

A photograph of a woman in traditional Pacific attire, including a patterned skirt and a headpiece, standing on a rocky outcrop. She is holding the hand of a man who is partially submerged in the ocean. The man is shirtless and wearing a loincloth, with his arms outstretched towards the horizon. The background shows a vast ocean under a cloudy sky.

Thinking Globally, Acting Regionally: The Case for a **PACIFIC CLIMATE TREATY**

A Pacific Climate Treaty is proposed to advance climate action in the Pacific and globally. The treaty will support regional cooperation on mitigation, adaptation, loss and damage, climate-induced migration and access to justice. Moreover, it could set up institutions-such as a Pacific Islands Climate Commission-to further enhance regional cooperation and promote Pacific climate leadership. The treaty would set a precedent that could inspire similar regulatory action elsewhere in the world, building on the momentum created by the new Paris Agreement. This report explains the initiative and presents a model Pacific Climate Treaty that draws on the joint leadership of Pacific Island governments and civil society in the global movement to tackle climate change.



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INTRODUCTION

The initiative of a Pacific Climate Treaty builds on the momentum of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (UNFCCC) at the 21st Conference of the Parties to the UNFCCC (COP21) in December 2015. Although the adoption of this new international climate change treaty marks a major breakthrough in international diplomacy, the advances made with the Agreement are mainly procedural. The single most important exception is the Agreement's long-term temperature goal of 'holding the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels'. However, the Agreement lacks substantive obligations for its State parties that would ensure the achievement of this goal. Instead, the system rests on a structure of 'nationally determined contributions' or 'NDCs' which are not legally binding and set by State parties themselves.

The weakness of this system is apparent from current pledges which, if fully implemented, would put the world on a pathway of at least 2.7°C of global temperature rise. Such levels of warming would have catastrophic consequences for Pacific Island Development States (PSIDS). And the non-binding nature of the pledges means that it will be difficult, if not impossible, to hold individual States to account for emission patterns that are inconsistent with the global goal. Climate action will therefore continue to depend on regulatory action at the national and regional levels. At the same time, however, such action will become more visible as a result of the oversight frameworks established under the Paris Agreement.

The Model Pacific Climate Treaty presented in this report is a draft model treaty for the Pacific region aimed at averting the multiple threats posed by climate change. The model treaty contains concrete regional targets that combine climate, development and human rights objectives--such as the target of ensuring universal access to sufficient amounts of clean and affordable energy for all Pacific islanders and for a growing productive sector by 2030. This target is coupled with a provision that creates the legal basis for an ambitious renewable energy framework, which should enable PSIDS to access climate finance for projects with economy-wide development gains. At the same time, the Treaty provides a bold example of the region's commitment to keeping global temperature rise well below 1.5°C by banning new coal or fossil fuel mines in the territories of State parties. The latter provisions draw on Pacific leadership in the growing global movement for an immediate halt to new fossil fuel mines to accelerate the transition from carbon-intensive to renewable energy.

This leadership was particularly apparent when Pacific Island leaders formally expressed their joint commitment to 'an international moratorium on the development and expansion of fossil fuel extracting industries, particularly the construction of new coal mines, as an urgent step towards decarbonising the global economy' in the Suva Declaration on Climate Change adopted under the auspices of the Pacific Islands Development Forum (PIDF) in September 2015. A similar call for a global moratorium on all new coal mines was made by leaders from the Cook Islands, Kiribati, the Marshall Islands, Nauru, Niue, Palau and Tuvalu in the Smaller Island States Leaders' Port Moresby Declaration on Climate Change, also adopted in September 2015.

These calls have been embraced, echoed and amplified by civil society in the Pacific and around the world. Through its focus on sustainable development and renewable energy, the Treaty combines continued Pacific leadership in the phase-out of fossil fuels with the promotion of economic and social development. While illustrating the region's commitment to combat climate change and achieve sustainable development, the Model Pacific Climate Treaty also reflects the urgent need to deal with the adverse effects of climate change that are already being experienced in the region. Moreover, it sets up structures and institutions to address future impacts of climate change and to ensure that the human rights of individuals and communities in Pacific Islands are optimally protected at all times. The Model Treaty has provisions on adaptation, loss and damage, climate-induced displacement and access to justice which attest to PSIDS' commitment to address these issues comprehensively and effectively through action at the national, regional and international levels. The Model Treaty also contains a clause aimed at securing the perpetual sovereignty and rights of Pacific Island peoples and their territories, in the face of the existential threats posed by climate change to many Pacific Island nations and communities. As for institutions, the Treaty sets up a Pacific Islands Climate Commission to further enhance regional cooperation and promote Pacific leadership in meeting the challenges posed by climate change, and a Pacific Islands Climate Compensation Fund to help facilitate compensation for Pacific Island communities and nations affected by climate change from actors with significant historical responsibility for climate change. The Pacific Climate Treaty could anchor the most ambitious part of the long-term temperature goal contained in the Paris Agreement--the 1.5°C limit--into a new source of law. Although this provision would not directly affect the Paris Agreement or its interpretation, it would be an important demonstration of PSIDS' continued commitment to keeping global temperature rise below 1.5°C. In a similar vein, the Treaty could showcase PSIDS' commitment to the protection of Pacific cultures and the enjoyment of human rights, including the rights of 'climate migrants' or 'climate refugees', in the face of climate change. Again, this commitment was powerfully articulated in the Suva Declaration on Climate Change and other regional declarations, many of which are affirmed in the Preamble of the Model Treaty. Adopting a regional Treaty that deals comprehensively with all these aspects of climate change would fill glaring gaps in the protection of those who are most vulnerable to the impacts of climate change, while inspiring more ambitious action in other regions and at the global level.

WHAT IS A PACIFIC CLIMATE TREATY?

The Vienna Convention on the Law of Treaties (VCLT) defines a treaty as ‘an international instrument concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation’. A Pacific Climate Treaty could be similar to other regional and international treaties banning or phasing out entire categories of substances or products that are known to be harmful to humanity, such as the Montreal Protocol, the Basel Convention, the Chemical Weapons Convention, the Biological Weapons Convention and the Mine Ban Treaty.

As there is currently no treaty that bans or phases out fossil fuels, the Treaty would set a pioneering example to the rest of the world. As indicated above, the Treaty could also comprise other aspects of climate change that are of essential importance to PSIDS, including sustainable development, adaptation, loss and damage, climate-induced migration, human rights, sovereignty, access to justice and compensation.

A treaty is binding on a State only if that State has solemnly agreed to be bound by the treaty. For this reason, the provisions of multilateral treaties are nearly always the product of intense negotiations between States. International negotiations under the UNFCCC have shown that achieving provisions that ban or phase out fossil fuels in an international treaty is politically impossible in the short run.

The proposed Climate Treaty is therefore a regional treaty under the auspices of PIDF, with its potential membership limited to PSIDS.

The rationale is that potential Parties to the Treaty already possess the political courage and commitment needed to adopt a flagship legal instrument that is sufficiently ambitious to prevent catastrophic changes in the global climate system.

Negotiating a Pacific Climate Treaty also allows Parties to tailor the Treaty’s provisions to the specific needs of PSIDS while promoting Pacific cultures, traditions and values. Such a treaty, when implemented in collaboration with PIDF and civil society, would send a powerful signal to markets, governments and civil society around the world that the end of fossil fuels is near, with Pacific Islanders acting not as victims of climate change but as agents of change.

An important precedent for the Pacific Climate Treaty is the South Pacific Nuclear Free Zone Treaty (the Rarotonga Treaty). This treaty was negotiated between members of the Pacific Islands Forum against a backdrop of nuclear tensions between great political powers.

The Rarotonga Treaty is an arms control agreement which bans the manufacture or possession of nuclear weapons amongst Parties to the treaty, establishing a ‘nuclear free zone’ with boundaries stretching from Latin America to the Antarctic zone in the south to the equator.

Although the Rarotonga Treaty, despite its title, did not establish a zone in which all nuclear activities were prohibited, it did act as a ‘braking mechanism’ in the nuclear arms race by ensuring that the South Pacific region would remain nuclear weapons-free.

The Pacific Climate Treaty would work in a similar way: it would not immediately make the use and production of fossil fuels illegal, but it would impose the first-ever moratorium on new coal and fossil fuel mines in a legally binding instrument covering a huge portion of the Earth’s surface.

This would demonstrate to the rest of the world that phasing out fossil fuels with a view to keeping global temperature rise below 1.5°C is possible

A PACIFIC VISION FOR CLIMATE ACTION

The vision that underpins the initiative for a Pacific Climate Treaty is set out in the Preamble of the Model Pacific Climate Treaty. The Preamble starts by highlighting the devastating effects of climate change that are already being experienced in the Pacific and the existential threats posed by future climate change, while spelling out the consequences thereof for internationally protected human rights:

- Gravely distressed about the impacts of climate change that are already causing loss and damage to our people, societies, livelihoods and natural environments, depriving many of our people of their fundamental human rights;
- Concerned that climate change creates existential threats to our very survival and that this, coupled with other climate impacts, puts the right of self-determination and all other human rights of our people at risk;

The Preamble proceeds to highlight that despite the near-universally ratified UNFCCC climate change has not been adequately addressed so far, and both action to limit global warming and funding for mitigation and adaptation remain grossly inadequate:

- Concerned that emission patterns over the past two decades have been in sharp contrast to the ultimate objective of preventing dangerous anthropogenic interference with the climate system, as stipulated in the United Nations Framework Convention on Climate Change;
- Concerned that current international action to limit global temperature rise remains grossly inadequate, and that fossil fuel production, including the construction of new coal mines, continues to increase;
- Concerned that current levels of grant-based funding for mitigation and adaptation remain insufficient to realise the right to sustainable development and to design and implement adaptation measures that address all vulnerable sectors including health, education, water and sanitation, energy, fisheries and oceans, agriculture and forestry;

The remainder of the Preamble clarifies that the Pacific vision for climate action is based on the principles of prevention, climate justice, non-discrimination and inclusiveness, drawing on the Suva Declaration on Climate Change and other regional statements.

It concludes:

- Reiterating our commitment to sustainable development and the phasing-out of fossil fuels at the national, regional and global level;
- Determined to take, facilitate and promote urgent action to address the causes of climate change and deal with its adverse effects.

The operational part of the Model Pacific Climate Treaty provides text suggestions for provisions that would promote sustainable development, phase out fossil fuels and address the aspects of climate change that pose the greatest challenges to the Pacific people.

The text suggestions are based on regional statements and declarations adopted by Pacific Island leaders and other regional stakeholders in recent years, as well as PSIDS' positions in international climate negotiations and other international forums.

The Model Pacific Climate Treaty also builds on the strongest parts of the UNFCCC, the Kyoto Protocol and the Paris Agreement. It draws further inspiration from the Rarotonga Treaty and other regional environmental treaties, international and regional human rights treaties and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('Aarhus Convention').

Both the preamble and operational provisions of the Model Treaty merit further and more detailed explanation.

This is provided in the Commentaries to the Model Treaty in the second part of this report.

MODEL PACIFIC CLIMATE TREATY WITH COMMENTARY

PREAMBLE

The Parties to this Treaty,

United in their commitment to a safe and stable climate;

- Gravely distressed about the impacts of climate change that are already causing loss and damage to our people, societies, livelihoods and natural environments, depriving many of our people of their fundamental human rights;
- Concerned that climate change creates existential threats to our very survival and that this, coupled with other climate impacts, puts the right of self-determination and all other human rights of our people at risk;
- Reaffirming the importance of the United Nations Framework Convention on Climate Change and its associated instruments in preventing, and dealing with, the adverse effects of climate change in a manner that is fair and equitable;
- Reaffirming the Smaller Island States Leaders' Port Moresby Declaration on Climate Change, the Suva Declaration on Climate Change, the Nuku'alofa Ministerial Declaration on Sustainable Weather and Climate Services for a Resilient Pacific, the Polynesian Leaders' Taputapuatea Declaration on Climate Change, the Boknake Haus Communiqué of the 15th Micronesian Presidents' Summit, the Lifou Ministerial Declaration on Climate Change, the SIDS Accelerated Modalities of Action (SAMOA) Pathway, the Majuro Declaration for Climate Leadership, the Melanesian Spearhead Group Declaration on Environment and Climate Change, and the Niue Declaration on Climate Change;
- Concerned that emission patterns over the past two decades have been in sharp contrast to the ultimate objective of preventing dangerous anthropogenic interference with the climate system, as stipulated in the United Nations Framework Convention on Climate Change;
- Concerned that current international action to limit global temperature rise remains grossly inadequate, and that fossil fuel production, including the construction of new coal mines, continues to increase;
- Concerned that current levels of grant-based funding for mitigation and adaptation remain insufficient to realise the right to sustainable development and to design and implement adaptation measures that address all vulnerable sectors including health, education, water and sanitation, energy, fisheries and oceans, agriculture and forestry;
- Reiterating our commitment to sustainable development and the phasing-out of fossil fuels at the national, regional and global level;
- Determined to take, facilitate and promote urgent action to address the causes of climate change and deal with its adverse effects;
- Considering that adaptation to the adverse effects of climate change and averting, minimising and addressing loss and damage associated with climate change are a matter of survival;
- Recognising that addressing gender-based inequality and discrimination is essential for effective action on climate change;
- Recognising the importance of engaging, as equal partners, civil society, women, youth and persons with disabilities, in all efforts towards building climate change resilience;

Agree as follows:

COMMENTARY

(1) The Preamble starts with a paragraph that articulates PSIDS' joint commitment to a safe and stable climate, followed by two paragraphs that highlight the human rights consequences of climate change. The language of these paragraphs is based on the Suva Declaration on Climate Change and numerous resolutions of the United Nations Human Rights Council which recognise that climate change poses a threat to the enjoyment of human rights. These preambular paragraphs specifically characterise climate change as a threat to the right of self-determination and all other rights, thus implying that all States—including States outside the region—must combat climate change and assist PSIDS in dealing with adverse effects as a matter of legal obligation under international human rights law.

(2) The fourth preambular paragraph clarifies that the Treaty complements rather than replaces the UNFCCC, the Kyoto Protocol and the Paris Agreement. This is important not only to safeguard the environmental integrity of these instruments, but also to ensure that climate action upholds the principle of common but differentiated responsibilities and respective capabilities. For PSIDS, the UNFCCC and its associated instruments are also essential to ensure continued and increased access to finance, capacity building and technologies—which developed countries are obliged to provide under these treaties. The fifth preambular paragraph highlights the most relevant regional statements on climate change, including those that are cited in the Suva Declaration. These statements provide an important part of the historical context of the Treaty.

(3) The sixth preambular paragraph expresses concern about emission patterns over the past two decades having been 'in sharp contrast to the ultimate objective of preventing dangerous anthropogenic interference with the climate system, as stipulated in the United Nations Framework Convention on Climate Change'. This paragraph suggests that Parties to the UNFCCC, especially developed country Parties, should have made drastic emission cuts long ago in accordance with the principle of common but differentiated responsibilities and respective capabilities and the ultimate objective of this treaty to prevent 'dangerous anthropogenic interference with the climate system'. This concern reflects the Pacific position that the UNFCCC is an instrument that in itself imposes legal obligations on its Parties—a position that can be defended by referring to the general rule of treaty interpretation that provisions of a treaty must be interpreted in the light of the object and purpose of the treaty. Legally and morally, the suggestion that the UNFCCC creates legal obligations which might already have been violated strengthens the Pacific claim for adaptation support, compensation and support for 'migration with dignity' based on historical responsibility for climate change.

(4) The seventh preambular paragraph addresses one of the greatest omissions of the Paris Agreement – the lack of references to fossil fuels – and explains the rationale for the ban on new coal and fossil fuel mines and other measures to accelerate the transition to renewable energy contained in Article 3(2) of the Treaty. This paragraph draws on paragraph 6 of the Suva Declaration on Climate Change.

(5) The eighth preambular paragraph addresses the continued lack of adequate funding for mitigation and adaptation. The paragraph refers to the right to sustainable development—protected under Article 3(4) of the UNFCCC—and hints at non-fulfilment of developed countries' obligations under that treaty to provide climate finance. The paragraph further provides a non-exhaustive list of sectors within PSIDS that are vulnerable to the adverse effects of climate change. This list includes the sectors highlighted in the Suva Declaration on Climate Change and adds 'education' and 'oceans'. The emphasis on grant-based finance reflects PSIDS' call for adaptation measures to be 100% grant-financed.

(6) The ninth preambular paragraph states that 'adaptation to the adverse effects of climate change and averting, minimising and addressing loss and damage associated with climate change are a matter of survival'. This language builds on statements made by Pacific leaders at international meetings, including at COP21 in Paris. The tenth and eleventh preambular paragraphs are taken verbatim from the Suva Declaration on Climate Change and reflect overwhelming support from Pacific leaders and civil society.

(7) The final preambular paragraphs draws on paragraph 6 of the Suva Declaration and also reflects Sustainable Development Goal (SDG) 13: 'Take urgent action to combat climate change and its impacts'. The language here is broader, with Parties expressing determination to 'take, facilitate and promote urgent action to address the causes of climate change and deal with its adverse effects'. The expressed determination to 'take' action reflects Pacific leadership to act at the national and regional levels, while the words 'facilitate and promote' signal the need for international cooperation, financial and technical assistance and urgent action to tackle climate change in other regions.

Article 1. USAGE OF TERMS

For the purpose of this Treaty, the definitions contained in Article 1 of the United Nations Framework Convention shall apply.

In addition:

1. *“Territory” means internal waters, territorial sea and archipelagic waters, the seabed and subsoil beneath, the land territory and the airspace above them.*

2. *“Sustainable development” means development that meets the needs of the present without comprising the ability of future generations to meet their own needs.*

3. *“Human rights” means the human rights protected under customary international law, the Charter of the United Nations and relevant human rights treaties ratified by the Parties.*

4. *“Loss and damage” means negative effects of climate-related stressors that occur despite efforts to reduce or prevent greenhouse gas emissions and adapt to climate change.*

5. *“Climate-induced migration” refers to movement of people within or across national borders because of sudden or gradual environmental disruption that is consistent with climate change.*

6. *“Compensation” means money awarded to person(s) or nation(s) who suffer loss and damage.*

7. *“Fund administrator” means the organisation responsible for managing the Pacific Islands Climate Compensation Fund under Article 7 of the Treaty.*

8. *“Party” means a Party to this Treaty.*

9. *“Conference of the Parties” means the Conference of the Parties to this Treaty.*

10. *“Secretary-General” means the Secretary-General of the Pacific Islands Development Forum.*

COMMENTARY

(1) The Article starts by suggesting that the definitions contained in Article 1 of the UNFCCC apply mutatis mutandis to the Pacific Climate Treaty. Article 1 of the UNFCCC defines key terms ranging from ‘emissions’ and ‘climate system’ to ‘adverse effects of climate change’. Particularly noteworthy is the definition of ‘climate change’, which makes it clear that climate change is human-made and in addition to natural variability. The Article 1 definitions similarly apply to the Kyoto Protocol and the Paris Agreement. Incorporating these promote consistency between the complementary regional initiative.

(2) The definition of ‘sustainable development’ is taken from the World Commission on Environment and Development’s 1987 report ‘Our Common Future’, also known as the Brundtland report. The report was written after three years of public hearings and is based on over five hundred written submissions. The landmark definition from the report remains the most frequently quoted definition of sustainable development.

(3) The definition of ‘territory’ is taken from Article 1(b) of the South Pacific Nuclear Free Zone Treaty. As the definition is broad, it ensures that the potential geographical scope of the treaty is nearly a fifth of the Earth’s surface. This geographical coverage particularly increases the impacts, including symbolic impact, of the ban on new coal mines and exploration for fossil fuels: it disproves the widely held assumption that fossil fuel production and consumption are legal, normal and permissible.

(4) The definition of ‘human rights’ is formulated so that it covers at least all human rights enshrined in the Universal Declaration of Human Rights, without creating new human rights obligations for Parties. This prevents a situation where a Party could incur, by implication, obligations under human rights treaties it has not ratified. At the same time, all human rights that are internationally recognised as being affected by climate change are within the scope of the Treaty. The right to enjoy a distinct culture—which is particularly important in light of the range of threats climate change poses to communities in the Pacific—is also within the scope of the Treaty, as it is incorporated in Article 27 of the International Covenant on Civil and Political Rights (ICCPR) which is widely understood to reflect customary international law.

(5) The definition of ‘loss and damage’ is broad and inclusive, in accordance with PSDIS’ positions on loss and damage in climate change negotiations under the UNFCCC. The definition makes it clear that loss and damage is distinct from mitigation and adaptation; it concerns residual negative effects of climate change. The definition is also sufficiently broad to encompass slow-onset and extreme weather events, which is in line with Article 8 of the Paris Agreement. As there is, as yet, no agreed definition of ‘loss and damage’ under the UNFCCC regime, the definition in the Pacific Climate Treaty could have significant influence on international discussions and policy-making on loss and damage, including the work of the Warsaw International Mechanism on Loss and Damage.

(6) Another gap in international law is the lack of norms and rules on climate-induced displacement and migration.

The definition of 'climate-induced migration' included in the Treaty borrows from a wealth of academic literature on 'climate refugees', and has been adjusted to ensure that the Treaty's provisions on this important matter cover: i) internally displaced persons and persons who cross borders; ii) involuntary and voluntary displacement or migration; and (iii) permanent and temporary relocation. The distinguishing parameter for the definition is that climate change is the cause of relocation. The advantage of this inclusive definition is ensuring that different categories of people who migrate as a result of climate change will receive, at least in principle, the same levels of protection. The potential drawback of the definition is that it is difficult to distinguish climate-induced displacement from migration triggered by political, economic or other factors. However, this difficulty could be resolved, at least to an extent, on a case-by-case basis in light of scientific and other evidence. And again, the absence of an agreed definition of 'climate-induced migration' means that the definition contained in this Treaty could help shape international discussions and policy-making, including the work of the task force mandated by the Paris decision to 'develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse effects of climate change'.

(7) The Treaty defines 'compensation' simply as 'money awarded to person(s) or nation(s) who suffer loss and damage'. This definition builds on the assumption that at least some greenhouse gas pollution can be qualified as, or linked to wrongful or illegal conduct, which results in an obligation for the responsible actor to rectify the consequences of the conduct. It should be noted that under international law, compensation is just one form of remedies that can be awarded to beneficiaries of an obligation who are affected ('injured') by wrongful conduct. The principal obligations arising from wrongful conduct are (i) to stop the wrongful conduct and (ii) 'as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed'. The need for, and right to, compensation arises from the reality that most damage to the climate system is of an irreversible nature. Accordingly, restoring or replacing rights that have been violated as a result of climate change is not always possible. Compensation is a second-best response to violations, which can rectify some of the harm done to the victims of climate change and provide the means for new opportunities.

(8) The final four definitions in the Treaty concern administrative and institutional arrangements. The 'Fund administrator' referred to in Article 9 of the Treaty is, as per that Article, the PIDF.

ARTICLE 2. PURPOSE

1. The purpose of this Treaty is to achieve sustainable development while strengthening national, regional and global responses to the threat of climate change, including by:

- (a) Pursuing all possible efforts to hold the increase in the global average temperature to well below 1.5°C above pre-industrial levels;
- (b) Ensuring and maintaining universal access to sufficient amounts of clean and affordable energy for all Pacific islanders and for a growing productive sector;
- (c) Increasing our ability to adapt to the adverse effects of climate change and foster climate resilience and sustainable development, in a manner that does not threaten food production;
- (d) Preventing, minimising and addressing loss and damage associated with the adverse effects of climate change;
- (e) Protecting the sovereign rights of all Pacific Small Island Developing States in the face of threats posed by climate change;
- (f) Making finance flows consistent with a pathway towards sustainable and climate-resilient development, adaptation and compensation for loss and damage.

2. This Treaty will be implemented in accordance with international law, including the precautionary principle, the principle of common but differentiated responsibilities and respective capabilities, the polluter pays principle and human rights, including cultural rights and the rights of indigenous peoples.

COMMENTARY

(1) The chapeau of the first paragraph of Article 2 states that the Treaty aims at the achievement of sustainable development while strengthening responses to the threat of climate change at the national, regional and global level. The simultaneous focus on these three levels is a distinctive feature of the Treaty, which sets it apart from most regional treaties and from international treaties—including the UNFCCC and the Paris Agreement—which focus primarily on global responses.

(2) The remainder of paragraph 1 resembles Article 2(1) of the Paris Agreement—which sets out the purpose of that instrument—but is more comprehensive, and tailored to the needs and priorities of PSIDS. Subparagraph 1(a) reflects what PSIDS would have liked to see in Article 2(1)(a) of the Paris Agreement, which sets an ambiguously phrased long term temperature goal of ‘holding the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change’. This Article of the Pacific Climate Treaty makes it clear that 1.5°C remains the upper limit for temperature rise from the perspective of PSIDS. Subparagraph 1(b) sets an ambitious goal of ensuring and maintaining universal access to sufficient amounts of clean and affordable energy for all Pacific islanders and for a growing productive sector—a goal which is operationalised in Article 4. Subparagraph 1(c) reflects Article 2(1)(b) of the Paris Agreement with ‘low greenhouse gas emissions development’ replaced by the broader term ‘sustainable development’. Subparagraphs 1(d) and 1(e) respectively add ‘preventing, minimising and addressing loss and damage’ and ‘protecting the sovereign rights of all Pacific Small Island Developing States’ to the purpose of the Treaty, reflecting the importance of these issues to PSIDS. Subparagraph 1(f) reflects Article 2(1)(c) of the Paris Agreement, but ‘adaptation’ and ‘compensation’ are added in accordance with Pacific priorities.

(3) Paragraph 2 of Article 2 clarifies that the Treaty complements rather than replaces existing international law, and highlights international law principles that are particularly important to PSIDS. It recites the principle of ‘common but differentiated responsibilities and respective capabilities’ as contained in the UNFCCC, instead of the diluted version of the principle included in Article 2(2) of the Paris Agreement. Finally, the paragraph mentions ‘human rights, including cultural rights and the rights of indigenous peoples’. This substitutes, at least at the regional level, a provision that was included in early drafts of the Paris Agreement but deleted in later drafts following opposition from a select number of countries. The Pacific Climate Treaty reflects the call from indigenous peoples, civil society and Pacific leaders for provisions that ensure respect for human rights and the rights of indigenous peoples in all climate change related actions.

ARTICLE 3. PHASING OUT FOSSIL FUELS

1. The Parties are committed to a global greenhouse gas emissions pathway that keeps global average temperature rise well below 1.5°C above pre-industrial levels. Accordingly, Parties shall take steps to achieve, and promote:
 - (a) Global peaking of greenhouse gas emissions as soon as possible;
 - (b) Rapid reductions of greenhouse gas emissions thereafter, in accordance with the best available science;
 - (c) Zero global emissions no later than 2050.

2. In order to achieve the long-term temperature goal, each Party undertakes:

- (a) Not to permit the opening of new coal or fossil fuel mines in its territory;
- (b) Not to take any action to assist or encourage the opening of new coal or fossil fuel mines in the territory of any other State;
- (c) To take steps to achieve the closure of any existing coal or fossil fuel mine in its territory as soon as practicable and appropriate;
- (d) To encourage the closure of existing coal and fossil fuel mines in the territories of other States;
- (e) Not to provide any subsidies for fossil fuel production or consumption.

3. The Parties shall strengthen their cooperation on the phasing out of fossil fuels, including through sharing information, best practices, experiences and lessons learned in designing and implementing mitigation plans and accessing finance for alternatives to fossil fuels.

COMMENTARY

(1) Article 3 is at the heart of the Pacific Climate Treaty: it demonstrates Pacific leadership in tackling the root causes of climate change. Paragraph 1 sets the stage by sketching out a global emissions pathway that is compatible with the long-term temperature goal of keeping warming below 1.5°C. In this sense, it ‘corrects’ Article 4(1) of the PA, which is insufficiently ambitious to be compatible with this goal. Most significant here is subparagraph (c), which calls for ‘zero emissions’ rather than ‘a balance between emissions by sources and removals by sinks’. This language is preferable given the inherent danger of an approach that allows for the continuation of emissions, and the desirability of achieving negative rather than net-zero emissions. It also replaces the dangerously vague deadline of ‘in the second half of this century’ by a firm deadline of ‘no later than 2050’, which gives the world a much better shot at staying below 1.5°C.

(2) Paragraph 2 is one of the most ground-breaking features of the Treaty. This paragraph makes the Treaty the first-ever legal instrument to impose a ban on new coal and fossil fuel mines (subparagraph a), setting a bold example for the rest of the world. Parties to the Treaty also commit not to assist or encourage the opening of new coal or fossil fuel mines elsewhere (subparagraph b), while taking steps to achieve the closure of any existing coal or fossil fuel mines in their own territories as soon as possible (subparagraph c) and encouraging the closure of existing coal and fossil fuel mines elsewhere (subparagraph d). In addition, the Treaty poses an absolute ban on fossil fuel subsidies (subparagraph e). With this package of provisions aimed at phasing out fossil fuels as soon as practically possible, Pacific leaders would show unique leadership in actually aligning laws and policies with a 1.5°C pathway.

(3) Finally, paragraph 3 contains a broad provision which commits Parties to strengthening cooperation on the phasing out of fossil fuels. Amongst the areas envisaged for cooperation is accessing finance for mitigation. Accordingly, the provision encourages Parties to learn from each other in overcoming obstacles to climate finance, minimising overheads, increasing transparency and establishing national institutions for direct access. Bringing this cooperation within the scope of the Treaty solidifies the role of PIDF as the main forum for regional cooperation on climate change.

ARTICLE 4. SUSTAINABLE DEVELOPMENT

1. The Parties shall take action, individually and jointly, to ensure universal access to sufficient amounts of clean and affordable energy for all Pacific islanders and for a growing productive sector by 2030, and to maintain such access thereafter.

2. A Pacific Framework for Renewable Energy is hereby established, with a view to achieving the objective set out in paragraph 1, in collaboration with development partners.

COMMENTARY

(1) Article 4 sets an ambitious objective of achieving universal access to clean and affordable energy by 2030 and maintaining such access thereafter. This objective corresponds in part with that of United Nations Secretary-General Ban Ki-moon's Sustainable Energy for All (SE4all) initiative, which aims at achieving universal access to modern energy services by 2030. It also aligns with Sustainable Development Goal (SDG) 7 on affordable and clean energy. However, neither the SE4all initiative nor SDG 7 sets a definite target for clean energy, instead aiming at a 'substantial increase' in the share of renewable energy in the global energy mix by 2030. For the Pacific, leapfrogging to clean energy access has a range of advantages: apart from the environmental and climate impacts avoided, an ambitious renewable energy framework should enable PSIDS to access climate finance for projects with economy-wide development gains.

(2) Paragraph 2 establishes a Pacific Framework for Renewable Energy. This framework could draw inspiration from the Africa Renewable Energy Initiative launched by African leaders at COP21 in Paris, which sets similar renewable energy objectives for the African region. As details for this framework are most appropriately worked out at the policy level, and given the need to align the Framework with existing initiatives related to renewable energy, no details about the Framework are included in the Treaty. Instead, the Pacific Climate Change Commission is mandated to support Parties in the formulation and implementation of the Framework.

Article 5. ADAPTATION

3. The Parties shall take action to strengthen resilience, reduce vulnerability and adapt to climate change in a country-driven, community-based, gender-responsive, participatory and fully transparent manner, taking into account the best available science, traditional knowledge and human rights.

4. The Parties shall strengthen their cooperation on adaptation, including through sharing information, best practices, experiences and lessons learned in designing and implementing adaptation plans and accessing finance for adaptation.

5. The Conference of the Parties may decide to take actions, as appropriate, to strengthen institutional arrangements to facilitate cooperation on adaptation.

COMMENTARY

(1) In line with the preambular statement that adaptation is 'a matter of survival', adaptation features prominently in the Treaty. Paragraph 1 of Article 5 commits Parties to 'take action to strengthen resilience, reduce vulnerability and adapt to climate change'.

The language on the modalities of such action draws on paragraphs 7(1) and 7(5) of the Paris Agreement, both of which are strong provisions that broadly reflect the position of PSIDS. The words 'community-based' and 'human rights' are added here to reflect the importance of community-based adaptation and human rights protection for individuals, communities and leaders in PSIDS, while phrases such as 'as appropriate' are not included to avoid weakening the commitment.

(2) Paragraph 2 calls for strengthened cooperation between Parties on adaptation, mirroring paragraph 3 of Article 3 on Mitigation. The overlap between these provisions would allow for clustered discussions on related issues, for example 'sharing best practices in accessing finance for mitigation and adaptation'. Again, the provision underscores the importance of PIDF as the main Pacific forum for regional cooperation on climate change.

(3) Although the Treaty does not create new institutions on adaptation, the door to new institutions is kept open through paragraph 3. Accordingly, Parties could consider strengthening institutional arrangements on issues such as access to climate finance—including, for example, the creation of a Pacific Mechanism for Financing Adaptation—should the need to do so arise. The modalities for taking such action would be determined by the Rules of Procedure of the Conference of the Parties.

Article 6. LOSS AND DAMAGE

1. The Parties shall take steps, individually and jointly, to prevent, minimise and address loss and damage associated with the adverse effects of climate change, including its economic and noneconomic aspects.
2. The Parties shall take steps, individually and jointly, to prevent involuntary migration as a result of the adverse effects of climate change.
3. The Parties shall cooperate to enable individuals and communities who are severely affected or threatened by the adverse effects of climate change to migrate with dignity. Accordingly, Parties undertake:
 - (a) To establish a Pacific Framework for Climate Mobility to facilitate internal and cross-border movement in the context of climate change;
 - (b) To ensure the protection of Pacific heritage, cultures and languages in the context of climate-induced migration;
 - (c) To cooperate with other States on arrangements that will enable individuals and communities in Pacific Small Island Developing States to migrate with dignity, temporarily or permanently, to a location where all of their human rights are optimally protected.
4. The Parties shall take all necessary measures to ensure that the human rights of those who are forced to flee from the adverse effects of climate change are protected at all times.

COMMENTARY

(1) Again, the Treaty's provision on loss and damage reflects the preambular statement that loss and damage is 'a matter of survival'. It starts with a broad provision in which Parties commit to 'prevent, minimise and address loss and damage' individually as well as jointly. Paragraph 1 makes it clear that both economic and non-economic aspects are to be addressed. This provision goes beyond the obligations related to loss and damage created under the Paris Agreement, but since most PSIDS are already taking the steps envisaged by the Article the inclusion of this provision mainly serves to highlight the importance of this matter to the region.

(2) Paragraph 2 mirrors paragraph 1 of this Article, but focuses on climate-induced migration. Again, most PSIDS are already taking the steps envisaged by this provision—in a sense, all mitigation and most adaptation measures contribute to the prevention of involuntary migration. The significance of placing this provision on prevention before the subsequent provisions on 'migration with dignity' is to avoid giving the impression that climate change-induced migration is an acceptable 'effect' of climate change. The inclusion of this topic under 'loss and damage', after 'mitigation' and 'adaptation', confirms that it is a last resort measure that nonetheless requires planning, action and cooperation.

(3) Paragraph 3 establishes a Pacific Framework for Climate Mobility to facilitate internal and cross-border movement in the context of climate change. The details of this Framework are to be worked out by the COP with assistance from the Pacific Islands Climate Commission, but this paragraph creates a basis – with legal force – for filling an important gap on the protection of climate migrants or climate 'refugees'. This answers to repeated calls from a network of intergovernmental and non-governmental organisations and agencies, the Pacific Network on Climate Change Migration, Displacement and Resettlement, to establish a framework for the governance of climate-induced displacement, resettlement and migration. The Pacific Islands Climate Commission could collaborate with PSIDS governments, members of this Network and other relevant stakeholders to ensure the effective governance of the increased mobility of the Pacific people in the face of future climate impacts. The Commission would also be ideally placed to help shape the work of the task force established under the Paris Decision to 'develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse effects of climate change and further work on this issue under the Warsaw International Mechanism on Loss and Damage.

(4) Subparagraph 3(b) commits Parties to 'ensure the protection of Pacific heritage, cultures and languages in the context of climate-induced migration'. This is in line with the Treaty's focus on human rights, including the right to enjoy a distinct culture and the right of self-determination. The threat of losing aspects of Pacific cultures as a result of climate change is one of the non-economic aspects of loss and damage the Treaty seeks to address. Parties could cooperate on this aspect through the Pacific Framework for Climate Mobility, although the provision is flexible and provides Parties with discretion on how to cooperate and take action.

(5) Subparagraph 3(c) calls on Parties to 'cooperate with other States on arrangements that will enable individuals and communities to migrate with dignity, temporarily or permanently, to a location where all of their human rights are optimally protected'. This cooperation could take place within the above-mentioned task force of the Warsaw International Mechanism on Loss and Damage, in other appropriate forums or bilaterally. The provision is broadly formulated, thus enabling innovative and ambitious action to deal with climate-induced migration. At the same time, the focus on human rights ensures that the best interests of those who are migrating will be at the centre of the envisaged arrangements.

(6) Paragraph 4 of the Article adds another provision to guarantee the protection of the human rights of those who are forced to flee from the adverse effects of climate change. The significance of the provision is not only in this human rights protection, but also in the use of the phrase 'flee from the adverse effects of climate change' which ensures that the Treaty keeps the door open to protection of the rights of climate migrants through measures under international refugee law.

ARTICLE 7. SOVEREIGNTY AND THE RIGHTS OF PEOPLES

1. The territories of Pacific Small Island Developing States shall forever belong to present and future generations of the Pacific Island peoples.
2. In no case may a Pacific Small Island Developing State be deprived of any of its sovereign rights under international law as a direct or indirect result of climate change.
3. The Parties shall cooperate to ensure the protection and continuation of all legal rights related to sovereignty in the face of threats posed by climate change.

COMMENTARY

(1) Article 7 deals with one of the major concern of PSIDS in relation to climate change, namely the potential legal implications of loss of territory as a result of climate change. The three provisions of this article make it clear that Pacific Island peoples and PSIDS are not surrendering any rights, even in the event that one or more PSIDS would lose all of its land territory. Paragraph 1 deals with one of the most fundamental rights, namely the right of peoples to their own territory. This right can be seen as a component of the right of self-determination, which entitles peoples to 'for their own ends, freely dispose of their natural wealth and resources.' And by virtue of the right of self-determination, a people may 'in no case ... be deprived of its own means of subsistence'. It should be noted that 'territory' is broadly defined in this Treaty, covering internal waters, territorial sea and archipelagic waters, the seabed and subsoil beneath, the land territory and airspace above them (Article 1), and thus the scope of paragraph 1 is sufficiently broad to protect at least some aspects of the right of self-determination in the face of climate change. At the same time, the loss of land territory could constitute a deprivation or violation of the right of self-determination, and fall within the scope of the Loss and Damage provisions of the Treaty. The provisions in Article 7 serve to minimise the loss in terms of legal rights of Pacific Island peoples and States.

(2) Paragraphs 2 and 3 focus on the rights of PSIDS under international law. Given the myriad of uncertainties surrounding the implications of the loss of land territory for rights and duties associated with statehood, it is important that PSIDS take measures to protect their rights in the face of climate change. Paragraph 2 makes it clear that according to PSIDS, it is legally impossible for climate change-related threats to deprive PSIDS of any of its sovereign rights under international law. Again, this makes it clear that as far as PSIDS are concerned, no rights are being surrendered as a result of the direct or indirect impacts of climate change.

(3) Paragraph 3 recognises the reality that solemn declarations about the continuation of rights will not suffice to protect those rights. PSIDS would need to work cooperatively with other States, including through relevant international forums, to ensure that their legal rights are protected in practice, even in worst case scenarios. This paragraph commits Parties to do exactly that, without being prescriptive as to the strategies to be used. Again, the Pacific Islands Climate Commission could be asked provide guidance on relevant forums that could be approached (e.g. the UN Human Rights Council, the UN General Assembly, the International Tribunal on the Law of the Sea, the International Court of Justice) and associated strategies and outcomes (e.g. seeking declarations, resolutions, advisory opinions or binding judgments).

Article 8. ACCESS TO JUSTICE

1. The Parties shall take steps to eliminate obstacles to redress for loss and damage caused by climate change within their jurisdictions.
2. In addition and without prejudice to paragraph 1 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons which contravene provisions of national, regional or international law relating to the protection of the global climate.
3. Each Party shall take steps, within the framework of its national legislation, to enable domestic courts to make an order for damages claimed on behalf of the public to be paid into the Pacific Islands Climate Compensation Fund.

COMMENTARY

(1) Article 8 of the Treaty aims to make it easier for Pacific island communities affected by climate change to claim compensation through the domestic court system. At the face of it, one key obstacle to successful climate change litigation is that the actors most responsible for climate change – such as big fossil fuel companies – are often based outside the jurisdiction of PSIDS. This obstacle is, however, not insurmountable, as jurisdiction can be established based on the location of the damages. The adoption of domestic legislation could help eliminate other obstacles while clarifying the law related to climate change litigation.

(2) Paragraph 1 calls on Parties to review and, if necessary, amend national legislation to minimise jurisdictional and other obstacles to climate change litigation against foreign actors. This could open the door to potentially ground-breaking cases resulting in compensation for climate damages. An advantage of this avenue to climate compensation is that PSIDS governments will not need to get involved in climate change litigation against governments who are also providers of humanitarian and development assistance and climate finance: compensation would be obtained directly by communities from some of the major corporate polluters. In addition, successful litigation against companies could lead to payments into the Pacific Islands Climate Compensation Fund, which could be used by governments for mitigation, adaptation and addressing loss and damage in accordance with Article 8(2)(c) of the Treaty. (2) The provision in paragraph 2 is aimed at enabling members of the public to challenge the legality of acts that contribute to climate change even if no damage has been suffered. This will enable the public to act as a ‘watchdog’ for compliance with international and regional climate change law, and with domestic legislation adopted to implement this Treaty. Making this subject to criteria laid down in national law clarifies that the provision does not prescribe or require sweeping reforms to the justice system.

(3) Paragraph 3 requires Parties to take steps, within the framework of national legislation, to enable domestic courts to make and order for damages claimed on behalf of the public to be paid into the Pacific Islands Climate Compensation Fund. Most courts will already have the discretion to make such orders under existing laws, based on the absence of explicit restrictions to do so. In such cases, PSIDS governments would only need to build awareness of the Fund among the judiciary. However, some governments may want to lay down specific procedures in legislation to promote the use of the Fund. The Pacific Islands Climate Commission and PIDF could lead capacity building initiatives for Parties, and possibly even for members of the judiciary, to help draw connections between domestic legal systems and the Fund.

Article 9. PACIFIC ISLANDS CLIMATE COMPENSATION FUND

1. A Pacific Islands Climate Compensation Fund is hereby established.
2. The Fund shall be held in trust for:
 - (a) Assistance and compensation for communities who have suffered climate change-related losses, including loss of food crops, fresh water sources, housing or land;
 - (b) Other actions related to mitigation, sustainable development, adaptation, loss and damage or climate-induced migration taken in accordance with Articles 3, 4, 5, 6 and 7 of this Treaty; and
 - (c) Such other purposes related to compensation for climate change and climate damages as may be specified in further decisions of the Conference of the Parties.
3. The Fund shall be administered by the Secretariat of the Pacific Islands Development Forum on behalf of the Parties.

COMMENTARY

(1) The establishment of a Pacific Islands Climate Compensation Fund is another innovative feature of the Treaty. Although there is a precedent for establishing a ‘Climate Resilient Fund’ at the national level, there is currently no existing Climate Compensation Fund with a mandate to receive funds not only through voluntary donations, but also through court orders following successful climate change litigation against actors with significant historical responsibility for climate change. The provisions of this Article are loosely based on similar provisions in a civil society proposal for a Climate Compensation Act, which could be adopted at the domestic level.

(2) Paragraph 2 clarifies that the Fund would be held in trust for a wide range of purposes, including assistance and compensation for communities who have suffered climate-related losses and ‘other actions related to mitigation, adaptation, loss and damage or climate-induced migration taken in accordance with Articles 3-7 of this Treaty’. This covers much ground already, and could be broadened further through COP decisions as per subparagraph 2(d). The rationale for this broad range of purposes is that some cases will beg for remedies to be provided directly to victims, while in other cases—e.g. ‘public interest’ litigation—remedies that benefit the public at large would be appropriate. The links to Articles 3-7 further ensure that the Pacific Islands Climate Compensation Fund could effectively serve as a funding mechanism for the implementation of the Treaty. Paragraph 3 mandates the Secretariat of PIDF to act as the Administrator of the Fund on behalf of the Parties.

Article 10. CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established.
2. The Conference of the Parties shall keep under regular review the implementation of the Treaty, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Treaty.
3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure.
4. An annual session of the Conference of the Parties shall be convened immediately preceding or following the regular meeting of the Leaders' Council.
5. Additional sessions may be convened at the request of three or more Parties. Such requests shall be communicated to the Secretary-General of the Pacific Islands Development Forum who will inform the Parties.
6. Any external party with a formal status conferred upon it by the Pacific Islands Development Forum may attend, as an observer, the sessions referred to in this Article.
7. An external party without a formal status conferred upon it by the Pacific Islands Development Forum may be invited to the sessions referred to in this Article upon admission by the Conference of the Parties.
8. The admission and participation of participants shall be subject to the rules of procedure adopted by the Conference of the Parties.
9. The Pacific Islands Development Forum shall provide secretariat services for implementing the provisions of this Article.

COMMENTARY

(1) Article 10 establishes a Conference of the Parties (COP) to the Treaty. Paragraph 2 stipulates that the main functions of the COP are to 'keep under regular review the implementation of the Treaty' and to 'make, within its mandate, the decisions necessary to promote the effective implementation of the treaty'. This provision mirrors Article 7(2) of the UNFCCC which establishes the Conference of Parties to the UNFCCC as the 'supreme body' of the Convention. For this Treaty, however, the COP is not specifically called the 'supreme body' of the Treaty as the Pacific Islands Climate Commission has an equally important role to play in the treaty regime. The provision is also less detailed than the comparable provision of the UNFCCC to allow Parties flexibility in shaping the regime. PIDF is tasked with providing secretariat services for the COP, as per paragraph 10 of this Article.

(2) Paragraph 3 mandates the COP to adopt its own rules of procedure at its first session. This provision resembles Article 7(3) of the UNFCCC, but again allows for more flexibility as to what kind of rules the Parties wish to adopt. It should be noted here that disagreement between Parties to the UNFCCC about decision-making procedures for the adoption of particular decisions has prevented the Conference of Parties to the UNFCCC from adopting its own rules of procedure, and 'adoption of the rules of procedure' is accordingly still on the agenda in that forum. PSIDS have not been able to achieve a unified stance on this issue, with some pressing hard for the adoption of a rule that would allow decisions to be adopted by voting and others showing reluctance to change the current practice of decisions being adopted by consensus. The issue of decision-making might be easier to resolve at the regional level, but PSIDS and PIDF would nonetheless do well to set the stage for a productive discussion on this issue in advance of the first session of the COP. For example, PIDF could consider preparing, in consultation with Parties, draft rules of procedure ahead of the first session. Actually adopting the rules of procedure at the first session would show political leadership and commitment that has been lacking at the international level.

(3) Paragraph 4 provides that the COP shall meet annually and ‘immediately preceding or following the regular meeting of the Leaders’ Council’. This mirrors Article V of the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest (‘Nauru Agreement’), which provides that Parties shall meet annually before or after meetings of the South Pacific Forum Fisheries Agency. Like the Nauru Agreement, this Treaty seeks to minimise the burden of meetings on Pacific leaders.

(4) Paragraph 5 provides for extraordinary sessions that may be convened at the request of three or more Parties. This mirrors Article V of the Nauru Agreement, and differs from the comparable provision in the UNFCCC which requires support from at least one third of the Parties for an extraordinary session to be granted. The present provision prevents the COP from having to vote on the request, building on the assumption that holding an extraordinary session will be worthwhile if three or more Parties decide to put forward a request.

(6) Paragraphs 6, 7 and 8, which deal with the participation of external parties, reflect the spirit of multi-stakeholder engagement championed by PIDF. The preamble of the Treaty specifically recognises ‘the importance of engaging, as equal partners, civil society, women, youth and persons with disabilities, in all efforts towards building climate change resilience’. Accordingly, the Treaty allows external parties to engage with the Conference of the Parties as ‘participants’, in contrast with the UNFCCC which limits the role of external parties to that of ‘observers’. Paragraph 6 and 7 set out how ‘participant’ status can be acquired, with paragraph 6 seeking to capitalise on the broad group of stakeholders already engaged in the work of PIDF by enabling those stakeholders to attend the sessions of the COP without needing to apply for additional accreditation. And paragraph 7 enables external parties without a formal status conferred upon it by PIDF to apply for accreditation to the COP. This paragraph creates another avenue for external parties to attend COP sessions, and also provides the COP with a degree of autonomy in admitting participants. Paragraph 8 implies that the COP will include provisions on the admission of participants in its rules of procedure.

Article 11. PACIFIC ISLANDS CLIMATE COMMISSION

1. A Pacific Islands Climate Commission, hereinafter called “the Commission”, is hereby established.
2. The Commission shall have a mandate to:
 - (a) Promote Pacific values associated with the purpose of this Treaty;
 - (b) Support the Parties in the implementation of all aspects of the Treaty;
 - (c) Oversee the realisation and implementation of the Pacific Framework for Renewable Energy;
 - (d) Oversee the realisation and implementation of the Pacific Framework for Climate Mobility Pacific Framework for Climate Mobility, including a rights-based approach to “migration with dignity”;
 - (e) Cooperate with other Pacific and international institutions on matters relevant to the purpose of this Treaty;
 - (f) Perform any other tasks which may be entrusted to it by the Conference of the Parties.
3. The Pacific Islands Development Forum shall provide the services necessary for the effective discharge of the duties of the Commission.
4. The Commission shall adopt its own rules of procedure.

COMMENTARY

(1) Article 10 establishes a Pacific Islands Climate Commission and provides some elements of its potential mandate. These elements are laid down in subparagraphs 2(a)-(e), with subparagraph (f) allowing for further extension of the Commission’s mandate through decisions of the COP.

(2) The promotion of Pacific values associated with the purpose of the Treaty would be one of the core elements of the Commission’s mandate. This could involve, for example, undertaking studies, organising seminars, symposia and conferences and disseminating information on matters relevant to the purpose of the Treaty. This part of the mandate could also form the basis for activities undertaken under other parts of the mandate: studying and discussing an issue is often a useful way to kick-start other types of work, including support and advocacy. Input from other stakeholders, as well as Parties, could be encouraged by issuing calls for written input as soon as the Commission decides to study, discuss or disseminate information on an issue.

(3) Another important aspect of the Commission’s mandate would be supporting the Parties on matters relevant to the implementation of the Treaty. This could include, for example, support on the formulation and implementation of Nationally Determined Contributions (NDCs) to be submitted by Parties under the Paris Agreement, possibly in collaboration with PIDF, in a manner that reflects the Pacific priorities articulated in the Treaty. The Commission is also tasked with providing support to realise the formulation and implementation of the Pacific Framework for Renewable Energy established under Article 4(2) and the Pacific Framework for Climate Mobility established under Article 6(3)(a). The Treaty does not prescribe the details on the type of oversight and support to be provided, leaving these to the COP to be determined.

(4) The Commission is explicitly mandated to cooperate with other Pacific and international institutions on matters related to the purpose of the Treaty (subparagraph e). This is a broad provision enabling collaboration with a wide range of institutions, ranging from the United Nations and the bodies established under the UNFCCC to the Council of the Regional Organisations of the Pacific (CROP) agencies and local and international non-governmental organisations. This provision would help avoid duplication of work while ensuring productive synergies between the work of the Commission and that of relevant regional and international institutions.

(5) The Treaty does not prescribe institutional modalities for the Commission. Accordingly, questions about the composition and membership of the Commission, the frequency of its meetings and its working relationship with the COP are all to be resolved by Parties themselves. The Treaty does stipulate that services for the Commission are to be provided for by PIDF (paragraph 3), and that the Commission is mandated to adopt its own rules of procedure (paragraph 4).

Article 12. AMENDMENT

The Conference of the Parties shall consider proposals for amendment of the provisions of the Treaty proposed by any Party and circulated by the Secretary-General to all Parties not less than three months prior to the convening of the session for this purpose. Any proposal agreed upon by consensus by the Conference of the Parties shall be communicated to the Secretary General who shall circulate it for acceptance to all Parties. An amendment shall enter into force thirty days after receipt by the depositary of acceptance from all Parties.

COMMENTARY

(1) Article 12 on amendments mirrors Article 11 of the South Pacific Nuclear Free Zone Treaty, but here the mandate for considering proposals for amendments is with the COP while the Secretary-General of PIDF is tasked with communicating proposals for amendments to the Parties. Amendments would only gain effect if adopted by consensus, which ensures that all Parties will continue to support every provision of the Treaty even after an amendment.

Article 13. SIGNATURE AND RATIFICATION

1. The Treaty shall be open for signature by any State that is, or is eligible to be, a Member of the Pacific Island Development Forum.
2. The Treaty shall be subject to ratification. Instruments of ratification shall be deposited with the Secretary General who is hereby designated depositary of this Treaty and its Protocols.

COMMENTARY

(1) Article 13 deals with signature and ratification. Paragraph 1 draws on Article 12 of the South Pacific Nuclear Free Zone Treaty, but Parties may include not only members of PIDF but also States that are eligible for membership. This provision ensure that the potential membership base of the Treaty is as broad as possible, yet confined to PSIDS.

(2) Paragraph 2, which also draws on Article 12 of the South Pacific Nuclear Free Zone Treaty, provides that the Treaty is subject to ratification and stipulates modalities. It seems wise to require ratification of the Treaty rather than only a signature given the far-reaching implications of joining the Treaty, which beg for democratic buy-in prior to undertaking obligations. And with PSIDS leading the way in the ratification of the Paris Agreement, PSIDS themselves are showing that ratification of a comprehensive and important treaty does not necessarily need to be a lengthy process.

(3) It must be noted that there are no provisions for withdrawal from the treaty. Thus, as opposed to the South Pacific Nuclear Free Zone Treaty this Treaty does not give Parties the right to withdraw from the treaty upon a violation of the treaty by another Party. Within this Treaty, compliance is dealt with by the Pacific Islands Climate Commission in a quasi-judicial manner to avoid collapse of the treaty regime in cases of non-compliance. The Treaty can also be contrasted with the UNFCCC on this point, which allows Parties to withdraw 'at any time after three years from the date on which the Convention has entered into force for a Party'. This Treaty follows the convention of human rights treaties, most of which do not contain provisions for withdrawal in light of the importance of their subject matter.

Article 14. RESERVATIONS

The Treaty shall not be subject to reservations.

COMMENTARY

(1) Article 14 prohibits reservations to the Treaty. This provision mirrors Article 14 of the South Pacific Nuclear Free Zone Treaty and Article 24 of the UNFCCC, Article 26 of the Kyoto Protocol and Article 27 of the Paris Agreement. The treaty regime would become unnecessarily complex, and could be weakened, if reservations were to be allowed.

Article 15. ENTRY INTO FORCE

1. The Treaty shall enter into force on the date of deposit of the fifth instrument of ratification.
2. For a signatory which ratifies the Treaty after the date of deposit of the fifth instrument of ratification, the Treaty shall enter into force on the date of deposit of its instrument of ratification.

COMMENTARY

(1) Article 15 on entry into force mirrors Article 15 of the South Pacific Nuclear Free Zone Treaty, but this Treaty would enter into force after five ratifications (as opposed to eight ratifications for entry into force of the South Pacific Nuclear Free Zone Treaty).

The rationale for this comparatively low threshold is that there is likely to be more good faith among PSIDS eligible to become Parties to the Treaty, and PSIDS willing to join the Treaty regime are less likely to be deterred by the possibility of becoming, at least initially, one of a handful of States bound by the terms of the Treaty. In such a situation, rapid entry into force seems not only desirable but also possible.

Article 16. DEPOSITARY FUNCTIONS

The depositary shall register the Treaty and its Protocols pursuant to Article 102 of the Charter of the United Nations and shall transmit certified copies of the Treaty and its Protocols to all Members of the Pacific Islands Development Forum and all States eligible to become Party to the Protocols to the Treaty and shall notify them of signatures and ratifications of the Treaty and its Protocols.

IN WITNESS WHEREOF the undersigned, being duly authorised by their Governments, have signed this Treaty.

COMMENTARY

(1) Article 16 indicates that the Secretary -General of PIDF, as the depositary of the Treaty, is responsible for registering the Treaty with the Secretariat of the United Nations, which shall in turn publish the Treaty in the United Nations Treaty Collection. The depositary is also tasked with transmitting certified copies of the Treaty and its Protocols to all members of PIDF as well as to States eligible to become Party to the Treaty, and with notifying them of signatures and ratifications. This provision mirrors Article 16 of the South Pacific Nuclear Free Zone Treaty, which endows the Director of the South Pacific Forum with the responsibility for these tasks.



