sup>36</sup> Id., pg. 20 (emphases added).

<sup>37</sup> Id., pgs. 8-12.