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## The Vicious Cycle of 'Disaster-Recovery-Disaster' and SIDS: Lessons from the ICJ Advisory Proceedings on Climate Change

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# THE VICIOUS CYCLE OF ‘DISASTER-RECOVERY-DISASTER’ AND SIDS: LESSONS FROM THE ICJ ADVISORY PROCEEDINGS ON CLIMATE CHANGE

CHHAYA BHARDWAJ\*

## ABSTRACT

The core argument of this Article is that the current theoretical and legal frameworks are insufficient to fully comprehend the circumstances of the Small Islands Developing States (SIDS), which claim to be in a “constant state of recovery or disaster.” The SIDS continue to suffer, as the extreme climate events become more frequent, severe, and compounding. The existing theoretical and legal frameworks assume that every disaster that begins must end, as does the recovery period following the disaster. However, in the case of some SIDS, the disaster or recovery period never ends. For example, sometimes, another disaster strikes even before the initial recovery period for the first disaster ends. This puts the SIDS in a vicious cycle of “disaster-recovery-disaster”, which has elements of law, finance, and human rights within it. While the frameworks are founded on assumptions that do not help the existing circumstances of SIDS, I explore both theoretical and legal tools that can be utilized to understand the vicious cycle of disaster-recovery-disaster in SIDS and assist in remedying it.

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## INTRODUCTION

Climate change is a very complex challenge for humankind,<sup>1</sup> and international law needs systemic changes for long-term climate solutions.<sup>2</sup> One of the complexities lies in how we envision Small Island Developing States (SIDS) or coastal States that are exposed to increasing climate disasters and need to strengthen their resilience. According to the Intergovernmental Panel on Climate Change (IPCC), extreme climate events, defined as “a pattern of extreme weather that persists for some time, such as a season,” are increasing.<sup>3</sup> To assess the extremity of these events, scientists ask whether the frequency or intensity of a particular weather event has increased, making it extreme.<sup>4</sup> The small islands around the world are experiencing several extreme events like extreme drought,<sup>5</sup> extreme sea level rise,<sup>6</sup> extreme precipitation,<sup>7</sup> extreme tide levels,<sup>8</sup> and temperature extremes,<sup>9</sup> amongst others, which affect the island nations and make them vulnerable.

The IPCC does not provide us with specific scientific principles that may guide the recovery of States in the wake of climate change and

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<sup>1</sup> Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. 187, ¶ 1 (July 23) (separate opinion of Judge Nolte).

<sup>2</sup> Ceri Warnock & Brian J. Preston, *Climate Change, Fundamental Rights, and Statutory Interpretation*, 35 J. ENV'T L. 47, 47 (2023).

<sup>3</sup> Sonia I. Seneviratne et al., *Weather and Climate Extreme Events in a Changing Climate*, in CLIMATE CHANGE 2021: THE PHYSICAL SCI. BASIS 1513, 1517, 1522 (V. Masson-Delmotte et al. eds., 2021).

<sup>4</sup> *Id.* at 1522.

<sup>5</sup> Michelle Mycoo, Morgan Wairiu, Donovan Campbell, Virginie Duvat, Yimnang Golbuu, Shobha Maharaj, Johanna Nalau, Patrick Nunn, John Pinnegar & Olivia Warrick, *Small Islands*, in CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY 2043, 2045 (H.-O. Pörtner et al. eds., 2022).

<sup>6</sup> *Id.* at 2045.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2053, 2068, 2098.

<sup>9</sup> *Id.* at 2045, 2052.

constant extreme events; however, it engages in studies on time, resources, and policies that guided the recovery of ecosystems and countries after a disastrous event.<sup>10</sup> The IPCC also specifies how compounding events in SIDS like the Maldives can affect their recovery.<sup>11</sup> A compound event takes place when “multiple extreme events of either different or similar types occur simultaneously and/or in succession”<sup>12</sup> in a given area or geography. In the case of the Maldives, the IPCC confirms that, as the region has been experiencing compounded events, the future recovery capacity of the ecosystem will primarily depend on the frequency of the future extreme events.<sup>13</sup> History tells us that when the Maldives experienced cascading negative effects due to compounding events, it fell far behind in its international economic rankings.<sup>14</sup> The Maldives became a Least Developed Country (now a middle-income country) after the 2004 Tsunami—a compounding disaster which took place while the nation was still recovering from a previous disaster.<sup>15</sup> It is clear that “recovery” as a concept is highly variable,<sup>16</sup> and may depend on specific capacities of a country<sup>17</sup> and its geography, which may experience higher compounding events. The key takeaway is that the “increasing frequency and severity of extreme events will decrease the recovery time available for ecosystems . . . such as . . . total loss of stony coral and sea ice communities,” making it increasingly difficult for nations to fully recover.<sup>18</sup> The IPCC calls it the “ecosystem tipping point[,]” as the ecosystem cannot recover beyond a point.<sup>19</sup> This implies that even the most reliable scientific report on climate change, the IPCC, does not set out scientific principles that can help policymakers understand the continuation of the state of disaster or recovery after compounded disasters make countries and people more vulnerable. On the contrary, the IPCC accepts that increasing

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<sup>10</sup> *Id.* at 2071, 2073, 2075.

<sup>11</sup> Mycoo et al., *supra* note 5, at 2071.

<sup>12</sup> Seneviratne et al., *supra* note 3, at 1610.

<sup>13</sup> Mycoo et al., *supra* note 5, at 2071.

<sup>14</sup> *See generally id.* (explaining how the 2004 Tsunami combined with the 2008 global recession to destabilize the Maldivian economy and stall its transition from a Least Developed Country status).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *See generally* IPCC, *Technical Summary*, in CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY 37, 56 (H.-O. Pörtner et al. eds., 2022) (describing how the narrowing window for ecosystem recovery between frequent extreme events leads to irreversible phase shifts and the collapse of critical habitats like coral reefs and sea ice).

<sup>19</sup> *Id.* at 217–18.

extreme events are “impeding our ability to identify, develop and adopt solutions” that can help States and communities recover.<sup>20</sup>

Once States are exposed to climate disasters, they are in a “state of emergency” due to being in a “state of disaster”, which is followed by a “state of recovery”.<sup>21</sup> Some of these States are more developed than the others;<sup>22</sup> however, the exposure of all States to climate disasters mandates them to seek international aid and assistance so that they can build back better.<sup>23</sup> Some other States are not as developed or are least developed and need more assistance for recovery.<sup>24</sup> The situation of SIDS is, however, distinct and unique due to their geographical and developmental circumstances in the wake of climate change, and puts them in a “constant state” of emergency, disaster, and recovery.<sup>25</sup> This constant state is conceptualized in the paper as a vicious cycle of “disaster-recovery-disaster,” with the aim of understanding the international legal principles that guide development in SIDS.

This Article argues that a vicious cycle of “disaster-recovery-disaster” (DRD) exists in several SIDS and can be remediated if the traditional understanding of disaster and recovery is re-understood through climate change. The idea is to first understand vicious cycle of DRD and how it is addressed in international climate change law. After the introduction, the Article lays out the existing understanding of DRD in academic literature and how it falls short of covering the constant vicious cycle of DRD in SIDS. In this Article, I set forth the understanding of the vicious cycle of DRD by discussing two broad but dependent concepts.<sup>26</sup> First, the “state of recovery”, and second, the “state of emergency”. I

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<sup>20</sup> *Id.* at 218.

<sup>21</sup> See, e.g., *When Disaster Strikes: How America's Three-Tier Response System Works*, GOVFACTS (July 7, 2025), <https://govfacts.org/climate-energy-environment/natural-disasters-hazards/disaster-response/when-disaster-strikes-how-americas-three-tier-response-system-works/> [https://perma.cc/AP5T-SXUH].

<sup>22</sup> Per Josephson, *Common but Differentiated Responsibilities in the Climate Change Regime: Historic Evaluation and Future Outlooks* 8–9, 12 (2017) (Master's thesis, Stockholm University) (on file with the Stockholm University Library).

<sup>23</sup> Sandeeka Mannakkara & Suzanne Wilkinson, *Build Back Better: Lessons from Sri Lanka's Recovery from the 2004 Indian Ocean Tsunami*, 7 INT'L J. ARCHITECTURAL RSCH. 108, 109 (2013).

<sup>24</sup> Josephson, *supra* note 22, at 8–9, 12.

<sup>25</sup> Dame Meg Taylor, Sec'y Gen., Keynote Address at the Pac. Islands F. Int'l Conf. on Disaster Resilient Infrastructure, Pacific faces 'constant state of recovery' from disasters (May 23, 2022).

<sup>26</sup> Jo Longman, Rebecca Patrick, Sarah Bernays & Fiona Charlson, *Three Reasons Why Expecting 'Recovery' in the Context of the Mental Health Impacts of Climate Change is Problematic*, 20 INT'L J. ENV'T RSCH. & PUB. HEALTH (2023).

discuss the existing theoretical debates over these concepts, along with the realities of the States submitted by the nations during the International Court of Justice (ICJ) advisory proceedings on climate change. I argue that the vicious cycle of DRD occurs between the two states of emergency and recovery. The state in between the two becomes constant, creating conditions leading to the cycle of DRD. To support this argument, I first synthesize the academic debate on recovery, then analyze the legal and temporal state of emergency or disaster, and finally contextualize the cycle of DRD within these overarching regimes. In Part IV, I discuss the legal understanding and existing rules on recovery and disaster for SIDS and how the rules lack a framework to protect the people and, more generally, SIDS. I primarily rely on academic literature on the issue, the documents from the ICJ advisory proceedings and decision on climate change, and international law instruments on disasters. The overall aim of the Article is to explore how SIDS are envisioned by themselves and their fellow States as members of the international community and if a change in this vision can also help bring some positive rules that ease the situation of SIDS.

#### I. THE “STATE OF RECOVERY” AND THE “CONSTANT STATE OF RECOVERY”

In this subsection, I critically analyze the academic discussion on recovery and its constant state. A lot of current discussion and understanding of recovery after an emergency is rooted in literature on the German recovery after World War II.<sup>27</sup> The war was a disaster to the German state, and its recovery from the war guided our understanding of recovery.<sup>28</sup> Due to this, post–World War recovery dominates our understanding of recovery in a Eurocentric or European lens.<sup>29</sup> After the Second World War, a considerable percentage of housing was destroyed in Germany,<sup>30</sup> food production was very low, and per capita availability

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<sup>27</sup> See, e.g., Tamás Vonyó, *Recovery and reconstruction: Europe after WWII*, CEPR (Nov. 21, 2019), <https://cepr.org/voxeu/columns/recovery-and-reconstruction-europe-after-wwii> [<https://perma.cc/T4EF-2MQK>].

<sup>28</sup> See Tejvan Pettinger, *The strength of the German economy post-war*, ECONOMICSHelp (Dec. 6, 2018), <https://www.economicshelp.org/blog/143663/economics/the-strength-of-the-german-economy-post-war/> [<https://perma.cc/9HFC-EY7R>].

<sup>29</sup> See Mark Mazower, *The End of Eurocentrism*, 40 *CRITICAL INQUIRY* 298, 311 (2014).

<sup>30</sup> JEFFREY M. DIEFENDORF, *IN THE WAKE OF WAR: THE RECONSTRUCTION OF GERMAN CITIES AFTER WORLD WAR II* 10–11 (1993).

of food was also low,<sup>31</sup> with almost no social security.<sup>32</sup> In the middle of all of this, however, in the 1960s, post-war economic recovery in Germany was seen as an “economic miracle” (*Wirtschaftswunder*).<sup>33</sup> The German recovery experience has two primary characteristics: Firstly, it is a recovery experience after a war and not a climate disaster.<sup>34</sup> Secondly, the focal point of recovery was economic,<sup>35</sup> rather than social or cultural. This means that although the German recovery experience or other post-war recovery experiences may guide the dominant principles for responding to and managing disasters, they may not be fully applicable in the context of climate change and the extreme climate events that follow. However, there is one similarity in the post-war recovery and how SIDS approach the recovery—financial assistance and economic resilience. This signifies that the post-disaster (war and climate change) recovery is primarily understood as a financial recovery.

Some of the more recent discussion on recovery, which is quite broad, focuses on how coastal countries can become more resilient and achieve a post-disaster recovery,<sup>36</sup> that may or may not be fast-paced.<sup>37</sup> These discussions on recovery are rooted in the understanding that once the area is damaged due to a disaster, it will be restored to what it was before the disaster, or even built back better.<sup>38</sup> It implies that recovery will take place in due course of time, if one of the barriers to effective post-disaster recovery does not make the recovery process difficult.<sup>39</sup> These

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<sup>31</sup> David R. Henderson, *German Economic Miracle*, ECONLIB, <https://www.econlib.org/library/Enc/GermanEconomicMiracle.html> [<https://perma.cc/8PST-VCW8>] (last visited Apr. 1, 2026).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> DIEFENDORF, *supra* note 30, at 12.

<sup>35</sup> Henderson, *supra* note 31.

<sup>36</sup> See Mannakkara & Wilkinson, *supra* note 23, at 108–21; Barry Eichengreen, *Economic Recovery in Post-World War II West Germany and Ukraine Today*, 24 *ECONPOL F.* 30, 3032–35 (2023); Servaas Storm & C.W.M. Naastepad, *Crisis and Recovery in the German Economy: The Real Lessons*, 32 *STRUCTURAL CHANGE & ECON. DYNAMICS* 11, 11–24 (2015).

<sup>37</sup> Robert B. Olshansky, *Recovery After Disasters: How Adaptation to Climate Change Will Occur*, in *CLIMATE CHANGE AND ITS IMPACTS: RISKS AND INEQUALITIES* 195, 196 (Colleen Murphy et al. eds., 2018). In this article Olshansky looks at adaptation models for coastal states suffering due to sea-level rise as recovery models.

<sup>38</sup> Mannakkara & Wilkinson, *supra* note 23, at 108–09. This source uses several legal, institutional, and academic definitions of “recovery”.

<sup>39</sup> Behzad Rouhanizadeh, Sharareh Kermanshachi & Thahomina Jahan Nipa, *Exploratory analysis of barriers to effective post-disaster recovery*, 50 *INT’L J. DISASTER RISK*

barriers, however, do not envision another disaster during the recovery period as a major barrier to recovery. It is rather assumed that recovery is guaranteed in a discrete, time-limited fashion after a single and isolated crisis event occurs.<sup>40</sup> This implies that a State may be in a “state of recovery” after the emergency or disaster strikes, and that this state of recovery has an endpoint.<sup>41</sup>

Historically, the idea of resilience after a disaster meant developing the abilities of ecosystems to return to a stable environment that existed before the crisis,<sup>42</sup> through either shock absorption and mitigation measures or empowering communities to re-emerge and recover.<sup>43</sup> This idea, however, holds back communities from innovatively designing their post-disaster growth, limiting the growth to how the West has imagined.<sup>44</sup> This theoretical imagination excludes the ground realities of SIDS suffering from climate change, and prevents the conditioning of alternative possibilities.<sup>45</sup> The critics of this Eurocentric modelling of resilience, and emergency management seek to denaturalize dominant assumptions in the field; challenge the dominant knowledge producing; understanding; and dissemination systems, and argue for alternative systems.<sup>46</sup>

It is assumed that the recovery will take place after one single isolated disaster in a given time period, which is flawed and does not fit with the extreme weather events that are increasing due to climate change.<sup>47</sup> It prevents any argument that a nation or community is in a continuing or “constant state of recovery”. Longman confirms that climate change–related crisis events are not single isolated events anymore, and recur unexpectedly with a discrete impact.<sup>48</sup> Therefore, assuming that both the crisis (emergency) and recovery have a beginning and an endpoint is a misunderstanding.<sup>49</sup> One disaster puts a country in a recovery

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REDUCTION 101735, at 8 (2020). The authors identified five barriers to an effective post-disaster recovery in a region. The five categories are: “financial and economic, social, infrastructure and housing reconstruction, environment, and coordination and resources.”

<sup>40</sup> Longman et al., *supra* note 26, at 1–2.

<sup>41</sup> *Id.* at 3.

<sup>42</sup> Andrew Russo & Christine da Rosa, *Acknowledge, elevate and reclaim: A thematic review of critical and decolonial perspectives on contemporary disaster resilience*, 46 ADMIN. THEORY & PRACTICE 323, 323 (2023).

<sup>43</sup> *Id.* at 324.

<sup>44</sup> *Id.* at 325.

<sup>45</sup> *Id.* at 326.

<sup>46</sup> *Id.* at 327.

<sup>47</sup> Longman et al., *supra* note 26, at 1.

<sup>48</sup> *Id.* at 1–3.

<sup>49</sup> *Id.* at 3.

mode, and while the country is recovering, another disaster strikes, cascading the disasters, their impacts, and vulnerabilities.<sup>50</sup> Longman's work on "constant state of recovery" focuses on the recovery of people suffering from mental health effects due to climate change.<sup>51</sup> His challenge to the traditional theory of recovery that does not take into account the continuation of the state of recovery is adapted in this Article to understand the socio-legal conceptualization of the issue.

Longman's critique is befitting and similar to what Fiji described as a "constant state of recovery" before the ICJ advisory proceedings on climate change.<sup>52</sup> Although Fiji is referring to its economic state (similar to Germany after World War II) as being in a constant state of recovery and not its situation as a nation, it also confirms that the damage is eroding developmental gains that have taken place in the past,<sup>53</sup> seeing recovery rather than a developmental or economic point of view. Fijian understanding is that this constant of a phase is a personal situation.<sup>54</sup> When Fiji characterizes this phenomenon as personal, it is saying it may or may not happen with other countries. Fiji's position is characterized by its "constant state of recovery" as a single, stand-alone situation, distancing itself from other SIDS in a similar position.<sup>55</sup> A position that stands in solidarity with counterparts in a similar situation and presents its case as a problem of many, not an individual problem, allows for greater collective bargaining power that SIDS should rely on.

Fiji additionally argues that, as a first step, it needs to transition out of this cycle.<sup>56</sup> Only when it transitions out of this cycle will Fiji be able to develop like its counterparts or other equal sovereign States. This assertion by Fiji is also based on the assumption that recovery has an endpoint or that an endpoint of recovery can be achieved. This misplaced understanding is not currently tapped into collectively by other countries, leading to gaps in international legal frameworks as well.

Overall, the traditional understanding of recovery is that it is not forever and ends after some time.<sup>57</sup> This does not fare well in the circumstances of SIDS, whose circumstances of recovery are in a continuum and

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 1–2.

<sup>52</sup> Obligations of States in Respect of Climate Change, Request for Advisory Opinion, 2024 I.C.J. 187, ¶ 10 (Dec. 20), Verbatim Record, CR 2024/40, at 67.

<sup>53</sup> *Id.* at 65.

<sup>54</sup> Taylor, *supra* note 25.

<sup>55</sup> Obligations of States in Respect of Climate Change, CR 2024/40, at 75.

<sup>56</sup> *Id.* at 66–68, 75.

<sup>57</sup> Longman et al., *supra* note 26, at 1–2.

seem almost impossible to end in light of compounding events. Additionally, the idea of recovery seems to focus on economic recovery, making financial-related aspects central to the idea of recovery. Finally, the idea of recovery also seems to focus on development as restoration, assuming that both can take place; however, SIDS may never be able to go back to how they were before climate change became irreversible. The foundations of recovery are inseparable from the foundations of an emergency or disaster, as discussed in the next section.

## II. THE “STATE OF EMERGENCY” AND “CONSTANT STATE OF EMERGENCY”

In this Part, I explore the existing underpinnings of the state of emergency, and critique it in the light of the constant state of emergency, and establish how it intertwines with the discussion on recovery. The idea and principles concerning the state of emergency have developed from either a political or a constitutional perspective, because the dominant literature on these issues examines the responses of governance mechanisms to crises, emergencies, or disasters.<sup>58</sup> The governance mechanisms are designed to allow an invocation of extraordinary powers to initiate and manage the state of emergency.<sup>59</sup> In the twentieth century, the idea of exceptionalism or emergency powers developed as a departure from the general applicable rule of law.<sup>60</sup>

One of the most widely read works on the state of emergency is Carl Schmitt’s, who laid the theoretical underpinnings of the state of emergency.<sup>61</sup> His underlying premise for the theory is that the sovereign decides the emergency in its own territory.<sup>62</sup> This underpinning does not guide or inform the emergency caused by climate change well, especially in SIDS. According to Schmitt, a sovereign decides its state of exception or emergency by invoking the laws that apply in extraordinary circumstances.<sup>63</sup> This theoretical foundation does not capture the circumstances

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<sup>58</sup> John Armitage, *State of Emergency: An Introduction*, 19 THEORY, CULTURE & SOC’Y 27, 29–32 (2002).

<sup>59</sup> *Id.* at 27–28.

<sup>60</sup> Mark Neocleous, *The Problem with Normality: Taking Exception to “Permanent Emergency”*, 31 ALTERNATIVES: GLOB. LOC. POL. 191, 193–94 (2006).

<sup>61</sup> CARL SCHMITT, POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY 5–6 (George Schwab trans., 2005) (1922).

<sup>62</sup> *Id.*; see also Mark Klamberg, *Reconstructing the Notion of State of Emergency*, 52 GEO. WASH. INT’L L. REV. 53, 55 (2020).

<sup>63</sup> SCHMITT, *supra* note 61.

of SIDS as they are exposed to the increase of extreme events, without contributing to their creation as a sovereign State. SIDS did not take part in putting themselves in the state of emergency caused by climate change in their territories.<sup>64</sup> SIDS do not have the agency or instrumentality to choose the state of emergency that they are suffering from today.<sup>65</sup> SIDS do not control whether climate disasters are going to put their nation and people in a state of emergency; however, the high greenhouse gas (GHG) emitting States do.<sup>66</sup>

Since the Industrial Revolution started in the 1850s, the SIDS were exposed to disasters in frequency and magnitude beyond their control.<sup>67</sup> Additionally, since the Industrial Revolution, several SIDS were colonies and never had the agency to decide for themselves, putting their people into a permanent state of recovery.<sup>68</sup> The existing state of emergency experienced by sovereign SIDS does not exist because SIDS as sovereign States decided to invoke emergency powers as in Schmitt's theory; rather, it exists because SIDS are unable and incapable of exercising sovereignty over their own territories and climate systems, and unable to control or decrease the frequency or magnitude of climate extremes—which will continue increasing regardless of what SIDS do.

During the advisory proceedings on climate change before the ICJ, Vanuatu stated that “[t]he accumulation of loss and damage from frequent, intense, and overlapping climate-induced disasters has left Vanuatu in a continuous state of ‘recovery-mode’[.]”<sup>69</sup> However, it did not characterize its situation as being in a recovery mode exclusively, and added that it is in a near-constant state of emergency, which affects its functions as a sovereign State.<sup>70</sup> This implies that Vanuatu as a country is not functioning in a way that is considered normal.<sup>71</sup> The weather occurrences are increasing and becoming more and more extreme, causing

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<sup>64</sup> Josephson, *supra* note 22, at 8.

<sup>65</sup> Taylor, *supra* note 25.

<sup>66</sup> Josephson, *supra* note 22, at 1.

<sup>67</sup> IPCC, *supra* note 18, at 17.

<sup>68</sup> Obligations of States in Respect of Climate Change, Request for Advisory Opinion, 2024 I.C.J. 187, ¶ 10 (Dec. 20), Written Comments of the Socialist Republic of Vietnam, ¶¶ 6, 7, 11 (Aug. 15, 2024).

<sup>69</sup> Obligations of States in Respect of Climate Change, Request for Advisory Opinion, 2024 I.C.J. 187, ¶ 10 (Dec. 20), Written Statement of the Republic of Vanuatu, ¶ 298 (Mar. 21, 2024).

<sup>70</sup> Andrej Zwitter, *The Rule of Law in Times of Crisis: A Legal Theory on the State of Emergency in the Liberal Democracy*, 98 ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE [ARSP] 95, 95–111 (2012).

<sup>71</sup> *Id.* at 99.

high uncertainties and difficulties in planning for disaster emergencies.<sup>72</sup> Vanuatu does not have any control over its emergency because it is caused by distant, high-GHG-emitting States.<sup>73</sup>

The existing academic discussion on the state of emergency is posited on a contrastive understanding that there is also “a state of normalcy” in divergence from the state of emergency.<sup>74</sup> This implies three things: First, in international law there are at least two kinds of States—normal States and States grappling with an emergency. The existing literature on the state of emergency is placed in relation to the state of normalcy and does not adequately address situations in which the emergency persists. For example, a 2020 report discusses how countries like Mozambique, once considered a State in crisis, returned to normalcy and stability in economic and political activities after a period.<sup>75</sup> The academic debate in international law concerning normal States and States that are not normal or are in a state of crisis is discussed under the rubric of failed States in the sections that follow.

The second implication is that emergencies have a beginning and an endpoint, and emergencies are supposed to end, after which the State can return to its normalcy.<sup>76</sup> This is similar to how the state of recovery is also conceptualized. The third assumption is about being able to return to normal or go back to how it was before the emergency. The recovery debate in the last section also confirms that recovery and emergency must end, allowing the States to return to pre-disaster conditions. Due to climate change, the endpoint of disaster and recovery has become an illusion rather than a reality. This implies that the continuation of the disaster/emergency and recovery phase is the only reality for several SIDS like Vanuatu and Fiji. The constant state of recovery and emergency in these countries prevents them from returning to a contrasting state of normalcy and keeps them in a vicious cycle, as discussed below.

### III. THE VICIOUS CYCLE OF DRD

Between the time a country is hit by a disaster, enters a recovery phase, and is hit by another disaster, it is placed in a constant state of

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<sup>72</sup> Obligations of States in Respect of Climate Change, Written Statement of Vanuatu, ¶¶ 67, 393.

<sup>73</sup> *Id.* ¶¶ 3, 87.

<sup>74</sup> Zwitter, *supra* note 70, at 99.

<sup>75</sup> WORLD BANK, MOZAMBIQUE ECONOMIC UPDATE: SETTING THE STAGE FOR RECOVERY viii (2021).

<sup>76</sup> Zwitter, *supra* note 70, at 99.

both disaster and recovery. In between this constant state of disaster and recovery is where the vicious cycle of DRD grips SIDS. This section highlights the characteristics of this vicious cycle of DRD in SIDS using their submissions to the ICJ Climate Change advisory proceeding and linking it to existing academic debates on the issue. By studying the submissions of SIDS, characteristics of SIDS have emerged, which are not isolated incidents but are being experienced by the majority of SIDS cases. First, the vicious cycle of DRD challenges the traditional debates on recovery, disaster, and emergencies. Second, the vicious cycle of DRD challenges the traditional economic understanding of climate change. Finally, the vicious cycle of DRD challenges the traditional understanding of failed states in international law.

A. *The Vicious Cycle of DRD Challenges the Traditional Understanding of Recovery and Disaster As Well As Applicable Laws*

This argument derives from the theoretical discussion above, which argues that the traditional discussion on recovery and disaster does not fit for SIDS, which are in a continuous state of disaster and recovery, or well in the context of climate change.<sup>77</sup> The Melanesian Spearhead Group submitted before the ICJ that unforeseeable disasters occur so frequently that the governments are constantly engaged in re-focusing or reprioritizing,<sup>78</sup> challenging how the traditional governance structures would otherwise operate in an emergency or recovery situation. The governments are increasingly finding it difficult to implement what would otherwise be known as the “normal planning process.”<sup>79</sup> This implies that governments need to shift their presumptions about the endpoints of recovery and disasters, and that recovery can take place in SIDS affected by climate change. Once there is a departure from that presumption, only then can DRD become a matter of global discourse and reimagine designs and principles that can guide SIDS which are in a constant state of recovery. The theoretical dimensions of this are already discussed in the previous sections.

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<sup>77</sup> Longman et al., *supra* note 26.

<sup>78</sup> Obligations of States in Respect of Climate Change, Request for Advisory Opinion, 2024 I.C.J. 187, ¶ 10 (Dec. 20), Written Comments of the Melanesian Spearhead Group, ¶ 72 (Aug. 15, 2024).

<sup>79</sup> *Id.*

B. *The Vicious Cycle of DRD Challenges the Traditional Understanding of Economics in Climate Change*

In this section, I argue that the traditional understanding of economics or financial assistance that is given to a country affected by a disaster relies on presumptions that recovery will take place and some (German-like) economic miracle will occur, making the countries that receive financial assistance economically self-sufficient or developed.<sup>80</sup> Like other discussions, this economic understanding also derives from the presumption that recovery will take place, rather than the reality that SIDS may always be in a state of recovery.<sup>81</sup> The second presumption is that recovery will be measured economically rather than holistically. The SIDS' state of disaster or state of recovery demands economic assistance within the international legal framework, which has two characteristics. First, SIDS must receive economic aid and assistance with a disaster or recovery.<sup>82</sup> Second, the goal of financial assistance is primarily to support economic development, especially when loans are given, so that SIDS can repay the funds they receive.<sup>83</sup>

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<sup>80</sup> See generally Jana Gheuens, Nidhi Nagabhatla & Edangodage Duminda Pradeep Perera, *Disaster-Risk, Water Security Challenges and Strategies in Small Island Developing States (SIDS)*, 11 WATER 637 (2019) (In this article, the authors give examples of SIDS that are showing economic growth despite being struck by extreme weather events. However, the overall focus of the Article is that SIDS are economically vulnerable due to climate change). Michelle Scobie, *Sustainable development and climate change adaptation: goal interlinkages and the case of SIDS*, in DEALING WITH CLIMATE CHANGE ON SMALL ISLANDS: TOWARDS EFFECTIVE AND SUSTAINABLE ADAPTATION 101, 101–22 (Carola Klöck & Michael Fink eds., 2019) (“Most Caribbean SIDS are now classed as upper-middle-income countries although they continue to struggle with the vulnerabilities and challenges that all SIDS have to achieve social and economic development and to adapt to climate change. Their debt service obligations reduce fiscal capacity for capital investment and economic growth. The Kingston Outcome Document prioritises the reclassification of SIDS to low-income states so that they may have access to concessionary financing. The World Bank’s allocation to Caribbean States is small and has been decreasing. Overseas development assistance has also decreased as aid has shifted to low-income and post-conflict nations. Within this context, it is understandable that Caribbean SIDS would include their reclassification to low-income countries, for the purpose of concessionary financing, as a priority and it is significant that the issue is not reflected in the international action agendas.”) (internal citations omitted).

<sup>81</sup> Scobie, *supra* note 80, at 102 (describing the special circumstances of SIDS, including their small size, remoteness, and limited resource base, which create unique challenges for achieving both “sustainable development and [effective] climate change adaptation.”).

<sup>82</sup> SCOTT M. HOOK, UNDESA, *DISASTER RISK FINANCING FOR SMALL ISLAND DEVELOPING STATES (2021)* (Final Draft).

<sup>83</sup> Josephson, *supra* note 22.

There are several financial mechanisms at the disposal of SIDS such as providing loans, grants, and assistance.<sup>84</sup> While the financial assistance is helpful for SIDS during the crisis, it proves insufficient, especially as compounding disasters recur. The inadequacy of international financial mechanisms was detailed by St. Vincent and the Grenadines in its submission before the ICJ that, “[D]espite the increasing severity and frequency of climate-related disasters, international financial institutions remain inadequately aligned to address our financial needs.”<sup>85</sup> It claims that the recovery process in St. Vincent and the Grenadines is delayed because the international financial mechanism is bureaucratic and can take years to deliver financial assistance.<sup>86</sup> It characterizes the existing financial mechanisms for SIDS as “going up the down escalator.”<sup>87</sup> Therefore, there is no doubt that SIDS’ vicious cycle of DRD is not only caused by the dominant Western actors, but is also strengthened by feeding into its vicious nature, and not by strengthening the resources that can fight the viciousness.

In addition to this, St. Vincent and the Grenadines also claims that “the global financial structure retains remnants of imperialistic inequities, with borrowing costs markedly disproportionate.”<sup>88</sup> It gives us a numerical fact about the global borrowing system. It submits that “the Global North can secure financing at interest rates of 1 per cent to 4 per cent, while the Global South faces rates of 14 per cent.”<sup>89</sup> This implies that loans to SIDS may not come easily because they are already a country that is at a high risk.<sup>90</sup> Grenada explained to the ICJ that it experiences a “vicious financial cycle of borrowing” due to climate disasters.<sup>91</sup> Every time a disaster hits the country, it is forced to take loans at very high commercial rates of interest so that it can build its economy, infrastructure, and institutional capacity to govern; however, before the rebuilding from one disastrous event is complete, the next climate disaster hits, and its borrowings keep increasing.<sup>92</sup> This leaves countries like

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<sup>84</sup> See Mycoo et al., *supra* note 5, at 2088–89.

<sup>85</sup> Obligations of States in Respect of Climate Change, Request for Advisory Opinion, 2024 I.C.J. 187, ¶ 10 (Dec. 20), Verbatim Record, at 14 ¶ 12, I.C.J. Doc. CR 2024/49 (Dec. 11, 2024).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* (internal quotations omitted).

<sup>88</sup> *Id.* at 15 ¶ 19.

<sup>89</sup> *Id.*

<sup>90</sup> Mycoo et al., *supra* note 5.

<sup>91</sup> Obligations of States in Respect of Climate Change, I.C.J. Doc. CR 2024/41, at 51 ¶ 21.

<sup>92</sup> *Id.*

Grenada grappling with debts that keep accumulating due to the increasing frequency and magnitude of climate disasters.<sup>93</sup> The growing debts keep the country in a financially distressing space, and in a cycle of DRD, which does not facilitate full recovery.<sup>94</sup> Additionally, this distressing space does not allow the country decide on a normal developmental planning that could even slightly prepare it to tackle climate events.<sup>95</sup> In the words of Grenada:

*[A]s a small island state, we are in a cycle of storm, damage, and then recovery and reconstruction and debt incurrence and that cycle continues. Mr President, we need the protection of the international legal system and structure . . . .*<sup>96</sup>

The second goal of financial assistance, such as loans and other forms of support, presumes that economic development, or at least revitalization, will occur in the country to which the funds are directed. However, the presumption is misplaced as the economic damages are also irreversible both in the short-term and long-term. For example, the economic damage from Cyclone Heta in Niue alone amounted to five times the country's GDP.<sup>97</sup> This was equivalent to 200 years' worth of exports at that time in the nation, which highlights the magnitude of economic loss and damage that is caused to a country, and also the limited ability of small island States like Niue to respond and recover.<sup>98</sup> Similar arguments were raised by other SIDS, too. In another example, Vanuatu submitted that, due to increasing disasters, its most economically lucrative industries, such as tourism and agriculture, are simultaneously destroyed, leaving the State economically crippled.<sup>99</sup>

When there are such disastrous circumstances, SIDS look out for financial assistance, and the developed States are not fulfilling their climate finance commitments, causing a delay in finance for recovery and adaptation projects.<sup>100</sup> The delay elongates the constant state of recovery

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Obligations of States in Respect of Climate Change, I.C.J. Doc. CR 2024/38, at 53 ¶ 14.

<sup>97</sup> Obligations of States in Respect of Climate Change, Request for Advisory Opinion, 2024 I.C.J. 187, ¶ 10 (Dec. 20), Verbatim Record, at 31 ¶ 6, I.C.J. CR 2024/53.

<sup>98</sup> *Id.* ¶¶ 6–8.

<sup>99</sup> Obligations of States in Respect of Climate Change, Request for Advisory Opinion, 2024 I.C.J. 187, ¶ 10 (Dec. 20), Written Statement of Vanuatu, ¶¶ 121–22, 124.

<sup>100</sup> IPCC, *supra* note 18.

and disaster, contributing to the continuation of the vicious cycle of disaster and recovery.<sup>101</sup> Between when a disaster or emergency grips a country and when the country is pushing to reach an endpoint for recovery, the reality is that the nation and its people are fighting to rebuild, which can only be supported by financial means—delayed by dominant actors.<sup>102</sup> Additionally, when decision makers do not pay attention to loss of financial value due to a disaster, they tend to delay a systematic recovery after a disaster.<sup>103</sup> To cover the road from disaster to recovery, financial resources are key; delays or shortages of these resources are barriers to effective recovery and keep the vicious cycle of DRD going. This implies that a lack of financial resources sustains the vicious cycle of DRD.

The financial system presumes everything will be good after the financial assistance is sent in, but fails to acknowledge that an initial prediction of financial losses due to disasters is generally less than the actual losses.<sup>104</sup> This means during the recovery period, the people do not receive adequate financial assistance, as the financial resources are almost always short of what is needed.<sup>105</sup> For example, after the 1984 Bhopal Gas Tragedy in India, the amount of compensation paid to the victims was relatively much less than an international standard.<sup>106</sup> The U.S.-based company paid 470 million dollars to the 40,000 immediate victims in India.<sup>107</sup> Broughton argues that if the U.S.-based standard for compensation given to toxic chemical victims had been applied in the Bhopal Gas Tragedy case, the compensation would have been more than 10 billion USD.<sup>108</sup> The handful of financial compensations received by the Bhopal victims also kept them in a perpetual state of recovery, which persists even today.<sup>109</sup> Just like the post-disaster situation of Bhopal, Grenada is also

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<sup>101</sup> See *Obligations of States in Respect of Climate Change, Request for Advisory Opinion*, 2024 I.C.J. 187, ¶ 10 (Dec. 20), Written Statement of the Commission of Small Island States on Climate Change and International Law (COSIS), ¶ 128 (Mar. 22, 2024).

<sup>102</sup> *Id.*

<sup>103</sup> See Rouhanizadeh et al., *supra* note 39, at 8.

<sup>104</sup> See *Real cost of disasters is 10 times higher than previously thought, says UN*, U.N. CARIBBEAN (May 27, 2025), <https://caribbean.un.org/en/295078-real-cost-disasters-10-times-higher-previously-thought-says-un> [<https://perma.cc/M44F-SEY5>].

<sup>105</sup> See Mycoo et al., *supra* note 5, at 2047.

<sup>106</sup> See Edward Broughton, *The Bhopal disaster and its aftermath: a review*, 4 ENV'T HEALTH 6, 8 (2005).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> See *generally Bhopal gas tragedy: Supreme Court rejects more money for victims*, BBC NEWS (Mar. 14, 2023), <https://www.bbc.com/news/world-asia-india-64899487> [<https://perma.cc/8YK4-JKQW>] (explaining that in 2023, the Supreme Court of India dismissed

concerned about the state of recovery that doesn't receive adequate financial resources, or pushes the people into debt.<sup>110</sup> According to Grenada, the lack of financial resources triggers a vicious cycle and prevents itself and its people from growing economically and socially.<sup>111</sup>

This argument, which relies on financial resources and their lack as a barrier to effective recovery, also assumes that if adequate financial resources were available, recovery would be achieved, leading the nations to normalcy. However, this argument is also not well-aligned with the realities of people and regions. For example, one of the most visible effects of climate change is seen in how communities are relocating to other places.<sup>112</sup> The fact that several communities live on the coast in SIDS is, by default, putting them in vulnerable situations, taking away their socio-economic rights.<sup>113</sup> For example, in some indigenous cultures, their ancestral lands are like the "placenta" that nourishes the baby, and that has been taken away from them.<sup>114</sup> While the cost of relocation is easily quantifiable in economic terms, the psychological and emotional loss cannot be quantified in financial terms.<sup>115</sup> Pacific Islanders, like in Fiji, are relocating, and the State prioritizes economic development over social or cultural development.<sup>116</sup>

C. *The Vicious Cycle of DRD Challenges the Traditional Understanding of Failed States in International Law*

In the international law literature, SIDS may be characterized as failed states because they continue to be in a state where they cannot perform basic functions of security and development, and do not have much control over their territories.<sup>117</sup> This understanding has developed

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a curative plea from Bhopal Gas Tragedy survivors, concluding that legal proceedings should reach finality given that over thirty years had elapsed since the disaster).

<sup>110</sup> Mycoo et al., *supra* note 5, at 2047.

<sup>111</sup> Obligations of States in Respect of Climate Change, I.C.J. Doc. CR 2024/49, at 27 ¶ 18.

<sup>112</sup> See Obligations of States in Respect of Climate Change, Written Statement of Vanuatu, ¶ 127.

<sup>113</sup> See *id.* at 173.

<sup>114</sup> *Id.* at 137 n.489.

<sup>115</sup> See *id.* ¶ 591.

<sup>116</sup> Tsegaye T. Gatiso, Suzie Greenhalgh, Isoa Korovulavula, Teddy Fong & Ratu Pio Radikedike, *Climate change-induced relocation dilemma between preserving cultural heritage and embracing modern infrastructure: insights from Fijian coastal villages*, 178 CLIMATE CHANGE 1, 19–20 (2025).

<sup>117</sup> JONATHAN DI JOHN, CONCEPTUALISING THE CAUSES AND CONSEQUENCES OF FAILED STATES: A CRITICAL REVIEW OF THE LITERATURE 9–10 (Crisis States Working Papers Series, Working Paper No. 25, 2008).

as a contrastive force to successful States in international law, which showcases the idea of what development should look like.<sup>118</sup> A “failed state” is known to be a State incapable of sustaining and protecting itself in the international community.<sup>119</sup> This understanding has developed against the backdrop of “successful states” internationally.<sup>120</sup> As discussed above, States that are in a constant “state of emergency” or constant “state of recovery”, there is a similar comparative understanding of the State compared to a State in a “state of normalcy”. The understanding of failed States, however, predominantly looks at States from a war, conflict, or violence rationale, which causes fragile governance structures in States.<sup>121</sup> At its foundation, the relevance of a failed or successful State is derived from how developed it is.<sup>122</sup> This may be measured in terms of the health of people, the standard of living of the people, and poverty rates.<sup>123</sup> Tiwari argues that normal societies are envisioned as developed capitalist societies in international law.<sup>124</sup> It seems that the global order, through its financial institutions like the World Bank, has fostered an international community in which most States aspire to be like the developed capitalist countries because, perhaps, they are successful.<sup>125</sup> These successful States have created and delivered an able-bodied narrative that most States aspire to, unaware of the realities that may be unique to able-bodied capitalist societies.

The argument here is that one of the ways the circumstances of SIDS in the wake of climate change can be conceptualized is by imagining their circumstances through a critical disability theory, instead of failed and successful States. According to Schalk, a system of disability is created when a system ranks and categorizes in a larger system, highlighting abilities and disabilities.<sup>126</sup> Currently, there is stigmatizing of SIDS’ circumstances,<sup>127</sup> as abnormal or failed or disastrous, due to which the international community shows them empathy by saying—“oh poor

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<sup>118</sup> *Id.* at 10.

<sup>119</sup> Rosa Ehrenreich Brooks, *Failed States, or the State as Failure?*, 72 UNIV. CHI. L. REV. 1159, 1160 (2005).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 1160–61.

<sup>122</sup> *Id.* at 1160.

<sup>123</sup> *Id.* at 1162.

<sup>124</sup> Vijay Kishor Tiwari, *Centering the Disabled Women in TWAIL Feminisms’ Discursive Framework: Some Reflections*, 18 NUJS L. REV. 1, 16–17 (2025).

<sup>125</sup> *Id.*

<sup>126</sup> Sami Schalk, *Critical Disability Studies as Methodology*, 6.1 LATERAL (2017).

<sup>127</sup> Melinda C. Hall, *Critical Disability Theory*, in STAN. ENCYCLOPAEDIA OF PHILOSOPHY (Edward N. Zalta ed., Winter 2019 ed.).

States.” The critical disability theory would redirect this empathy by scrutinizing dominating norms, with a goal of justice for marginalized (stigmatized) bodies.<sup>128</sup> A discourse on disabled States will also foster the understanding that SIDS have been powerless in international legal and political discourse to have legal frameworks developed for their sustenance.<sup>129</sup> Such a discourse will also strengthen a system that commits to providing for the States that may be disabled, like SIDS.

#### IV. SHIFTING THE VICIOUS CYCLE THROUGH LAW

The existing international law lacks a robust mechanism to deliver justice, help SIDS build resilience, or break the vicious cycle. When SIDS approached the ICJ requesting an advisory opinion on climate change,<sup>130</sup> they asked the Court to emphasize the obligations of States and remedies available to SIDS, who are “specially affected”, “due to their geographical circumstances and level of development[.]”<sup>131</sup> In its advisory opinion, the Court acknowledged the receding coastlines of the States due to sea-level rise and addressed aspects of this problem.<sup>132</sup> This means the Court narrowed the problems with maritime entitlements to the geographical circumstances of the coastal States and almost no discussion of their constant state of recovery and disaster.<sup>133</sup> While the ICJ reiterated that some least developed States have limited capacity to transform their economies,<sup>134</sup> it did not discuss the possibility that some of these States may never be able to transform their economies into what we consider successful economies. Therefore, the law needs to be (re)interpreted for these States.

How will the international legal development look amidst the ongoing vicious cycle of DRD for SIDS? This Part answers this question as follows: First, the legal understanding of emergency and recovery in the context of climate change for SIDS needs reconstruction. Second,

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<sup>128</sup> *Id.*

<sup>129</sup> *Id.*; CRITICAL DISABILITY THEORY: ESSAYS IN PHILOSOPHY, POLITICS, POLICY, AND LAW 1–2 (Dianne Pothier & Richard Devlin eds., 2006).

<sup>130</sup> See Obligations of States in Respect of Climate Change, I.C.J. Doc. CR 2024/49, at 24 ¶ 3.

<sup>131</sup> Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. 1 ¶ 9 (July 23).

<sup>132</sup> *Id.* ¶ 110 (“A unique situation faced by small island States and low-lying coastal States was addressed by many participants that raised concerns over issues of sea level rise, which causes the coasts of such States to recede, thereby potentially affecting the outer limits of their maritime zones or even threatening their very existence.”).

<sup>133</sup> *Id.* ¶ 355.

<sup>134</sup> *Id.* ¶ 110.

there needs to be a deeper understanding of the interplay of human rights and the circumstances of SIDS. Finally, the existing law governing the financial mechanism needs to support SIDS rather than exploit them.

First, from a legal perspective, the state of emergency is legally declared by the legitimate sovereign authority in a State.<sup>135</sup> Under international law, treaties like the International Covenant on Civil and Political Rights (ICCPR) recognize that while states must protect a wide range of human rights, they may temporarily suspend certain protections during genuine emergencies that threaten the very existence of the nation.<sup>136</sup> However, the Sovereign State can only derogate from its obligations under international law, as permissible by the existing standards.<sup>137</sup> It can be assumed that the legal power to declare an emergency lies in a formal emergency law invoked at the domestic level by a legitimate and accepted authority.<sup>138</sup> Additionally, when the state of emergency is invoked, the law is administered and guided by the executive branch in a democracy, and subject to the subservience of the legislature and judiciary.<sup>139</sup> This implies that the role of the executive branch becomes more dominant in a constitutional democracy, and almost to the exclusion of the legislature and judiciary.<sup>140</sup> The normal application of the law does not exist, and the continuity of the application of normal laws is broken and replaced by the emergency laws, which may or may not end.<sup>141</sup>

SIDS do not have the sovereign legitimate authority to control the invocation of an emergency in their territory through law, and thereby recovery. The emergency and recovery are currently controlling the sovereign, and it is also constantly adapting its laws to control circumstances on its territory. This space may look like a space that does not have law to govern the constant state of emergency and recovery.<sup>142</sup> This is where international law (and even domestic law) needs to be designed

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<sup>135</sup> OREN GROSS & FIONNUALA NÍ AOLÁIN, *LAW IN TIMES OF CRISIS: EMERGENCY POWERS IN THEORY AND PRACTICE* 54–57 (2006); see also SCHMITT, *supra* note 61 (defining the sovereign as “he who decides on the exception”).

<sup>136</sup> International Covenant on Civil and Political Rights art. 4, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>137</sup> U.N. OFF. ON DRUGS & CRIME, *Module 7: Counter-Terrorism and Situations of Public Emergency: Derogation During Public Emergency*, E4J UNIV. MODULE SERIES, <https://www.unodc.org/e4j/en/terrorism/module-7/key-issues/derogation-during-public-emergency.html> [<https://perma.cc/39WF-JLUY>] (last visited Apr. 1, 2026).

<sup>138</sup> Armitage, *supra* note 58, at 27.

<sup>139</sup> GROSS & AOLÁIN, *supra* note 135, at 5, 8–9, 20–21.

<sup>140</sup> Horst Bredekamp, *From Walter Benjamin to Carl Schmitt, via Thomas Hobbes*, 25 *CRITICAL INQUIRY* 247, 247–52 (Melissa Thorson Hause & Jackson Bond trans., 1999).

<sup>141</sup> *Id.* at 252.

<sup>142</sup> GIORGIO AGAMBEN, *STATE OF EXCEPTION* 13, 15 (Kevin Attell trans., 2005) (2003).

or redesigned itself. The legal framework must acknowledge that the principles that currently guide emergency and recovery in international law are insufficient to address the circumstances of SIDS. For example, the *Draft Articles on the protection of persons in the event of disaster*<sup>143</sup> are developed on the premise that recovery is possible and puts an extraordinary burden on the State itself to recover. The *Draft Articles* set forth rules concerning “termination of external assistance”.<sup>144</sup> Article 17 states that “[t]he affected State, the assisting State, the United Nations, or other assisting actor may terminate external assistance at any time.”<sup>145</sup> The commentary on the *Draft Articles*, however, illustrates that these rules imply “that a transit State will likely take the necessary measures, within its national law, to ensure an effective provision of external assistance.”<sup>146</sup> This puts an additional burden on the suffering State, confirming that if it does not recover, it has failed to secure the external assistance that it needed to recover. This burden emerges from an inherent challenge of the current understanding of recovery, which is embedded in an implicit endpoint.<sup>147</sup> This means recovery should emerge from a “deficit model”, placing responsibility on those who are taking more time to recover or have not recovered yet.<sup>148</sup> This is a systemic challenge that shifts the blame from root causes driving disasters to communities that are recovering.<sup>149</sup> We can find similar language in the *Introduction to the Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance*.<sup>150</sup> These guidelines state that most governments are not prepared to receive international assistance, and due to this, they suffer and do not receive quality or coordinated assistance.<sup>151</sup> The international legal frameworks on disasters need to address capacity and preparedness building so that States can first ask for what they really need during the recovery phase. Additionally, the States and communities need preparedness so that they are not ashamed of or feel burdened by asking for more when they are in the vicious cycle of DRD.

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<sup>143</sup> Report of the International Law Commission to the General Assembly, U.N. Doc. A/71/10, arts. 4–5 (2016), reprinted in [2016] Int’l L. Comm’n vol. II, pt. II.

<sup>144</sup> *Id.* at art. 44.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at arts. 40–41.

<sup>147</sup> Longman et al., *supra* note 26.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> INT’L FED’N OF RED CROSS & RED CRESCENT SOC’YS, INTRODUCTION TO THE GUIDELINES FOR THE DOMESTIC FACILITATION AND REGULATION OF INTERNATIONAL DISASTER RELIEF AND INITIAL RECOVERY ASSISTANCE 5 (2017).

<sup>151</sup> *Id.*

This would come about by reimagining the laws, not by holding the State in a vicious cycle of responsibility for its own recovery. Reimagining laws would allow a more collective approach, especially for States like Vanuatu and Fiji, which are constantly seeking more international support. Grenada has also pleaded before the ICJ that it needs protection through the international legal framework.<sup>152</sup>

Second, there needs to be a deeper understanding of the interplay of human rights and the circumstances of SIDS. The *Draft Articles* consist of specific human rights within them.<sup>153</sup> For example, Article 4 states that “[t]he inherent dignity of the human person shall be respected and protected in the event of disasters.”<sup>154</sup> It is one of the core principles of human rights law,<sup>155</sup> and its inclusion in disaster law makes it the core human rights principle of disaster law. This principle is enunciated by the General Assembly through its resolution 45/100.<sup>156</sup> If the victims of disasters or emergency situations are abandoned without humanitarian assistance, it is a “threat to human life and an offence to human dignity.”<sup>157</sup> Grenada has highlighted that the current financial institutions have an administrative system which delays financial assistance to countries like Grenada.<sup>158</sup> This is equivalent to abandoning Grenada and its people, who are victims of climate disasters, and should be considered a violation of the right to life and right to human dignity. After all, the *Draft Articles* are clear that “[p]ersons affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law.”<sup>159</sup> In addition to protecting the human rights of people affected by the disaster, there are interlinkages between disaster, recovery, and migration that require protecting people on the move while recovering or with an aim to recover.<sup>160</sup> With migration or planned relocation, the legal frameworks need to take into account that recovery might not end once people have moved. One of the communities in India, that was relocated in the 1980s and 1990s, from a sinking island in India

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<sup>152</sup> Obligations of States in Respect of Climate Change, I.C.J. Doc. CR 2024/40, at 168 ¶¶ 12, 70 ¶¶ 12–13, 72 ¶ 20, 73 ¶¶ 26–27, 75.

<sup>153</sup> U.N. Doc. A/71/10, *supra* note 143, at arts. 4–5.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at art. 11.

<sup>156</sup> G.A. Res. 45/100, Humanitarian Assistance to Victims of Natural Disasters and Similar Emergency Situations (Dec. 14, 1990).

<sup>157</sup> *Id.*

<sup>158</sup> Obligations of States in Respect of Climate Change, I.C.J. Doc. CR 2024/40, at 168 ¶¶ 12, 70 ¶¶ 12–13, 72 ¶ 20, 73 ¶¶ 26–27, 75.

<sup>159</sup> U.N. Doc A/71/10, *supra* note 143, at art. 5.

<sup>160</sup> *Id.* at 13.

to another island that is sinking today, is experiencing double vulnerability and never-ending recovery.<sup>161</sup> Therefore, the law needs to take this into consideration, and this cannot happen until the human rights are looked into, keeping in mind the vicious cycle of DRD for SIDS.

Finally, the existing law governing the financial mechanism needs to support SIDS rather than exploit them. It is clear from the submissions of SIDS before the ICJ that the current financial mechanisms are ineffective in supporting the constant state of emergency and recovery of SIDS, pushing them into the vicious cycle of DRD.<sup>162</sup> The current legal framework, for example, pushes for higher interest rates for countries at higher risk, facilitating the continuation of the vicious cycle.<sup>163</sup>

In the past, however, international law has applied exceptionalism to States like St. Lucia, taking into account their state of emergency. For example, in response to the 2010 hurricane in St. Lucia, the International Monetary Fund (IMF) gave a zero-interest loan to the nation.<sup>164</sup> According to the legal framework, she did not qualify for the eligibility threshold for a loan like this under the IMF rules; however, a microstate exception was applied.<sup>165</sup> This means that although it took longer for the IMF to process this loan, because of the rules on exceptions' applications and interpretation, it still applied the exception in exceptional circumstances. I do not want to applaud the international financial mechanism for giving St. Lucia a zero-interest loan, because the exception should have been a loan that was not only interest-free but also forgivable if St. Lucia's circumstances do not improve. This is an exceptionalism required to emerge as a legal framework for SIDS affected by the vicious cycle of DRD.

During the ICJ advisory proceedings on climate change, several participants submitted that international financial mechanisms could consider "debt relief" for developing States, particularly affected by climate change.<sup>166</sup> The Court acknowledged this request;<sup>167</sup> however, it did not make any specific legal pronouncement on it.<sup>168</sup> The ICJ, rather, left it as

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<sup>161</sup> Chhaya Bhardwaj, *Protection of people displaced from India's sinking islands: a human rights perspective*, 7 JINDAL J. PUB. POL'Y 35, 35–45 (2023) (draft copy on file with author).

<sup>162</sup> Obligations of States in Respect of Climate Change, ICJ Doc. CR 2024/40 (statements of States noting that existing efforts fail to remedy the cycle of climate-induced debt and disaster recovery).

<sup>163</sup> Mycoo et al., *supra* note 5, at 2088–89.

<sup>164</sup> HOOK, *supra* note 82, at 27.

<sup>165</sup> *Id.*

<sup>166</sup> Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. 187, *supra* note 1, ¶ 262.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* ¶¶ 263–65.

an issue of cooperation between the States, for the States to resolve. The SIDS had requested the ICJ to take into consideration the fact that they are “specially affected” by climate change.<sup>169</sup> The ICJ did not delve into the “specially affected” status of SIDS and reasoned that the existing rules of international law “do[es] not differ depending on the category or status of an injured State.”<sup>170</sup>

Furthermore, the Court stated that even the “specially affected” States “are in principle entitled to the same remedies as other injured States”.<sup>171</sup> In practice, this has not been the case in practice within the international legal framework. For example, exceptionalism rules were applied in the case of St. Lucia, when the IMF and other States could agree that she qualified as a State where the exceptionalism can be justified.<sup>172</sup>

The ICJ could have used the advisory opinion as an opportunity to at least list the reliefs that SIDS could use to protect themselves. Even after the climate advisory, the SIDS are burdened by the lack of rules or norms in international law that can understand their circumstance of living in a vicious cycle. For example, Antigua and Barbuda recommended a Debt Swap Program.<sup>173</sup> In the past, programs like the Seychelles Debt Swap for Conservation and Climate Adaptation<sup>174</sup> have been implemented with an aim to provide relief to the island nations. The argument here is that there are legal frameworks in place that become more dominant in international law and practice for SIDS in a vicious cycle, providing equitable justice for their special status in the adversities of climate change. The ICJ could have enunciated these principles or norms, however, it chose not to.

## CONCLUSION

The foundations of the theoretical and legal framework on emergency and recovery that follows are becoming visibly hollow for the

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<sup>169</sup> G.A. Res. 77/276, Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change (Mar. 29, 2023).

<sup>170</sup> Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. 187, *supra* note 1, ¶ 109.

<sup>171</sup> *Id.*

<sup>172</sup> HOOK, *supra* note 82, at 27.

<sup>173</sup> Written Statement of Antigua and Barbuda, OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE ¶¶ 489–94 (Mar. 22, 2024).

<sup>174</sup> HOOK, *supra* note 82, at Case 3 (This program was “administered through the Seychelles Conservation and Climate adaptation Trust (SeyCCAT). This is a local independent trust established under Seychelles legislation, bringing financial efficiency, transparency, and accountability and at the same time building synergies between fisheries management, marine conservation, and climate resilience.”).

circumstances of SIDS. These foundations can be strengthened and filled with discussions on the ground realities of SIDS and the communities on the front line of climate change. The starting point of filling up the foundations should be to accept that SIDS may be stuck in a constant state of disaster and recovery, because climate change is irreversible<sup>175</sup> as we continue to emit GHGs. This means accepting that the SIDS may never be able to recover. Once this foundation sets in, the countries then need to look into what is in between the constant state of emergency and the constant state of recovery. For each SIDS, there will be some form of a vicious cycle of DRD, with different elements of financial, legal, political and socio-cultural realities. To look at these realities from a neutral and factual perspective, the international community will have to start with debunking the theoretical and legal narratives on recovery, emergency, financial mechanisms, governance mechanisms, etc.

Once the foundations are strengthened, the frameworks can be directed for the betterment of SIDS while they live in the vicious cycle of DRD. For some SIDS, the vicious cycle has either already become a normal way of life or will, in the near future, become normal. Due to this, the traditional human development, the traditional democratic method of governance, and the model of international financing will not be adequate for these nations. From a disability theory perspective, the SIDS may not be normal able-bodied nations, but nations that have unique circumstances and may depend on collective global effort, or a specific institutionally guaranteed effort.

This can in turn allow the policy and decision makers to develop concrete and comprehensive legal frameworks that cover the exceptional circumstances of SIDS and consist of remedies that are proportionate and necessary to their circumstances. The provisions of these legal frameworks could look like debt forgiveness clauses, zero-interest clauses, grants in lieu of loans, fast-track grants within 48 hours of disasters, pre-approved grants for SIDS with foreseeable climate extremes, and clauses that add proportionate finance for every second of delay for financial assistance to SIDS.

These conclusions and recommendations are merely suggestive, and may be characterized as ambitious. However, they only touch the tip of an unexplored iceberg. The international community can develop better legal frameworks to support SIDS as they battle the vicious cycle of DRD.

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<sup>175</sup> Commission of Small Island States on Climate Change and International Law, Request for Advisory Opinion, ITLOS Rep. No. 31 ¶¶ 243, 399 (May 21, 2024).