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| **IN THE FEDERAL COURT OF AUSTRALIA** | NO. VID 1356/2025 |
| **DISTRICT REGISTRY: VICTORIA** | VID 1357/2025 |
| **DIVISION: GENERAL** | VID 1400/2025 |
| **Australian Conservation Foundation Inc** | Applicant in VID 1356/2025 & 1400/2025 |
| **Friends of Australian Rock Art Inc** | Applicant in VID 1357/2025 |
| and | |
| **Minister for Environment and Water** | First Respondent in all matters |
| **Woodside Energy Ltd** | Second Respondent in all matters |

## SUBMISSIONS OF *AMICUS CURIAE*

**Pursuant to the orders of Justice Button dated 25 May 2026, the grant of leave to Ms Astrid Puentes Riaño - in her capacity as United Nations Special Rapporteur on the human right to a clean, healthy and sustainable environment - to be heard as *amicus curiae* in proceeding VID1400/2025 is limited to paragraphs 5-12, 18-19 and 39-49 of these submissions.**

1 If granted leave to be heard as *amicus curiae*, Astrid Puentes Riaño – in her capacity as United Nations **Special Rapporteur** on the human right to a clean, healthy and sustainable environment – seeks to make the following written submissions in these proceedings.

2 By way of summary, the Special Rapporteur's submissions are directed to two issues arising under the grounds of review.

a) *First*, the correct construction of the phrase 'substantial cause' in s 527E(1)(b) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), which is the provision that determines whether the physical effects of climate change are an 'impact' of the North West Shelf Project (**NWSx**) (relating to Ground 1 in VID1400/2025 and Ground 4 in VID1356/2025).

b) *Second*, the content of the obligation in s 137A of the EPBC Act not to act inconsistently with the National Heritage management principles – specifically, what the obligation to protect and transmit heritage values 'to all generations' requires where climate change poses an acknowledged, serious, and irreversible threat to those values over a 45-year approval period (relating to Ground 6 and separate question on Ground 7 in VID1357/2025).

The submissions also briefly address the power to attach conditions necessary or convenient for protecting, repairing or mitigating damage under s 134(1) of the EPBC Act.

3 In line with her expertise, the Special Rapporteur's submissions identify the international law obligations relevant to constructional questions raised by the above two issues, and explain how those obligations inform the construction of the relevant statutory terms. The Special Rapporteur's intervention is made in a legal context that now includes the International Court of Justice's landmark Advisory Opinion on the Obligations of States in Respect of Climate Change of 23 July 2025 (**ICJ Advisory Opinion**), which clarified the pre-existing obligations of States under international law that are relevant to climate change. These proceedings provide an early opportunity for an Australian court to consider the construction of the EPBC Act's causal and protective provisions in light of that recently clarified legal background.

4 To provide the foundation for the Special Rapporteur's submissions, it is necessary first: to address the principle that statutes should be interpreted consistently with international law; to explain the salience of that principle in the particular context of the EPBC Act as it was in force at the time of the decisions under review; and to identify obligations under international law relevant to the interpretation of the EPBC Act in these proceedings.

## PRINCIPLE OF CONSISTENCY WITH INTERNATIONAL LAW

5 A statute is to be construed, as far as its language permits, so that it is in conformity, and not in conflict, with established rules of international law.[1] This principle flows from the proposition that 'Parliament, prima facie, intends to give effect to Australia's obligations under international law.'[2]

6 The legal value of compliance with international law has two dimensions. *First*, ratification of a treaty involves an 'undertaking by the Executive government to adhere (in good faith) to the terms of a given international instrument as a solemn assurance

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[1] *Jumbunna Coal Mine NL v Victorian Coal Miners' Association* (1908) 6 CLR 309, 363 (O'Connor J), referring to *Grenada County Supervisors v Brogden* (1884) 112 US 261, 269; ***Polites*** *v The Commonwealth* (1945) 70 CLR 60, 68–69 (Latham CJ), 77 (Dixon J), (80-81 (Williams J); *Chu Kheng Lim v Minister for Immigration* (1992) 176 CLR 1, 38 (Brennan, Deane and Dawson JJ); *Kartinyeri v The Commonwealth* (1998) 195 CLR 337, [97] (Gummow and Hayne JJ).

[2] *Minister for Immigration and Ethnic Affairs v* ***Teoh*** (1995) 183 CLR 273, 287 (Mason CJ and Deane J), 315 (McHugh J).

made to the international community and to the Australian people.'[3] *Second*, '[t]he violation of an international treaty or custom is a violation of international law *qua* law' and as such can be considered a 'matter of deep and lasting significance.'[4]

7 Regardless of whether Parliament was aware of the relevant rules of international law when enacting a particular statute,[5] the principle continues to apply because, like the principle of legality to which it has been compared,[6] it is not understood as a 'factual prediction' about actual legislative intent,[7] but rather as 'an expression of a legal value, respected by the courts, and acknowledged by the courts to be respected by Parliament.'[8]

8 The principle is not absolute; as is the case with other interpretative presumptions, it may be rebutted if regard to 'the circumstances and the subject matter' make it 'artificial and unreal' to apply it.[9]

9 It is possible to identify a limit on the principle's application by reference to when it is engaged. So, for example, it has been said that the principle is only engaged where the meaning of a statute is otherwise ambiguous. However, the conception of ambiguity is a broad one,[10] such that the principle applies 'as far as [the statute's] language permits.'[11] Stated in the negative, 'the implication must give way where the words of the statute are inconsistent with the implication.'[12]

10 Whether the principle permits resort to international law obligations that post-date the enactment of a statute has been doubted.[13] However, this supposed limit rests on the mistaken idea that a court interpreting a statute is bound to give effect to what the enacting legislature intended *at the time of enactment*. It is now accepted that the Court's task is subtly but importantly different – it is to give effect to the meaning of the statute

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[3] *Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v* ***CWY20*** (2021) 288 FCR 565, [3] (Allsop CJ); *Teoh*, 287 (Mason CJ and Deane J).
[4] *CWY20*, [5] (Allsop CJ).
[5] In this regard, see ***Al-Kateb*** *v Godwin* (2004) 219 CLR 562, [65] (McHugh J).
[6] *Tajjour v New South Wales* (2014) 254 CLR 508, [48] (French CJ).
[7] Cf *Al-Kateb*, [63]-[65] (McHugh J).
[8] *Al-Kateb*, [20] (Gleeson CJ).
[9] See, eg, *Polites*, 78 (Dixon J).
[10] *Teoh*, 287 (Mason CJ and Deane J): 'there are strong reasons for rejecting a narrow conception of ambiguity'.
[11] *Teoh*, 287 (Mason CJ and Deane J).
[12] *Al-Kateb*, [63] (McHugh J).
[13] *Kruger v The Commonwealth* (1997) 190 CLR 1, 71 (Dawson J): 'Such a construction is not, however, required by the presumption where the obligations arise only under a treaty and the legislation in question was enacted before the treaty …'. See also ***Coleman*** *v Power* (2004) 220 CLR 1, [19] (Gleeson CJ); *McGee v Gilchrist-Humphrey* (2005) 92 SASR 100, [78] (Perry J). Cf *Re Maritime Union of Australia; Ex parte CSL Pacific Shipping Inc* (2003) 214 CLR 397, [46]-[48] (the Court).

at the present time.[14] That is consistent with the 'always speaking' approach to statutory interpretation.[15] Accordingly, although it is accepted that '[t]he matter cannot be regarded as settled,'[16] the better view is that international obligations that post-date a statute's enactment may inform its meaning.[17] The case for the relevance of post-enactment international obligations is stronger in respect of customary international law, given Parliament's presumed understanding that these obligations are capable of developing over time.[18]

11 While the principle operates generally – because the 'values and principles [of customary and conventional international law] form part of the context in which statutes are enacted'[19] – it has particular purchase when applied to an act that 'seeks to give effect to matters of international law.'[20] As is explained below, the EPBC Act is such a statute.

12 The principle converges with the purposive approach to statutory interpretation mandated by s 15AA of the *Acts Interpretation Act 1901* (Cth). Where Parliament has enacted a statute to facilitate compliance with Australia's international obligations, the Court should adopt the construction that best advances that purpose.[21] In such a case it may not be necessary to prefer a particular interpretation (interpretation A) to show that another interpretation (interpretation B) would result in inconsistency with Australia's obligations under international law. Rather, it may be enough that the former interpretation better advances the fulfilment of those obligations.

## INTERNATIONAL LAW CONTEXT TO THE EPBC ACT

13 The constitutional basis for Commonwealth environmental legislation was established in *Commonwealth v Tasmania* (1983) 158 CLR 1 (***Tasmanian Dam case***). The High Court held, by majority, that the external affairs power in s 51(xxix) of the Australian Constitution empowers the Parliament to enact legislation implementing Australia's

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[14] See generally Stephen Gageler, 'Common Law Statutes and Judicial Legislation: Statutory Interpretation as a Common Law Process' (2011) 37(2) *Monash University Law Review* 1.
[15] See generally *Aubrey v The Queen* (2017) 260 CLR 305.
[16] D C Pearce, *Statutory Interpretation in Australia* (10th ed, 2024) [3.74].
[17] *Coleman*, [247] (Kirby J). See also *Ahmad v Inner London Education Authority* [1978] QB 36, 48; [1978] 1 All ER 574, 583 (Scarman LJ).
[18] Cf Hon John Basten, 'Australia's Climate Change Legal Obligations' (December 2025) p 18-19.
[19] *R* v *Hape* [2007] 2 SCR 292, [53] (McLachlin CJ, LeBel, Deschamps, Fish and Charron JJ).
[20] *Kingdom of Spain v Infrastructure Services Luxembourg Sarl* (2023) 275 CLR 292, [16] (the Court); *R v Jacobs Group (Australia) Pty Ltd* (2023) 280 CLR 170, [22] (Kiefel CJ, Gageler, Gordon, Steward, Gleeson and Jagot JJ).
[21] *Minister for Immigration and Border Protection v SZTAL* (2017) 262 CLR 362, [39], [44] (Gageler J, dissenting in the result).

obligations under international treaties even where the legislation operates principally within Australia. The case concerned Commonwealth legislation enacted to prevent Tasmania from damming the Franklin River, which would have damaged World Heritage values of the South West Tasmania wilderness. The High Court upheld that legislation as a valid exercise of the external affairs power.

14 Following the foundation laid by the *Tasmanian Dam case*, the EPBC Act was enacted to implement into Australian law the provisions of international environmental agreements to which Australia is party, including the *Convention on Biological Diversity*,[22] the *Convention Concerning the Protection of the World Cultural and Natural Heritage* (**World Heritage Convention**),[23] the *Convention on Wetlands of International Importance Especially as Waterfowl Habitat* (**Ramsar Convention**),[24] and the *Convention on the Conservation of Migratory Species of Wild Animals and related bilateral migratory bird agreements* (**CMS**).[25] It has been said of the Act that it represents 'an attempt to consolidate and clarify the Commonwealth's responsibilities for environmental protection within the Australian Federation.'[26]

15 The EPBC Act expressly refers to its international law context, including in the following ways:

a) The objects of the EPBC Act include 'to assist in the co-operative implementation of Australia's international environmental responsibilities' (s 1(e)).[27]

b) Many of the Act's 'matters of environmental significance', found in Part 3, implement the protection obligations placed on Australia by international treaties.

c) The EPBC Act specifically requires the Minister to act consistently with certain international conventions. For example, in deciding whether to approve an action under ss 12 or 15A, the Minister must not act inconsistently with Australia's

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[22] *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).
[23] Adopted by the General Conference at its seventeenth session Paris, 16 November 1972.
[24] *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*, opened for signature 2 February 1971, 996 UNTS 245 (entered into force 21 December 1975).
[25] *Convention on the Conservation of Migratory Species of Wild Animals*, opened for signature 23 June 1979, 1651 UNTS 333 (entered into force 1 November 1983).
[26] *Minister for the Environment and Heritage v Queensland Conservation Council Inc* (2004) 139 FCR 24, [2], citing Second Reading Speech, House of Representatives Hansard, 29 June 1999 at 7770.
[27] The objects of the Act have previously informed the Court's interpretation of it: see *Lansen v Minister for Environment and Heritage* (2008) 174 FCR 14, [284], cf [285].

obligations under the World Heritage Convention (s 137); equivalent obligations apply in respect of the Ramsar Convention (s 138) and migratory species agreements including the CMS (s 140). The Court has interpreted these provisions by reference to the corresponding international instruments.[28]

**AUSTRALIA'S OBLIGATIONS UNDER INTERNATIONAL LAW**

16 Australia's international environmental obligations arise from a range of sources, including treaties to which Australia is a party, customary international law, and general principles of international law. The ICJ Advisory Opinion recently and authoritatively clarified the content of States' obligations under international law relating to climate change. The Annexure to these submissions summarises the climate change-related international law obligations identified by the ICJ. The Special Rapporteur does not seek to provide an exhaustive account of Australia's international environmental, human rights and climate-related obligations; her submissions are directed to those obligations that bear directly on the grounds of review in these proceedings.

17 Australia has conventional and customary obligations under international law to protect the environment and the climate system from significant harm. Under customary international law, Australia is subject to a duty to prevent significant harm to the environment. The ICJ Advisory Opinion confirmed that this duty applies to the environment and the climate system. This is an *erga omnes* obligation (a fundamental norm protecting shared interests), owed by States to the international community as a whole. The ICJ clarified that the climate system 'is an integral and vitally important part of the environment and which must be protected for present and future generations.'[29] It further confirmed that due diligence requires States to assess the specific climate-related effects of significant individual greenhouse gas-emitting activities at the project level, including their possible cumulative and downstream effects.[30] Further, the ICJ said that failure by a State 'to take appropriate action to protect the climate system from GHG emissions - including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies - may constitute

[28] See, eg, *Booth v Bosworth* (2001) 114 FCR 39, [105] (Branson J); *Brown v Forestry Tasmania (No 4)* (2006) 157 FCR 1, [295]-[301] (Marshall J).
[29] ICJ Advisory Opinion, [273].
[30] ICJ Advisory Opinion, [137]-[138], [295]-[298].

an internationally wrongful act which is attributable to that State.'[31] The standard of due diligence required is stringent in the climate context in light of the gravity of the risks to the environment and to human rights.[32] States are required to 'prevent significant harm to the climate system and other parts of the environment',[33] which means using 'all the means at [their] disposal'[34] to prevent the harm as well as, at a general level, putting in place legislation, administrative procedures, and enforcement mechanisms to regulate the activities of both public and private operators.[35] In making a determination concerning 'significant harm', States are to 'take into account the best available science', which the ICJ stated are (at the present time) the Intergovernmental Panel on Climate Change (**IPCC**) reports.[36]

18 The precautionary principle is an integral part of the general obligation of due diligence under customary international law. The precautionary principle is embodied in principle 15 of the Rio Declaration on Environment and Development and several climate and environmental international agreements (including the *Convention on Biological Diversity*), and provides that 'where 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.'[37] In this regard, in discussing the importance of the precautionary principle (or 'precautionary approach') in this context, the ICJ agreed with the International Tribunal for the Law of the Sea that 'where there are plausible indications of potential risks', a State 'would not meet' its due diligence obligations 'if it disregarded those risks.'[38]

19 Customary international law also recognises intergenerational equity as an operative principle – that 'present generations are trustees of humanity tasked with preserving dignified living conditions and transmitting them to future generations.'[39] The ICJ

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[31] ICJ Advisory Opinion, [427].
[32] ICJ Advisory Opinion, [138], [372]-[386].
[33] ICJ Advisory Opinion, [132]-[139], [409].
[34] ICJ Advisory Opinion, [272]-[273], [281], [290].
[35] ICJ Advisory Opinion, [281]-[282].
[36] ICJ Advisory Opinion, [278].
[37] As described in the ICJ Advisory Opinion, [293].
[38] ICJ Advisory Opinion, [293]-[294].
[39] ICJ Advisory Opinion, [156] (see also [155]-[157]).

confirmed this principle must be taken into account 'where States contemplate, decide on and implement policies and measures.'[40]

20 Australia is a party to the United Nations Framework Convention on Climate Change (**UNFCCC**),[41] and to the Paris Agreement[42] which sits under it. Although the EPBC Act was not enacted to implement those treaties directly, they form part of the contemporary international law context in which the EPBC Act operates. Climate change is now recognised as one of the most significant and pervasive threats to many elements of the environment that are protected, including heritage places: the IPCC has concluded that climate change is already affecting the environment and the climate system, including cultural heritage through increased exposure to extreme weather events, rising temperatures and changing atmospheric conditions, with impacts that will intensify with every increment of global warming.[43]

21 Article 3(1) of the UNFCCC requires parties to protect the climate system 'for the benefit of present and future generations of humankind,' thus referencing the principle of intergenerational equity. The Paris Agreement's preamble also affirms intergenerational equity as a principle that parties must respect when taking action to address climate change, as well as emphasising the need for States to respect their human rights obligations when taking action to address climate change.[44]

22 The Special Rapporteur's mandate is important to these proceedings. The ICJ confirmed that the full enjoyment of human rights cannot be ensured without protection of the climate system.[45] In this regard, the ICJ considered that the 'enjoyment of certain human rights' may be 'significantly' impaired by the 'adverse effects of climate change.'[46] The ICJ also confirmed that the right to a clean, healthy and sustainable environment is a human right, and that it is a precondition and essential for the enjoyment of other human

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[40] ICJ Advisory Opinion, [157].
[41] UNFCCC: *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994).
[42] *Paris Agreement*, opened for signature 22 April 2016, [2016] ATS 24 (entered into force 4 November 2016).
[43] IPCC, Climate Change 2023: Synthesis Report, Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)], IPCC, Geneva, Switzerland (2023); IPCC, Climate Change 2022: Impacts, Adaptation and Vulnerability, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor et al. (eds.)], Cambridge University Press, Cambridge (2022), Chapter 1 (Point of Departure and Key Concepts) and Technical Summary.
[44] See, Paris Agreement, Preamble; ICJ Advisory Opinion at [404].
[45] ICJ Advisory Opinion, [373]-[375] and [403]-[404].
[46] ICJ Advisory Opinion, [376].

rights.[47] The recognition of this right corresponds to Australia's obligations to prevent significant harm to the environment and to the climate system as well as ensuring compliance with its international climate change obligations. In consequence, Australia, like other States, must take effective and progressive measures for the protection of the environment and the climate system, abstaining from implementing regressive measures.[48] Further, components of the right to a clean, healthy and sustainable environment are protected under the principles of ecologically sustainable development (such as, intergenerational equity), which must be taken into account by the Minister pursuant to s 136(2)(a) of the EPBC Act when deciding whether to approve the taking of an action.

**SPECIAL RAPPORTEUR'S SUBMISSIONS ON GROUNDS OF REVIEW**

23 Against the above background, the Special Rapporteur seeks to make submissions in relation to two issues:

a) The proper construction of 'substantial cause' in s 527E(1)(b) of the EPBC Act, as applied by the Minister in the Approval Decision and the Reconsideration Decision (Ground 4 in VID1356/2025 and Ground 1 in VID1400/2025); and

b) The content of the obligation in s 137A(a) of the EPBC Act not to act inconsistently with the National Heritage management principles, and what consistency with those principles requires in the context of climate change (Grounds 6 and 7 in VID1357/2025).

24 The Special Rapporteur also seeks to make brief submissions directed to the adequacy of the conditions attached to the Approval Decision (Ground 3 in VID1356/2025; Grounds 3, 4 and 5 in VID1357/2025), as they relate to each of the above issues.

25 The Special Rapporteur does not raise additional grounds or errors. Her submissions advance a positive construction of s 527E(1)(b) that resolves in a principled way the question left open by the Full Court in *Environment Council of Central Queensland Inc v Minister for the Environment and Water* [2024] FCAFC 56 (***ECoCQ***). Her submissions on s 137A identify the international law content of the National Heritage management principles that the Court needs in order to assess consistency with those principles. In

[47] ICJ Advisory Opinion, [393]; and see [387].
[48] As to the consequences of breach, see ICJ Advisory Opinion, [445].

both respects, the Special Rapporteur's submissions advance a perspective on the international law dimensions that supplements, without repeating, the submissions of the Applicants.

**Section 527E(1)(b) and 'substantial cause' – Ground 1 in VID1400/2025 and Ground 4 in VID1356/2025**

26 Ground 1 of VID1400/2025 and Ground 4 of VID1356/2025 raise the meaning of 'substantial cause' in the 'indirect consequence' limb of the definition of 'impact' in s 527E(1)(b). In particular, the grounds rest on the contention that the phrase 'substantial cause' 'has a qualitative meaning that cannot be reduced to arithmetical analysis.'[49]

27 In making the approval and reconsideration decisions that are the subject of each of these proceedings, the Minister accepted that:

a) climate change has physical effects on matters of national environmental significance, including the national heritage values of the Dampier Archipelago;

b) the combustion of fossil fuels contributes to climate change; and

c) the physical effects of climate change on those MNES are, if anything, indirect consequences of the NWSx Project.

What he disputed, and where the ACF in turn disputes his reasoning, is whether the NWSx Project is a **s**ubstantial cause of those physical effects on the national heritage values of the Dampier Archipelago specifically.

28 Accordingly, a critical question to the proceedings is whether the phrase 'substantial cause' permits the Minister to dismiss the causal connection between the NWSx project's emissions and the physical effects of climate change on arithmetical grounds (very small proportion of global emissions; no net increase by substitution), or whether it requires a qualitative evaluative judgment about the nature and character of the causal connection.

29 On the arithmetical approach, where an event or circumstance is caused by the cumulative contribution of many actions each contributing a quantitatively small proportion, no single action can be a substantial cause of that event or circumstance. On the Applicants' construction, by contrast, 'substantial cause' requires a qualitative

[49] See particularly (g) of Ground 1 in VID1400/2025 and Ground 4 in 1356/2025.

evaluative judgment about the nature and character of the causal connection between the action and the specific event or circumstance, which cannot be answered solely by reference to the action's proportional contribution.[50]

30 The Special Rapporteur submits that the Applicants' construction is correct. The phrase 'substantial cause' in s 527E(1)(b) requires a qualitative evaluative judgment as to whether the causal connection between the action and the relevant event or circumstance is real, meaningful, and of substance. On that construction, a finding that the proposed action would contribute only a 'very small' proportion of global emissions, or would produce 'no net increase' in global emissions by reason of market substitution, does not answer the question whether the action is a substantial cause of the physical effects of climate change, for example on the National Heritage values of the Dampier Archipelago.

31 Before turning to the way that international law should inform this constructional choice, it is necessary to say something about the context and purpose of that provision and its consideration in the authorities.

*Context and purpose of s 527E(1)(b)*

32 The definition of 'impact' in s 527E was inserted into the EPBC Act by the *Environment and Heritage Legislation Amendment Act (No 1) 2006* (Cth) (**2006 Amending Act**).

33 The Explanatory Memorandum to the 2006 Amending Act stated:

> The purpose of the amendment is to clarify the extent to which impacts which are indirect consequences of actions must be considered or dealt with under the Act. Section 527E applies to all direct and indirect consequences of the taking of an action by a person, which meet the criteria in the section. Subsection 527E(2) only applies in relation to impacts of actions by third parties which are an indirect consequence of the taking of an action by the first person.[51]

34 Section 527E was introduced in response to *Minister for the Environment and Heritage v Queensland Conservation Council Inc* (2004) 139 FCR 24 (***Nathan Dam case***), in order to clarify direct and indirect impacts.[52] It came into effect on the same day that the

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[50] See, e.g., Applicant's submissions in VID 1356/2025 at [217].
[51] Explanatory Memorandum to the Environment and Heritage Legislation Amendment Bill (No 1) 2006 (Cth) [519].
[52] Explanatory Memorandum to the Environment and Heritage Legislation Amendment Bill (No 1) 2006 (Cth) [519]; see also Australian Conservation Foundation Incorporated v Minister for the Environment (2016) 251 FCR 308, [156] (Griffiths J).

judgment in ***Anvil Hill*** *Project Watch Association Inc v Minister for the Environment and Water Resources* (2007) 243 ALR 784 was handed down in 2007. Although s 527E was referenced in ***Anvil Hill***, it was not discussed or interpreted. Justice Stone held that, absent a demonstrated link between a project's emissions and a specific identifiable harm, 'the relatively small contribution of the proposed emissions to total global emissions could not be seen as having a significant impact.'[53]

*Case law on s 527E(1)(b)*

35 In *Australian Conservation Foundation Incorporated v Minister for the Environment* (2016) 251 FCR 308, Griffiths J considered the application of s 527E in the context of a challenge to the Minister's approval of a large coal mine (the Carmichael mine). The ACF contended that the Minister had misconstrued 'substantial cause', arguing it should mean 'not de minimis' rather than 'weighty or big'. Justice Griffiths rejected the ACF's submissions concerning the Minister's approach to construction, but in doing so accepted that 'substantial cause' is an ambiguous term.[54] His Honour did not resolve its meaning, finding it was unnecessary for the Minister to address any ambiguity because the Minister 'found it was difficult to identify any causal relationship between the proposed action and any possible environmental impacts.'[55] His Honour effectively endorsed the Minister's substitution reasoning – that because the coal, if not mined by Adani, might be supplied by another source, then no net contribution to climate change could be established – without requiring that reasoning to be tested against the proper meaning of 'substantial cause'. The Full Court dismissed the appeal without addressing the construction question.[56] Neither the first instance decision nor the appeal therefore resolved the meaning of 'substantial cause' in s 527E(1)(b).

36 In *ECoCQ*, the Full Court considered the meaning of 'substantial cause' in s 527E(1)(b) in the context of a challenge to the Minister's reconsideration decision in respect of two coal mine expansions. The parties accepted that the adjective 'substantial' imported a qualitative assessment to the nature of the causal link.[57] However, no developed

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[53] *Anvil Hill*, [40]. Not disturbed on appeal: (2008) 166 FCR 54
[54] *Australian Conservation Foundation Incorporated v Minister for the Environment* (2016) 251 FCR 308, [163(c)].
[55] *Australian Conservation Foundation Incorporated v Minister for the Environment* (2016) 251 FCR 308, [163(d)].
[56] *ACF v Minister for the Environment and Energy* [2017] FCAFC 134; (2017) 251 FCR 359.
[57] *ECoCQ*, [44].

argument was advanced as to whether 'substantial cause' had a qualitative meaning that could not be reduced to an arithmetical analysis.[58] In those circumstances, Mortimer CJ and Colvin J were not prepared to find error in the Minister's arithmetical approach, while expressly declining to endorse it as the correct construction.[59] Justice Horan did not address the question.[60] In the costs judgment, Mortimer CJ confirmed that 'there was ... a different approach to this term that may have been available to the Minister as decision-maker.'[61]

37 The present proceedings therefore represent an important occasion for the Court to squarely determine the correct construction of 'substantial cause' in the climate change context.

38 In other statutory contexts, substantial cause has been described as a cause that is 'real and of substance',[62] which entails a qualitative rather than quantitative analysis. That the phrase is capable of a qualitative construction has some support in the authorities.[63] In these circumstances, the presumption of consistency with international law has real work to do. Its meaning in this statutory context is ambiguous. However, even if substantial cause (in this context) is not considered ambiguous, it must be interpreted – as with any statutory causal phrase – by reference to statutory context and purpose.[64]

*Australia's international law obligations informing 'substantial cause'*

39 The presumption of consistency with international law applies to s 527E as it does to all provisions of the EPBC Act. Importantly, s 527E was inserted in 2007, after the principal treaties the EPBC Act was enacted to implement had entered into force for Australia. No

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[58] *ECoCQ*, [46]-[50].
[59] *ECoCQ,* [109], [123]-[124].
[60] *ECoCQ,* [172]-[183].
[61] *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2)* [2024] FCAFC 97, [50].
[62] *Badawi v Nexon Asia Pacific Pty Ltd (t/as Commander Australia Pty Ltd)* (2009) 75 NSWLR 503, [82]; *Fisher v Nonconformist Pty Ltd* (2024) 114 NSWLR 1, [67]-[73] (Kirk JA, Meagher JA agreeing at [1]; Simpson AJA agreeing at [149]). It is noted the language of 'real **or** of substance' is also used: see the discussion in *Australian Conservation Foundation Incorporated v Minister for the Environment* (2016) 251 FCR 308, [163(b)].
[63] *ECoCQ*, [44], [132] (Mortimer CJ and Colvin J).
[64] *Comcare v Martin* (2016) 258 CLR 467, [42] (French CJ, Bell, Gageler, Keane and Nettle JJ). See also *Allianz Australia v GSF Australia* (2005) 221 CLR 568, [99].

post-enactment difficulty arises in relying on the obligations imposed by those treaties as interpretive context.[65]

40 The ICJ Advisory Opinion assists in resolving the ambiguity in 'substantial cause' in three distinct and reinforcing ways.

41 *First*, the ICJ confirmed that individual activities cannot escape the obligation of due diligence simply because their individual contribution to a cumulative harm appears small in isolation.[66]

42 *Second*, the due diligence obligation, recalling that it is a stringent obligation, requires States to put in place legislation and administrative procedures to effectively regulate relevant activities.[67] An administrative procedure that allows a decision-maker to dismiss the climate change impacts of a major gas project on the basis that its proportional contribution to global emissions is arithmetically small does not satisfy this requirement. Because of the nature of climate change and the increasing and cumulative impacts of greenhouse gases, as the Applicants correctly observe, adopting a test which asks 'whether an action's effects on the climate are greater than "small"' will mean the test will not ever be met.[68] Such an approach denudes the relevant part of the statutory scheme of its protective qualities (and, therefore, deprives it of utility). The qualitative construction, which requires genuine engagement with the specific causal chain between the project's emissions and the physical effects of climate change on the National Heritage place (and other matters of national environmental significance), does.

43 *Third*, the ICJ confirmed that specific climate-related effects must be assessed at the level of proposed individual activities, including their possible cumulative and downstream effects.[69] The NWSx Project is the kind of individual activity contributing to greenhouse gas emissions that must be specifically assessed at the project level, especially when the

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[65] Further, the ICJ Advisory Opinion is what is referred to as *lex lata (*which refers to existing obligations): ICJ Advisory Opinion at [100]. The ICJ was not asked to give a legal opinion on how the law can develop, but was asked to identify the existing obligations of States to protect the climate system and other parts of the environment from significant harm. As the ICJ said: 'its response … is limited to identifying the existing obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions, thereby elucidating the content of these obligations, and clarifying the relationship between obligations arising from various sources of international law' (at [100]).
[66] ICJ Advisory Opinion, [277].
[67] ICJ Advisory Opinion, [282].
[68] Applicant's submissions in VID 1356/2025 at [218].
[69] ICJ Advisory Opinion, [295]-[298]

matter under discussion is whether a significant expansion in size and time (around 50 years) of a project which produces and processes gas will be authorised.

44 The ICJ also relevantly confirmed that the diffuse and cumulative nature of climate change does not preclude finding a breach of States' obligations. Causation of damage is required only for reparation; a breach of an obligation of conduct – such as the failure to exercise regulatory due diligence – is established independently.[70]

45 Further, the cumulative nature of climate change (both cause and effect) should not be conflated with the type of cumulative impacts addressed in **Tarkine** National Coalition Inc v Minister for the Environment (2015) 233 FCR 254. Cumulative GHG emissions are the cause of climate change; this is the specific character of the environmental risk itself. As the ICJ said, climate change is the sum of all activities that contribute to anthropogenic GHG emissions over time, not any specific emitting activity, which produces the risk of significant harm to the climate system.[71] The precautionary principle, as mentioned, is an integral part of the general obligation of due diligence under customary international law.[72] Where there are plausible indications of potential risks, a State would not meet its due diligence obligations if it disregarded those risks. A construction of 'substantial cause' that requires arithmetical proof of causal significance is inconsistent with the precautionary principle (and also 'likely', the less stringent criteria for protection under the EPBC Act), because it demands certainty of contribution before obligations arise, including the obligation to assess the impact under Part 8 of the EPBC Act.

46 Australia is a party to the Paris Agreement, under which it must pursue domestic mitigation measures, including regulating private actors, with the aim of achieving Nationally Determined Contribution which is capable, when taken together with other NDCS, of limiting global average temperature rise to 1.5°C.[73] Although the Paris Agreement post-dates s 527E, the 'always speaking' approach to statutory interpretation supports its relevance. Further, although the Paris Agreement is not implemented through the EPBC Act, climate change is a principal threat to the protected matters of national environmental significance under that Act. A construction of 'substantial cause' that

[70] ICJ Advisory Opinion, [435]-[436].
[71] ICJ Advisory Opinion, [137] and [277].
[72] ICJ Advisory Opinion, [293]-[294].
[73] ICJ Advisory Opinion, [250]-[254]

allows individual project contributions to that threat to be dismissed as arithmetically insignificant (when looked at in isolation) cannot be reconciled with Australia's commitment under the Paris Agreement to pursue domestic mitigation measures with the aim of limiting global average temperature rise to 1.5°C.

47 In any event, the assessment of environmental impacts is an integral part of the way in which the EPBC Act achieves its statutory purposes. The reduction of the statutory concept of 'substantial cause' to an arithmetical calculation undermines the assessment process and (therefore) the achievement of the EPBC Act's important objectives.

*Conclusion on 'substantial cause'*

48 Applying the presumption of consistency with international law, the better interpretation of 'substantial cause' is that it cannot be answered in a purely arithmetical way. An action may be a substantial cause of an event or circumstance even if its contribution is numerically small, whether measured as a percentage of global emissions, or as a fraction of global average temperature increase. What is required is a qualitative analysis that may be informed by arithmetical considerations but cannot be dictated by them.

49 The Minister's reasoning was purely arithmetical. It did not constitute the qualitative evaluative judgment that 'substantial cause' requires. As a result, it did not consider the specific risk and significant harm that the action would have had, as mandated by international law. International law supports the construction of 'substantial cause' advanced by the Applicants.

**Section 137A and the obligation to 'not act inconsistently' with National heritage management principles – Ground 6 and separate question on Ground 7 in VID1357/2025**

50 The Special Rapporteur makes no submission on whether s 137A of the EPBC Act imposes an objective jurisdictional condition or a subjective satisfaction requirement.

51 It should be noted that the National Heritage management principles do not derive from an international treaty obligation. However, the principles (contained in Schedule 5B of the *Environment Protection and Biodiversity Conservation Regulations 2000*) parallel principles found in international law and must be understood in light of them.

52 In particular, Objective 1, which requires that heritage values be 'identified, protected, conserved, presented and transmitted, to all generations', must be understood in light of the principle of intergenerational equity under international law (summarised in relation to climate change above at paragraphs [19]-[20]).

53 Intergenerational equity has particular force where harm is irreversible. The ICJ Advisory Opinion's identification of irreversibility as central to the principle,[74] citing the IPCC finding that 'many changes will be irreversible on centennial to millennial time scales,'[75] is relevant here because the petroglyphs of the Dampier Archipelago are irreplaceable.

54 If compliance with s 137A is an objective question for the Court (Ground 6), the ICJ Advisory Opinion's articulation of intergenerational equity should inform the objective assessment of consistency with Objective 1. The question for the Court would be whether the Approval Decision, which approved the action for 45 years with conditions that cannot respond to unknown future emissions, is consistent with an obligation to protect and transmit the heritage values of the Dampier Archipelago to all generations.

55 If compliance with s 137A requires the Minister to be satisfied that he would not act inconsistently with the management principles (Ground 7), the ICJ Advisory Opinion bears on the standard to which that satisfaction must be formed. The Advisory Opinion confirms that where 'there is generally recognised scientific evidence that it is highly probable that significant harm will occur, the standard of due diligence will be more demanding.'[76] The Minister's acceptance of the risk of serious and irreversible damage to the petroglyphs elevated rather than reduced what was required.

**Section 134(1) and the power to attach conditions 'necessary or convenient' for 'protecting', 'repairing or mitigating' – Ground 3 in VID1356/2025 and Grounds 3, 4 and 5 in VID1357/2025**

56 Ground 3 in VID1356/2025 and Grounds 3, 4 and 5 in VID1357/2025 broadly all concern the power in s 134(1) to attach conditions to the approval of an action where the Minister is satisfied that the condition is 'necessary or convenient' for 'protecting' a Part 3 matter

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[74] ICJ Advisory Opinion, [156].
[75] IPCC, Climate Change 2023: Synthesis Report, Summary for Policymakers [Core Writing Team, H. Lee and J. Romero (eds.)], IPCC, Geneva, Switzerland (2023), p 24, Statement C.1.3, as cited in ICJ Advisory Opinion, [156].
[76] ICJ Advisory Opinion, [283].

or 'repairing or mitigating' damage to a Part 3 matter (that is, a matter of national environmental significance). The Special Rapporteur makes the following general submissions as to the power to attach conditions.

57 *First*, the power to attach conditions is an important mechanism in the EPBC Act's balancing of the protection of the environment with the attainment of other statutorily acknowledged benefits (including economic benefits which outweigh the economic detriments) that can flow from regulated projects. Understood in this way, the existence of the power coheres with the non-absolute nature of many of Australia's international obligations and the way that those obligations afford a 'margin of appreciation' to the government, a concept that originated out of international law but is familiar to domestic Australia law.[77]

58 *Second*, the language of protection, repair and mitigation in s 134(1) makes plain that the provision is intended to have a remedial operation. Accordingly, and consistently with orthodox principles of statutory interpretation, it should be given a 'large and liberal' interpretation.[78] That remains true even though the EPBC Act more broadly can be acknowledged to be a statute that strikes a balance between competing priorities. The point for present purposes is that the individual provision under consideration, s 134(1), is remedial or protective in nature and should be interpreted accordingly.

59 *Third*, the power to impose conditions must be given real teeth in order to give effect to Australia's obligations under international law. This is so especially in relation to potential irreversible harms. The ICJ has emphasised that the due diligence standard in the climate change context is 'stringent' and requires 'a heightened degree of vigilance and prevention.'[79] Where a decision-maker has identified a significant risk of climate-related harm, that heightened standard informs what conditions are necessary and reasonable, and whether the conditions imposed are sufficient to protect, repair or mitigate the harm.

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[77] See generally C Ward, 'The Margin of Appreciation in Australian Jurisprudence' (2003) 23 *Australian Bar Review* 189.
[78] *IW v City of Perth* (1997) 191 CLR 1, 12 (Brennan CJ and McHugh J, quotation marks and citation omitted).
[79] ICJ Advisory Opinion, [138].

**CONCLUSION**

60 For the above reasons, the Special Rapporteur seeks to submit that the presumption of consistency with international law supports the qualitative construction of 'substantial cause' in s 527E(1)(b), and that the obligation in s 137A to protect and transmit National Heritage values 'to all generations' must be understood in light of the principle of intergenerational equity under customary international law. Interpreting these provisions consistently with Australia's international obligations best advances the protective purpose of the EPBC Act.

**Kathleen Foley**
**Alofipo So'oalo Fleur Ramsay**
**Julian R Murphy**
**Laura Schuijers**

**On behalf of Astrid Puentes Riaño, the United Nations Special Rapporteur for the human right to a clean, healthy and sustainable environment**

**Annexure - Summary of climate change-related international law obligations**

| | Mitigation | Adaptation | Co-operation and assistance |
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| **United Nations Framework Convention on Climate Change ('UNFCCC')**<br><br>**Convention adopted on 9 May 1992 and opened for signature on 4 June 1992.**<br><br>**Ratified by Australia; entered into force on 21 March 1994** | **Article 2 – Ultimate Objective of the UNFCCC**<br>• The "ultimate objective" of the UNFCCC sets the objective "in the light of which the other treaty provisions are to be interpreted and applied" **(ICJ AO, [197])**.<br>• Sets an overall framework for intergovernmental efforts to tackle the adverse effect of climate change, with state parties to aim to reach global peaking of greenhouse gas (**GHG**) emissions as soon as possible and within a timeframe to allow ecosystems to adapt naturally to climate change **(ICJ AO, [63])**.<br>• The Intergovernmental Panel on Climate Change('IPCC') definition of the climate system substantially aligns with that under the UNFCCC, which defines the climate system as 'the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions' **(ICJ AO, [75])**.<br>**Article 4(1) - Limit peaking of GHG emissions**<br>**International Court of Justice Advisory Opinion of 23 July 2025, 'Obligations of States in respect of climate change' ('ICJ AO'), [194]**<br>• Requires State parties to aim to reach global peaking of greenhouse gas ('GHG emissions as soon as possible **(ICJ AO, [194])**.<br>**Article 4(1)(a) - Inventories of GHG emissions and sinks**<br>• Develop, update, publish and make available national inventories of anthropogenic GHG emissions and removals by sinks **(ICJ AO, [201])**.<br>**Article 4(1)(b) - Formulate programmes**<br>• Formulate, implement, publish and regularly update national and regional programmes containing measures to mitigate climate change by addressing GHG emissions, and measures to facilitate adequate adaptation **(ICJ AO, [201])**.<br>**Article 4(1)(j) - Communicate to COP** | **Article 4(1) - Programmes and plans to facilitate adaptation**<br>**ICJ AO, [210]**<br>• Parties must formulate, implement, publish and regularly update national, and where appropriate, regional programmes containing measures to facilitate adequate adaptation to climate change.<br>• Parties should collaborate to address climate change impacts by creating integrated plans for coastal management, water resources, agriculture, and protecting or restoring areas affected by drought, desertification, and floods, especially in Africa.<br>• Social, economic, and environmental policies should consider climate change and use nationally determined impact assessments to minimize any negative effects adaptation projects may have on the economy, public health, or the environment.<br>**Article 4(4) - Annex II parties to assist developing countries**<br>**ICJ AO, [211]**<br>• Annex II parties must assist developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adaptation to those adverse effects.<br>**Article 4(8) - Parties to consider funding, insurance and transfer of technology**<br>**ICJ AO, [212]**<br>• Parties should give consideration to necessary actions including funding, insurance and transfer of technology to meet the specific needs and concerns of developing country parties arising from climate change and/or response measures. | **Article 4(1)(c) - Technology and processes to limit GHG emissions**<br>**ICJ AO, [214]**<br>• Parties must co-operate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic GHG emissions.<br>**Article 4(1)(d) - Technology and processes to limit GHG emissions**<br>**ICJ AO, [214]**<br>• Parties must co-operate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all GHG, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems.<br>**Article 4(1)(e) - Adaptation to impacts of climate change**<br>**ICJ AO, [70]**<br>• Parties must co-operate in the adaptation to the impacts of climate change.<br>**Article 4(1)(g) & Article 5 - Research and its promotion**<br>**ICJ AO, [214]**<br>• Parties must co-operate and promote scientific, technological, technical, socioeconomic and other research.<br>**Article 4(1)(h) - Information exchange**<br>**ICJ AO, [214]**<br>• Parties must co-operate and promote the exchange of relevant scientific, technological, technical, socioeconomic and legal information.<br>**Article 4(1)(i) - Education and awareness**<br>**ICJ AO, [214]**<br>• Parties must co-operate in education, training and public awareness related to climate change including by facilitating public participation in addressing climate change and its effects and developing adequate responses.<br>**Article 4(3)-(5) - Assistance to developing country parties**<br>**ICJ AO, [217]** |

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| | • Communicate information to the Conference of the Parties (**COP**) related to implementation **(ICJ AO, [201])**.<br>**Article 4(2)(a) - Adopt national policies**<br>**ICJ AO, [205]**<br>• Developed country parties and Annex I parties must adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic GHG emissions and protecting and enhancing its GHG sinks and reservoirs.<br>**Article 4(2)(b) - Communicate policies and measures**<br>**ICJ AO, [206]**<br>• Annex I parties must periodically communicate detailed information on policies and measures, and projected emissions/removals with the aim of returning to 1990 levels.<br>**Article 4(2)(e) - Co-ordinate instruments and review policies**<br>**ICJ AO, [206]**<br>• Annex I parties must co-ordinate with other parties on economic and administrative instruments and periodically review policies leading to greater GHG emissions.<br>• Annex I parties must identify and periodically review its own policies and practices which encourage activities that lead to greater levels of anthropogenic emissions of GHG not controlled by the Montreal Protocol than would otherwise occur.<br>**ICJ AO, [207]**<br>• All of these obligations are legally binding to the Parties regardless of whether the obligation is one of result or one of conduct. | | • Annex II parties and developed country parties must provide financial assistance, technology transfers and other forms of support to developing country parties, especially those countries that are particularly vulnerable to the adverse effects of climate change**.** |
| **Kyoto Protocol**<br>**11 December 1997 – Protocol adopted at Kyoto; opened for signature 16 March 1998.**<br>**Ratified by Australia on 12 December 2007;** | **Concretised and quantified emission reduction commitments**<br>**ICJ AO, [219]-[221]**<br>• Annex I parties listed in Annex B must comply with quantified emission reduction commitments during specified commitment periods (2008–2012 and 2013–2020). | | |

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| **entered into force for Australia on 11 March 2008.** | • Non-compliance with emission reduction commitments may constitute an internationally wrongful act.<br>• Though no commitment period beyond 2020 has been set, the Protocol remains part of applicable law and its provisions serve as interpretive aids and substantive provisions to assess compliance. | | |
| **Paris Agreement**<br>**12 December 2015 – Agreement adopted at Paris; opened for signature 22 April 2016.**<br>**Ratified by Australia on 10 November 2016; entered into force for Australia on 10 December 2016.** | **Preamble**<br>• Among other things, acknowledges that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.<br>**Article 2(1) – Aims of the Paris Agreement**<br>**ICJ AO, [222]-[229]**<br>• The 1.5°C threshold (not the 2°C threshold) in Article 2(1) is the parties' agreed primary temperature limit for limiting the global average temperature increase under the Paris Agreement.<br>• This temperature limit in Article 2, which is also referenced in Article 4(1), constitutes, in addition to the object and purpose of the Agreement, the context relevant for interpretation of other obligations in the Paris Agreement, such as the mitigation obligations under Article 4.<br>**Article 4(1) - Obligation to achieve net zero emissions**<br>**ICJ AO, [272]-[300]**<br>• Parties must aim to reach a global peaking of GHG emissions as soon as possible and to undertake rapid reductions thereafter to achieve net zero emissions by balancing anthropogenic GHG emissions and their removal by sinks by the second half of the century.<br>• This obligation is informed by the context of the treaty, including the collective temperature limit | **Article 7(9) - Plan and implement adaptation measures**<br>**ICJ AO, [255]-[259]**<br>• Parties must engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions.<br>• Actions to meet this obligation include:<br>o Implementation of adaptation actions, undertakings and/or efforts - Art 7(9)(a);<br>o Formulation and implementation of national adaptation plans - Art 7(9)(b);<br>o Assessment of climate change impacts and vulnerability, to determine prioritised actions taking into account vulnerable people, places and ecosystems - Art 7(9)(c);<br>o Monitoring, evaluating and learning from adaptation plans, policies, programmes and actions - Art 7(9)(d);<br>o Building resilience of socio-economic and ecological systems including through economic diversification and sustainable management of natural resources - Art 7(9)(e).<br>• Parties must use their best efforts, in line with the best available science, with a view to achieving these objectives.<br>• Measures that may be effective to meet this obligation include:<br>o Restoration of ecosystems;<br>o Creation of early warning systems;<br>o Resilience-enhancing infrastructure;<br>o Regenerative farming;<br>o Crop diversification;<br>o Weatherproofing of buildings;<br>o Managing land to reduce wildfire risk. | **Article 12 - Co-operate to enhancing education and awareness**<br>**ICJ AO, [260]**<br>• Parties co-operate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation, and public access to information.<br>**Article 7(6) and 7(7) - Co-operate to enhancing education and awareness**<br>**ICJ AO, [260]**<br>• Parties must co-operate with respect to adaptation, loss and damage.<br>**Article 9 - Co-operate by providing financial assistance**<br>**ICJ AO, [263] -[265]**<br>• Developed states must provide financial resources to developing states for both mitigation and adaptation.<br>o These obligations are to be implemented in a manner and at a level that allows for the achievement of the collective maximum limit temperature, with that level being evaluated on the basis of factors including the capacity of developed states and the needs of developing states.<br>• Relatedly there are legally binding obligations for developed parties to communicate information on project climate finance - Art 9(5) to 9(7).<br>**Article 10 -Technology development and transfer**<br>**ICJ AO, [266]**<br>• Parties must strengthen cooperative action on technology development and transfer - art 10(2).<br>• Additionally, parties are required to provide financial support to developing country parties for the purpose of enabling technology transfer and development - art 10(6).<br>**Article 11 - Capacity-building**<br>**ICJ AO, [267] -[268]** |

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| | (which is to limit warming to no more than 1.5°C). (**ICJ AO [231]**)<br><br>**Article 4(2) - Obligation to prepare and communicate NDCs**<br><br>**ICJ AO, [230]-[233]**<br><br>• Parties must outline and communicate their climate actions. Substantively, this must include the preparation, communication and maintenance of successive Nationally Determined Contributions ('NDCs') that the State intends to achieve. In connection with the NDC obligation, each party is required to:<br>o Communicate a NDC every five years - Art 4(9);<br>o Account for their NDCs - Art 4(13);<br>o Register their NDCs - Art 4(12).<br>• Failure to prepare, communicate and maintain successive NDCs, to account for them and to register them would amount to a breach of these obligations.<br><br>**Article 4(3) - Ensure NDCs reflect the highest possible ambition**<br><br>**ICJ AO, [237]-[249]**<br><br>• Each party's successive NDC must represent a progression beyond their then-current NDC and reflect its highest possible ambition.<br>o The ambition contained in a party's NDC must be adequate to ensure that, when taken together, they not pass the 1.5°C temperature maximum limit and the stabilisation of GHG in the atmosphere.<br>o The standard of due diligence required when preparing NDCs is stringent - each party must do its utmost to ensure that the NDCs it puts forward represent its highest possible ambition.<br>o The NDCs should reflect common but differentiated responsibilities and respective capabilities in light of different national circumstances.<br>o Developed countries should take the lead with economy-wide absolute emission reduction targets, whereas developing party countries are expected to continue enhancing their mitigation efforts. However, the obligation to prepare and | | • Parties co-operate to build the capacity of developing countries to implement the Paris Agreement, in particular that of least developed countries and small island developing states.<br>o Whether developed or developing, parties that enhance the capacity of a developing country party shall communicate the relevant capacity-building actions and measures regularly. |

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| | communicate NDCs capable of preventing surpassing the 1.5°C temperature limit applies to all parties to the Agreement.<br><br>**Article 4(2) - Implement NDCs and pursue domestic mitigation**<br><br>**ICJ AO, [229], [250]-[254]**<br>• All parties must pursue domestic mitigation measures, exercising due diligence in their efforts and in deploying appropriate means to take domestic mitigation measures, including in relation to activities carried out by private actors.<br>o Parties are required to make best efforts to achieve the NDCs;<br>o States must be proactive and pursue measures that are reasonably capable of achieving the NDCs;<br>o Measures may include putting in place a national system, including legislation, administrative procedures and an enforcement mechanism, and exercising adequate vigilance to make such a system function effectively.<br>o The required standard of due diligence is stringent. Compliance of parties with their due diligence obligations under the Paris Agreement is assessed on the basis of whether the party in question exercise due diligence and employed best efforts by using all means at its disposal in the performance of that obligation. | | |
| **Vienna Convention for the Protection of the Ozone Layer ("Ozone Layer Convention") and Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol")**<br><br>**Vienna Convention: 22 March 1985 – adopted at Vienna. Acceded by Australian on 16 September 1987.** | **Ozone Layer Convention, Article 2**<br><br>**ICJ AO, [320]**<br>• General obligation to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer.<br>• Parties are required in accordance with the means at their disposal and their capabilities to take measures to co-operate and adopt appropriate legislative or administrative measures. | | |

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| **Montreal Protocol: 16 September 1987 – adopted at Montreal. Ratified by Australia on 19 May 1989; came into force on 1 January 1989.** | **Montreal Protocol, Article 2**<br><br>**ICJ AO, [323]**<br><br>• Establishes the core binding obligation on each Party to ensure that its production and consumption of controlled substances do not exceed specified limits and is progressively reduced over time.<br><br>• These obligations apply on a twelve-month control period basis and are legally mandatory for Parties. | | |
| **Convention on Biological Diversity**<br><br>**Adopted on 5 June 1992; entered into force on 29 December 1993.**<br><br>**Ratified by Australia on 18 June 1993; entered into force on 29 December 1993.** | **Article 1**<br><br>**ICJ AO, [325]**<br><br>• State parties have objectives under the Convention of Biological Diversity of: the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.<br><br>• The biosphere is a component of the climate system comprising all ecosystems and living organisms, in the atmosphere, on land (terrestrial biosphere) or in the oceans (marine biosphere), including derived dead organic matter, such as litter, soil organic matter and oceanic detritus.<br><br>**Article 3**<br><br>**ICJ AO, [327]**<br><br>• States parties have responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction, which reflects the customary duty of preventing significant harm.<br><br>**Article 6**<br><br>**ICJ AO, [328]**<br><br>• Each State party must, in accordance with its particular conditions and capabilities, develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity. | | |

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| | • States must integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.<br><br>**Article 7(c)**<br><br>**ICJ AO, [329]**<br><br>• States are required, as far as possible and as appropriate, to identify and monitor processes and categories of activities that have, or are likely to have, significant adverse impacts on the conservation and sustainable use of biological diversity.<br><br>**Article 8(l)**<br>**ICJ AO, [329]**<br><br>• Where significant adverse effects have been identified, as far as possible and as appropriate, to regulate or manage the relevant processes and categories of activities, including those which contribute to anthropogenic GHG emissions. | | |
| **United Nations Convention to Combat Desertification**<br>**Adopted on June 17, 1994, and formally entered into force in December 1996.**<br>**Ratified by Australia on 15 May 2000.** | **Article 4(2)(a)**<br><br>**ICJ AO, [333]**<br><br>• States parties are required to adopt an integrated approach addressing the physical, biological and socio-economic aspects of the processes of desertification and drought. | | **Article 4(2)(d)**<br><br>**ICJ AO, [333]**<br><br>• States parties must promote cooperation among affected country Parties in the fields of environmental protection and the conservation of land and water resources, as they relate to desertification and drought.<br><br>**Article 6**<br><br>**ICJ AO, [333]**<br><br>• Developed country parties must support affected developing country parties in their efforts to combat desertification and mitigate the effects of drought, including through the provision of financial resources.<br><br>**Article 8**<br><br>**ICJ AO, [333]**<br><br>• Requires States parties to encourage the co-ordination of their actions and commitments undertaken in the framework of the Desertification Convention, the UNFCCC and the Biodiversity Convention. |

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| **Customary International Law** | **The duty to protect the environment and the climate system, and therefore to prevent significant harm to the environment**<br><br>**ICJ AO, [272]-[300]**<br><br>• Applies to the climate system, which is an integral and vitally important part of the environment, and which must be protected for present and future generations (ICJ AO [273]).<br><br>• Accordingly, the duty is to prevent significant harm to the climate system and other parts of the environment.<br><br>• This duty is *erga omnes,* that is, one owed to the international community as a whole (**ICJ AO, [440]**).<br><br>• The duty has two elements: (ICJ AO [272]-[299])).<br><br><u>1. First element - Risk of significant harm to the climate system and other parts of the environment</u>: This risk:<br>o Depends upon the environmental context, requiring regard to the particular environmental setting and circumstances of the activity in question (**ICJ AO, [294]-[296]**);<br>o Includes both where no harm yet exists but there is risk of future significant harm, or where some harm exists and there is risk of further significant harm (**ICJ AO, [274**]);<br>o Includes where the harm is from cumulative impacts. The diffuse and multifaceted nature of conduct which contributes to climate change does not preclude the application of the duty (**ICJ AO, [276]-[277**]);<br>o Depends on probability or foreseeability of the occurrence of harm and its severity or magnitude. The higher the probability and seriousness of the harm, the more demanding the standard of conduct (**ICJ AO, [275])**<br>o Is informed by the best available science, which is currently found in the IPCC reports (**ICJ AO, [298**]).<br><u>2. Second element - Due diligence as the required standard of conduct.</u> | **The duty to prevent significant harm to the environment**<br><br>**ICJ AO, [282]**<br><br>• This duty applies to both mitigation and adaptation.<br>• Adaptation measures reduce the risk of significant harm occurring and are therefore also relevant for assessing whether a State is fulfilling its customary obligations with due diligence. These measures must regulate the conduct of public and private operators within the States' jurisdiction or control. | **The duty to co-operate for the protection of the environment**<br><br>**ICJ AO, [301]-[308]**<br><br>• The obligation to co-operate is an important complement to the substantive obligations of every riparian State, which is all the more vital in the case of the climate system as a shared resource that can only be protected through close and continuous co-operation.<br>• The specific nature of climate change requires States to take individual measures in co-operation with other States.<br>o States have obligations to make individual contributions to collective efforts;<br>o The interpretation and fulfilment of their substantive obligations must take into account the situation of other states and be fulfilled in co-operation with other states.<br>o Discharge of the duty is not only by the conclusion and fulfilment of treaties.<br>• States have some discretion in determining the means for regulating their GHG emissions.<br>o Discretion cannot serve as an excuse for States to refrain from co-operating with the required level of due diligence;<br>o or to present their effort as entirely voluntary contributions which cannot be subjected to scrutiny.<br>• Duty to co-operate is founded on recognition of the interdependence of States.<br>o Requires more than transfer of finance or technology;<br>o Requires efforts to continuously develop, maintain and implement a collective climate policy based on equitable distribution of burdens and common but differentiated responsibilities and respective capabilities.<br>• Customary duty provides standard for determining whether existing co-operation including treaties and their implementation still serve their purpose, and whether further collective action must be taken. |

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| | This due diligence standard:<br>○ is stringent (**ICJ AO, [138]**);<br>○ includes application of the precautionary principle (**ICJ AO, [293]**);<br>○ varies based on common but differentiated responsibilities and capabilities according to national circumstances. Relevantly to Australia, developed countries must take more demanding measures to prevent environmental harm and meet a more demanding standard of conduct (**ICJ AO, [292]**);<br><br>○ Includes substantive and procedural obligations.<br>○ Substantive obligations require States to:<br>▪ Use all means at its disposal to prevent significant harm to the climate system and other parts of the environment (**ICJ AO, [281]**);<br>▪ Put in place a national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate activities (including public and private operators) and be accompanied by an effective enforcement and monitoring mechanisms (**ICJ AO, [281]-[282]**).<br><br>○ Procedural obligations require States to:<br>▪ Undertake risk assessment and environmental impact assessment. This includes assessment of proposed individual activities within their jurisdiction or control for their potential to cause significant climate-related harm, including through downstream and transboundary effects (**ICJ AO [298]**);<br>▪ Take into account relevant international rules and standards, including international binding obligations and non-binding rules (**ICJ AO [288]**);<br>▪ Take into account scientific and technical information, including the best available science. The best available science is the IPCC | | |

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| | reports at the date they are published. However, the standard of due diligence becomes more demanding in the light of new scientific and technological knowledge **(ICJ AO [284]**).<br><br>Note that the Inter-American Court of Human Rights (**IACtHR**) found a similar duty had reached level of peremptory norm (where there must be no derogation). | | |
| **United Nations Convention on the Law of the Sea**<br><br>**Adopted and opened for signature on 10 December 1982; entered into force on 16 November 1994.**<br><br>**Ratified by Australia on 5 October 1994 and entered into force for Australia on 16 November 1994.** | **Article 192 - General obligation to protect and preserve the marine environment**<br><br>**International Tribunal for the Law of the Sea Advisory Opinion ('ITLOS AO'), [384]-[400], ICJ AO [336].**<br><br>• States have the obligation to protect and preserve the marine environment, which represents over 95 per cent of the biosphere and is a component of the climate system.<br>• Anthropogenic GHG emissions also have deleterious effects on the marine environment and are considered pollution.<br><br>**Article 194(1) - Prevent, reduce and control marine pollution**<br><br>**ITLOS AO, [197]-[243]**<br><br>• Requires States, individually or jointly, to take all measures necessary to prevent, reduce and control pollution of the marine environment from any source, using the best practicable means at their disposal and in accordance with their capabilities, and to endeavour to harmonise their policies.<br><br>**Article 194(2) - Prevent transboundary harm**<br><br>**ITLOS AO, [244]-[258]**<br><br>• Requires States to ensure that activities within their jurisdiction or control do not cause pollution damage to other States or their environment, and that pollution does not spread beyond areas where they exercise sovereign rights.<br><br>**Article 194(5)**<br><br>**ITLOS AO, [401]-[406]**<br><br>• Requires measures necessary to protect and preserve rare or fragile ecosystems and the habitats | | **Article 197 - Cooperation on a global or regional basis**<br><br>**ITLOS AO [300]-[311]**<br><br>• Requires States to cooperate at the global level and, where appropriate, at the regional level, either directly or through competent international organisations, to formulate and develop international rules, standards, and recommended practices and procedures for the protection and preservation of the marine environment, taking into account the particular characteristics of different regions.<br><br>**Article 200 - Studies, research programmes and exchange of information and data**<br><br>**ITLOS AO, [312]-[320]**<br><br>• Requires States to cooperate, directly or through competent international organisations, to promote studies, undertake scientific research programmes, and encourage the exchange of information and data relating to pollution of the marine environment. States must also endeavour to participate actively in regional and global programmes aimed at improving knowledge about the nature and extent of marine pollution, exposure pathways, associated risks, and potential remedies.<br><br>**Article 201 - Scientific criteria for regulations**<br><br>**ITLOS AO, [312]-[320]**<br><br>• Requires States to cooperate, directly or through competent international organisations, to establish appropriate scientific criteria for developing rules, standards, and recommended practices and procedures to prevent, reduce and control pollution of the marine environment, taking into account the information and data acquired under Article 200. |

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| | of depleted, threatened or endangered species and other forms of marine life.<br><br>**Article 206 - Obligation to conduct environmental impact assessments**<br><br>**ITLOS AO [352]-[367]**<br><br>• Requires States, where there are reasonable grounds to believe that planned activities under their jurisdiction or control may cause substantial pollution or significant and harmful changes to the marine environment, to assess the potential environmental effects of those activities, as far as practicable, and to communicate reports of the results.<br><br>• Requires States to assess the potential effects of planned activities under their jurisdiction or control where there are reasonable grounds to believe those activities may cause substantial pollution or significant and harmful changes to the marine environment, and to communicate reports of those assessments in accordance with Article 205.<br><br>**Article 204 - Monitoring the risks or effects of pollution**<br><br>**ITLOS AO, [346]-[349]**<br><br>• Requires States, as far as practicable and consistent with the rights of other States, to monitor, observe, measure and analyse the risks and effects of marine pollution using recognised scientific methods. States must also keep under surveillance the environmental effects of activities they permit or undertake to determine whether those activities are likely to cause pollution of the marine environment.<br><br>**Article 61(2)–(4) - Conservation of living resources in the exclusive economic zone**<br><br>**ITLOS AO [412]-[414], [417]-[418]**<br><br>• Requires coastal States to ensure, based on the best available scientific evidence, that living resources in the exclusive economic zone are not endangered by over-exploitation through appropriate conservation and management measures, cooperating with relevant international organisations where appropriate. These measures must aim to maintain or restore harvested species | | **Article 202 - Scientific and technical assistance to developing States**<br><br>**ITLOS AO, [322]-[339]**<br><br>• Requires States, directly or through competent international organisations, to assist developing States in protecting and preserving the marine environment and preventing, reducing and controlling marine pollution, including through training, participation in international programmes, provision of equipment and facilities, capacity building, assistance in responding to major pollution incidents, and support in preparing environmental assessments.<br><br>**Article 203 - Preferential treatment for developing States**<br><br>**ITLOS AO, [322]-[339]**<br><br>• Requires that developing States be given preferential treatment by international organisations, including priority access to funds, technical assistance, and specialised services, for the purposes of preventing, reducing and controlling marine pollution and minimising its effects.<br><br>**Article 205 - Publication of reports**<br><br>**ITLOS AO, [350]-[352]**<br><br>• Requires States to publish reports on the results of monitoring conducted under Article 204 or provide those reports at appropriate intervals to competent international organisations, which should make them available to all States.<br><br>**Article 63 - Stocks occurring within multiple exclusive economic zones or adjacent high seas**<br><br>**ITLOS AO [419]-[428]**<br><br>• Requires coastal States to cooperate, either directly or through appropriate regional or subregional organisations, to agree on conservation and management measures where the same fish stocks occur within the exclusive economic zones of two or more coastal States. Where stocks occur both within an exclusive economic zone and in adjacent high seas areas, the coastal State and States fishing those stocks in the adjacent area must seek to agree on measures necessary for their conservation |

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| | at levels capable of producing maximum sustainable yield, taking into account environmental and economic factors, fishing patterns, and international standards. States must also consider the impacts on species associated with or dependent on harvested species and ensure their populations are maintained or restored to levels that do not threaten their reproduction.<br><br>**Article 117 - Duty to conserve living resources of the high seas**<br><br>**ITLOS AO [415]**<br><br>• Requires all States to take, or cooperate with other States in taking, measures necessary for the conservation of living resources of the high seas in relation to their nationals, including those engaged in activities on the high seas. This obligation applies to all States, not only flag States.<br><br>**Article 119(1) - Conservation of living resources on the high seas**<br><br>**ITLOS AO [416]-[418]**<br><br>• Requires States, when determining allowable catch and conservation measures for living resources on the high seas, to use the best available scientific evidence to maintain or restore harvested species at levels capable of producing maximum sustainable yield, taking into account environmental and economic factors, fishing patterns, stock interdependence, and international standards. States must also consider the effects on species associated with or dependent on harvested species and ensure their populations are maintained or restored to levels that do not threaten their reproduction.<br><br>**Article 196(1) - Pollution from technologies and introduction of species**<br><br>**ITLOS AO [429]-[436]**<br><br>• Requires States to take all necessary measures to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, and from the intentional or accidental introduction of alien or | | **Article 64(1) - Highly migratory species**<br><br>**ITLOS AO [419]-[428]**<br><br>• Requires coastal States and other States whose nationals fish for highly migratory species to cooperate, directly or through appropriate international organisations, to ensure the conservation and optimum utilisation of those species throughout the region, both within and beyond the exclusive economic zone. Where no suitable international organisation exists, the relevant States must cooperate to establish one and participate in its work.<br><br>**Article 118 - Cooperation in the conservation and management of living resources**<br><br>**ITLOS AO [419]-[428]**<br><br>• Requires States to cooperate in the conservation and management of living resources on the high seas. States whose nationals exploit the same or different living resources in the same area must enter into negotiations to adopt necessary conservation measures and, where appropriate, cooperate to establish subregional or regional fisheries organisations for this purpose. |

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| | new species that may cause significant and harmful changes to the marine environment. | | |
| **Convention Concerning the Protection of the World Cultural and Natural Heritage ('World Heritage Convention')**<br><br>**Adopted on 16 November 1972; entered into force on 17 December 1975.**<br><br>**Ratified by Australia on 22 August 1974; entered into force for Australia on 17 December 1975.** | **Article 5(c) - Scientific and technical studies**<br><br>• Requires States to develop scientific and technical studies and work out operating methods to counteract dangers threatening its cultural or natural heritage.<br><br>**Article 5(d) - Identification of heritage**<br><br>• Requires States to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of heritage.<br><br>**Operational Guidelines Paragraph 118bis - Carry out assessments**<br><br>• Requires States to ensure that Environmental Impact Assessments, Heritage Impact Assessments, and/or Strategic Environmental Assessments are carried out as a pre-requisite for development projects planned within or around a World Heritage property, to identify development alternatives and recommend mitigation measures against degradation or other negative impacts.<br><br>**Operational Guidelines Paragraph 116 - Corrective measures**<br><br>• Where the intrinsic qualities of a nominated site are threatened by human action yet meet the relevant criteria, States must prepare an action plan outlining the corrective measures required should be submitted with the nomination file.<br><br>**Operational Guidelines Paragraph 15(f) and 15(h) - Protection of heritage**<br><br>• States must not take any deliberate measures that directly or indirectly damage their heritage or that of another State Party, and shall take appropriate legal, scientific, technical, administrative and financial measures to protect the heritage. | **Operational Guidelines Paragraph 118 - Climate change planning**<br><br>• States should include disaster, climate change and other risk preparedness as an element in their World Heritage site management plans and training strategies.<br><br>**Operational Guidelines Paragraph 111(c) - Management system cycle**<br><br>• States should ensure that the management system incorporates a cycle of planning, implementation, monitoring, evaluation and feedback to ensure the property can respond to changing conditions. | **Article 4 - Identification of heritage**<br><br>• Requires States to recognise that the duty of ensuring identification, protection, conservation, presentation and transmission of heritage belongs primarily to that State, and that it will do all it can, including with any international assistance and co-operation - financial, artistic, scientific and technical -which it may be able to obtain.<br><br>**Article 6(1) - Recognition and respect of heritage**<br><br>• States must recognise that World Heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate, whilst fully respecting the sovereignty of the States on whose territory the heritage is situated.<br><br>**Article 6(2) - Providing help if requested**<br><br>• States must undertake to give their help in the identification, protection, conservation and presentation of heritage if the States on whose territory it is situated so request.<br><br>**Article 6(3) - Not to deliberately damage**<br><br>• States must undertake not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage situated on the territory of other States Parties.<br><br>**Article 7 - System of co-operation and assistance**<br><br>• States must establish a system of international co-operation and assistance designed to support States Parties in their efforts to conserve and identify that heritage.<br><br>**Article 13(7) - International co-operation**<br><br>• States shall co-operate with international and national governmental and non-governmental organisations having objectives similar to those of the World Heritage Convention. |

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| **International Human Rights Law** | The ICJ held that the adverse effects of climate change - including the impact on the health and livelihoods of individuals through events such as sea level rises, drought, desertification and natural disasters - may significantly impair the enjoyment of certain human rights (**ICJ AO, [376]).** As such, the full enjoyment of human rights cannot be ensured without protection of the environment and the climate system (**ICJ AO, [373]-[375]** and **[403]-[404]**).<br><br>The ICJ cited the following relevant international human rights law obligations (without trying to be exhaustive):<br><br>**Right to a clean, healthy and sustainable environment - ICJ AO [390]-[393]**<br>• The right to a healthy environment is essential and a precondition for the enjoyment of all human rights, enshrined by over one hundred States in their constitutions or domestic legislation. It results from the interdependence between human rights and the protection of the environment.<br>• In so far as States parties to human rights treaties are required to guarantee the effective enjoyment of such rights, they must ensure the protection of the right to a clean, healthy and sustainable environment as a human right, to ensure their human rights obligations can be fulfilled at the same time.<br><br>**Right to Life - protected under Article 3 Universal Declaration of Human Rights ('UDHR'), Article 6 International Covenant on Civil and Political Rights ('ICCPR') and Article 6 Convention of the Rights of the Child ('CRoC') - ICJ AO, [376]-[377]**<br>• Climate change adversely affects the enjoyment of the right to life in various ways including through phenomena such as sea level rise, drought, desertification, increase of air pollution and extreme weather events. Environmental degradation and climate change may compromise, and in severe cases violate, the right to life.<br>• Accordingly, States' obligations to respect and ensure the right to life include taking measures to preserve and protect the environment against climate harm caused by public and private actors.<br><br>**Right to Health - protected under Article 12 of the International Covenant on Economic, Social and Cultural Rights ('ICESCR'), article 25 UDHR, article 24(1) CRoC - ICJ AO, [379]**<br>• There is a close link between the right to health and the environmental conditions in which an individual lives, with climate change potentially posing the greatest threat to global health in the 21st century according to the WHO.<br>• States are responsible for promoting environmental conditions necessary for the enjoyment of the right to health, including addressing pollution and the adverse effects of climate change.<br><br>**Right to an adequate standard of living - protected under Article 11 ICESCR and Article 25 UDHR - ICJ AO, [380]**<br>• Climate change can interfere with the effective enjoyment of these rights given there is a close connection between the environment and the right to an adequate standard of living, including access to food, water and housing.<br><br>**Right to privacy, family and home - protected under Article 17 ICCPR - ICJ AO, [381]**<br>• Since the adverse effects of climate change may hinder the enjoyment of this right, a State's failure to implement timely and adequate adaptation measures may violate this right.<br><br>**Rights of Women, Children and Indigenous People**<br>• The rights of women, children and Indigenous People may be more severely impacted by the adverse impacts of climate change (**ICJ AO [384]**).<br>• In relation to the rights of Indigenous Peoples and Children, the Special Rapporteur highlights:<br>o Under the United Nations Declaration on the Rights of Indigenous Peoples, Articles 25–29, 32:<br>▪ States must protect Indigenous Peoples' rights to land, territories and resources; ensure their free, prior, and informed consent in decisions affecting those rights; and safeguard their cultural survival, which is often intrinsically linked to the environment.<br>▪ In the context of climate change, these obligations imply that States must assess how projects contributing to greenhouse gas emissions may disproportionately affect Indigenous Peoples and ensure that such impacts are fully considered in decision-making processes. Failure to do so risks not only environmental harm, but also independent violations of Indigenous People's rights under international law.<br>o Under the CRoC, Articles 6, 24, 27:<br>▪ States must ensure the enjoyment of a range of rights that are directly threatened by climate change, including the rights to life, highest attainable standard of health, and adequate standard of living.<br>▪ Procedurally, this can be done by States regulating business activities to prevent environmental harm affecting children, conducting child-sensitive environment take and climate impact assessments, and ensuring that decision-making processes take into account the best interests of the child as a primary consideration (see Committee on the Rights of the Child, General Comment No.26). |

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| | • In addition to the substantive and procedural international human rights obligations highlighted by the ICJ and discussed above, the Special Rapporteur notes two particularly relevant obligations:<br>○ **United Nations Guiding Principles on Business and Human Rights (Principles 1 and 3) -** Pursuant to these Principles, States have a duty to protect against human rights abuses by private actors that requires the adoption of appropriate legislative, regulatory, and adjudicative measures.<br>This obligation requires States to effectively prevent infringements of Covenant rights in the context of business activities, including those arising from environmentally harmful conduct, through the adoption of legislative, administrative and other appropriate measures to ensure effective protection against human rights violations linked to business activities (Committee on Economic and Social and Cultural Rights (**CESCR**), General Comment No. 24 on State obligations in the context of business activities, UN Doc E/C.12/GC/24 (10 August 2017), [14] (**GA 24**)).<br><br>Where projects may affect Indigenous Peoples, States must ensure that such impacts are specifically assessed, including through human rights impact assessments, and that affected communities are consulted in good faith with the objective of obtaining free, prior and informed consent, consistent with international standards (CESCR, GA 24, [17]).<br><br>○ **The rights to access to information, public participation and access to justice -** International human rights law requires States to ensure these three procedural rights, which are both autonomous rights and procedural elements on the right to a healthy environment. These procedural guarantees are essential in the environmental context and require that individuals and communities to be provided with accurate, timely, and relevant information regarding environmental and climate impacts, enabling meaningful participation in decision-making processes. This is particularly significant where, there are identified gaps in the assessment of climate-related impacts, including failures to consider intergenerational effects, broader social and economic consequences, and the full extent of emissions-related harm. |