‘Vanishing Yams’

A Food Microhistory in the *Climate Change* Advisory Opinion

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इतिहास देते साक्षी वारली कधी भी भुकेनं मेला नाही
‘History is witness; the Warli has never died of hunger’
Swadeshi ft. Prakash Bhoir, ‘The Warli Revolt’[1]

I. Introduction

The nature of a ‘landmark’ decision is that it creates a narrative ‘before’ and ‘after’. This is as true for the Climate Change Advisory Opinion as for any of the ICJ’s previous ‘historic’ rulings. Indeed, in its concluding remarks, the Court acknowledges the unprecedented nature of these advisory proceedings. However, it hastens to outline the limited role international law plays in resolving this ‘existential problem of planetary proportions.’[2]. The reader is encouraged to be circumspect about the role of the Court; she is reminded that a quest for a ‘lasting and satisfactory solution’ to this ‘daunting, self-inflicted’ problem needs the ‘contribution of all fields of human knowledge’ along with ‘human will and wisdom.’[3]

This Opinion is an event that makes the quest for climate justice more hopeful, more ambitious[4]- and all the more challenging. This is particularly the case for small island developing States, who did much of the heavy

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1 Available at: https://www.youtube.com/watch?v=sYADNgIkelY (translation from Marathi to English is my own).

2 ICJ, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 456.

3 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), para. 456.

4 Sera Sefeti, ‘”We were heard”: the Pacific students who took their climate fight to the ICJ – and won’, The Guardian, 25 July 2025, avalable at https://www.theguardian.com/world/2025/jul/25/pacific-students-who-won-climate-case-icj-international-court-of-justice-hague.

lifting[5] in the advocacy efforts leading up to the proceedings and who remain the most vulnerable to the ravages of climate change. But there is one monumental contribution on their part that may be overlooked: an archive of narrated microhistories[6] in the corpus of the ICJ.

II. Small Island States and Personal Narratives in the ICJ

Narration is central to legal discourse.[7] The law recognises and puts limits on its own narrativity by imposing rules about the kind of narration permitted in the courtroom – what can be said, and by whom. For example, international human rights law and international criminal law explicitly recognise the individual as a subject under their frameworks,[8] making the first-person voice and the recounting of personal histories legally significant narrative techniques. However, the ICJ has been limited in this regard by its jurisdictional mandate[9] and retains the largest share of 'main character energy' for States.

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5 Bernadette Carreon, 'Vanuatu to seek international court opinion on climate change rights', The Guardian, 26 September 2023, available at: https://www.theguardian.com/world/2021/sep/26/vanuatu-to-seek-international-court-opinion-on-climate-change-rights.

6 Isabella Kaminski, '"A human face on an abstract problem": ICJ forced to listen to climate victims', The Guardian, 11 December 2024, available at: https://www.theguardian.com/law/2024/dec/11/international-court-of-justice-icj-forced-to-listen-to-climate-victims.

7 See for example Peter Brooks, 'The Law as Narrative and Rhetoric', in: Peter Brooks and Paul Gewirtz (eds), *Law's Stories: Narrative and Rhetoric in the Law* (Yale University Press 1996), 14–22; See also Robert Cover, 'Nomos and Narrative', Harv. L. Rev. 97 (1983), 4–68; Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge University Press 1995). For more contemporary work, see for example Andrew Benjamin Bricker, 'Is Narrative Essential to the Law? Precedent, Case Law and Judicial Emplotment', LAW CULT HUMANIT (2016), 1–19; Jerome Bruner, 'Narrative and Law: How They Need Each Other', in: Brian Schiff, A. Elizabeth McKim and Sylvie Patron (eds), *Life and Narrative: The Risks and Responsibilities of Storying Experience* (Oxford University Press 2017), 3–10.

8 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR) of 4 November 1950, 213 UNTS 221, Arts 34–35; American Convention on Human Rights (ACHR) of 22 November 1969, 1144 UNTS 123, Art 3. Rome Statute of the International Criminal Court (Rome Statute) of 17 July 1998, 2187 UNTS 90, preamble and Art 25.

9 Article 34 ICJ-Statute. See also Court's characterisation of itself in ICJ, *Obligations of States in Respect of Climate Change* (n. 2), para. 456.

It is remarkable, therefore, that small island States have long been pioneers in using singular personal narratives before the ICJ[10]. Notably, in the *Nuclear Weapons* Advisory Opinion (hereafter *Nuclear Weapons)*,[11] Marshall Islander Lijong Eknilang participated in the oral proceedings, recounting the horrific effects of the Castle Bravo nuclear tests on the Rongelap Atoll.[12] She recalled that it was the first time the islanders had seen snow- a sense of wonder quickly effaced, as they realised the 'snow' was radioactive fallout. She recounted how arrowroot and makmok (tapioca) plants had stopped bearing fruit, and how those that grew caused blisters in mouths and on lips: *'our staple foods had never made us ill before*.'[13] She described how Marshallese women '*suffer silently and differently*': frequent miscarriages, and the births of what she called 'monster babies,' buried in secrecy and shame.

Eknilang stated that her purpose before the Court was to prove that these effects were not abstract predictions, but the concrete everyday lives of Marshall Islanders[14]. Her statement finds no mention in the main text of *Nuclear Weapons*, even as the Court recognises that 'the environment is not an abstraction.'[15] Her story remains lodged in the *Nuclear Weapons* archive, a small yet indelible fragment in the collective cultural memory of international law.

In the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (hereafter *Chagos*),[16] Liseby Elyse recounted before the Court her exile from the island. She described how the islanders, having always had access to fresh food, were plunged into a state of hunger and precarity after they were summarily ordered to leave. '*Afterwards, the ships which used to bring food stopped coming. We had nothing to eat. No*

10 See Lilian Robb and Vishal Prasad, 'Both a 'Global' and an 'International' Court of Justice', in this volume.

11 ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ Rep. 226, para. 29.

12 Statement by Lijong Eknilang, *Nuclear Weapons* (n. 11) Verbatim Record CR 95/34, 19 October 1995, 45–46.

13 Statement by Lijong Eknilang (n. 12).

14 Statement by Lijong Eknilang (n. 12).

15 ICJ, *Nuclear Weapons* (n. 11), para. 29.

16 ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*. Advisory Opinion of 25 February 2019, ICJ Rep., 95.

medicine. Nothing at all.'[17] In the written submissions of Mauritius, she stated that for approximately six months, they had no rice, flour, oil, or milk.[18] On the ship they were made to board to leave the island, they '*were like animals and slaves. People were dying of sadness on that ship*.'[19] She was pregnant at the time; her child was born after her exile, and only lived a few days.[20]

Philippe Sands, counsel for Mauritius, clarifies that the words of Madame Elyse were not offered as testimonial evidence, but 'simply as a member of the delegation of Mauritius.'[21] This is an interesting, and deliberate, distinction to make. The Mauritian delegation included her statement despite knowing that it did not carry much weight before the Court from the formal point of view. In doing so, they transformed what could not count as evidence into something arguably more powerful: a symbolic act of presence within the Court's record. Although the Court summarised the history of the displacement of the Chagossian people in Part III of the Opinion, the personal narratives presented before it did not form part of this historicisation. Like Eknilang's statement in *Nuclear Weapons*, Elyse's personal story becomes a fragment that lodges itself into the Court's State-centric grammar.

Small island States have used such fragments adeptly before the ICJ to give concrete, affective dimensions to international law's legal categories. Their contributions in the *Climate Change* Advisory Opinion, including the personal narratives of marginalised communities,[22] enrich this epistemic vein even as they (still) do not form part of the Court's formal reasoning.[23] Placed alongside the personal narratives in previous advisory opinions, the submissions of small island States in *Climate Change* form part of the

17 ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in* 1965 (n. 16), Oral Proceedings, Verbatim Record CR 2018/20, 3 September 2018, 74–75.

18 Written Comments of the Republic of Mauritius, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in* 1965 (n. 16), para 4.114 (this paragraph also contains personal narratives by four other Chagossians who were all present in the Peace Palace for the oral proceedings).

19 ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in* 1965 (n. 16), Oral Proceedings, Verbatim Record CR 2018/20, 3 September 2018, 74–75.

20 Oral Proceedings, *Chagos* (n. 19).

21 Oral Proceedings, *Chagos* (n. 19), 72.

22 Isabella Kaminski (n. 6).

23 Separate Opinion of Judge Charlesworth, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, paras. 13–29 for an exception.

emerging archive of microhistories at the ICJ. Each offers a glimpse of lived experience- radioactive fallout, exile, miscarriages, the loss of staple food- and each in turn is woven into the Opinions' corpus without forming explicit part of its reasoning.

In this chapter, I foreground one such narrative, a 'microhistory' in Vanuatu's extraordinary 736-page *Book of Exhibits*, which is absent from the main Advisory Opinion yet has the narrative tools to fill its gaps and throw its limits into relief: the vanishing yam.[24] The vanishing yam of Yakel, stands in continuity with earlier voices, part of a longer story of how small island States have used personal narrative to make the Court's archive speak beyond its main Opinion.

III. The Microhistory of the Vanishing Yam

Microhistory, as a historical method, examines the everyday lives of previously overlooked subjects to gain insight into larger-scale global events and processes.[25] It analyses 'primary documents'- letters, personal accounts etc. – and maps them onto larger structures of history to capture what they might miss, and to add marginalised voices to the 'grand narrative.'

Nothing demonstrates this as clearly as the motif of the vanishing yam in Yakel Village, Tanna, Vanuatu (Exhibits F-N in Vanuatu's *Book of Exhibits*).[26] This set of documents narrates the history of how the yam vanished in Yakel through nine personal testimonies. Read together, they give us the rich and complex story of how the loss of the yam struck an unimaginable blow to their everyday lives.[27]

Through these testimonies, we find out that Yakel is a Kastom village. It lives by the old ways. The yam, or *Neok*, is integral to Kastom ceremonies and occupies a special place in the political, socio-economic, and cultural

24 Written Submissions of the Republic of Vanuatu, '*Book of Exhibits*,' Exhibits F–N (*Book of Exhibits*), *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, submitted by Republic of Vanuatu 21 March 2024.

25 Carlo Ginzburg, 'Microhistory: Two or Three Things That I Know about It', Crit. Inq. 20 (1993), 10–35, 12.

26 *Book of Exhibits* (n. 24).

27 In this section, I attempt to follow closely the phrasing and cadence of the testimonies contained in Vanuatu's *Book of Exhibits*. The descriptive sentences are drawn from the testimonies themselves, and should therefore be read as paraphrases or condensations thereof. They are not ethnographic interpretations. I have indicated the exact exhibits as often as possible.

life of this community. It is the subject of origin stories, cautionary tales, and myths in a way that is entangled with agricultural practices, food habits, social norms, and economic structures.

We also learn that *Kalbapeng*, a God from the mountains, made the yam. We are told the story of the Yam Spirit and the Taro Spirit, of how the Yam came to be king of crops in Tanna because He stayed, while His wife Taro and the other crops went to the Americas. We learn that Wildcane is the Chief of the Yam because the two plants always go together. Mangau Iokai is *Tupunis* of the yam in Yakel and has an ancestral spiritual connection to it that allows him to oversee the yam crop.[28] The yam is the primary offering in many Kastom ceremonies, which are inconceivable without it.

However, the testimonies agree that four years ago, *the yam vanished altogether*. After the cyclones (Pam, Kevin, Judy, La Nina, Harold, Lola), the erratic unseasonal rain made the yam crop shrink and die, along with wildcane and banana. Incidentally, Iokai has not tasted a banana since 2023. His connection to the Yam Spirit has been severed, leaving him heartbroken. Nine women in a collective statement[29] narrate how the food shortage and dangerous weather have disrupted social and familial harmony. *The yam has vanished entirely,* they repeat. They can no longer access yam for the ceremonies; this feels wrong, shameful, in ways they cannot explain.

The reefs are dead too, and so are the fish.[30] Yam can no longer be traded for fish with the coastal villages- alternative financial arrangements must be made.[31] The knowledge of the yam can no longer be passed on to the next generation. It will exist only in the past (Exhibit K).[32]

The microhistory of the yam in Yakel village is absent from the main Advisory Opinion. It might be more relevant before a human rights tribunal or a relevant treaty body, like the Court has implied.[33] However, it has a strategic role in this case that goes beyond being formally 'useful' information. It is a narrative singularity that can fill gaps in the law and demonstrate its epistemic limits.

28 *Book of Exhibits* (n. 24) Exhibit H.
29 *Book of Exhibits*, (n. 24) Exhibit I and Exhibit P.
30 *Book of Exhibits* (n. 24) Exhibit G.
31 *Book of Exhibits* (n. 24) Exhibits G and H.
32 *Book of Exhibits* (n. 24) Exhibit K.
33 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), para. 111.

IV. On the Deferred In Concreto *Assessment*

The narrative boundaries of Advisory Opinions are drawn by the Court's reading of the questions posed to it. While clarifying the scope of question (b), the Court has drawn such a boundary (Paras 101–111).[34] It does not speculate on questions of responsibility that, in its view, require an *in concreto* assessment.[35] The motif of the '*in concreto* assessment' comes up in the following observations of the Court:

(i) That international responsibility of a State/group of States requires an *in concreto* assessment, and that the Court is only called upon to establish in general the applicable legal framework of state responsibility[36]

(ii) That 'specially affected' or 'vulnerable' States are entitled to the same remedies as other injured States. Whether there are any specific legal consequences to any particular injured State would be a question for an *in concreto* assessment.[37]

(iii) That causal links between wrongful acts and omissions of a State and the damage arising from climate change, though tenuous, are not impossible to draw, but must be established through an *in concreto* assessment.[38]

(iv) That the forms of reparation may be difficult to determine in a climate change context and must be assessed on a case-by-case basis[39], but that once the general conditions of state responsibility, including

34 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), paras. 101–111. Question (b) is as follows: 'What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to: (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change? (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?'.

35 See Juan Auz, 'The Legal Consequences of Climate Harm: Complementarity Between the Advisory Opinions of the International Court of Justice and the Inter-American Court of Human Rights', in this volume.

36 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), paras. 106, 423.

37 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), para. 107.

38 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), para. 438.

39 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), paras. 449–454.

> a direct and certain causal nexus, are established, the injured State is entitled to 'full reparation.'[40]

Judge Nolte observes that the Court has 'not elaborated much' on the limits of climate change-related claims, leaving the deliberation of these limits to *in concreto* assessments. He cautions that this might lead to 'false expectations.'[41] The irony that the *in concreto* assessments take place in the abstract future is not lost on anyone. However, the vanishing yam enables us to map this abstract-future '*in concreto* assessment' onto the past and present landscape of Yakel village. The ravages of the cyclones, the disappearance of the yam, and the resulting hunger and heartbreak of the inhabitants of Yakel are as '*in concreto*' as it gets.

As such, the vanishing yam becomes a metonym for everything that the Court has deferred for '*in concreto*' assessments. It foreshadows the problems of 'concrete' assessments of state responsibility and reparations. Reading this microhistory makes us do the complex temporal-imaginative work of drawing the causal nexus between the worsening cyclones in Vanuatu, the disappearance of the yam, the resulting damage to the State of Vanuatu, and state responsibility.

IV. Vanishing Yams and the Tenuous (But Possible) Causal Nexus

The 'tenuous, but not impossible'[42] causal nexus is particularly interesting when read alongside the vanishing yam testimonies. State responsibility seems to hinge on the drawing of the causal nexus – an event[43] of injury, and the attribution of this injury to a breach of international obligations by a particular State or States. The narrativity[44] of state responsibility thus emerges from this causal nexus; this nexus is the *plot* that configures the

40 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), Operative Clause 4 (c).

41 Declaration of Judge Nolte, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 14.

42 ICJ, *Obligations of States in Respect of Climate Change* (n. 2) para. 438.

43 See Fleur Johns, Richard Joyce, and Sundhya Pahuja (eds), *Events: The Force of International Law* (Routledge, 2011) 1–3. Particularly evocative is their statement '… [i]nternational lawyers listen, above all, for the screech accompanying an event, when that hum seems to recede and reparation of one kind or another is urged…of the episodic, international law makes an everyday.'

44 For a deeper reading of narrativity, see generally Hayden White, 'The Value of Narrativity in the Representation of Reality', Crit. Inq. 7 (1980), 5–27.

events into an intelligible and meaningful whole. Paul Ricœurhas argued that it is emplotment that mediates between chronological sequences to form a coherent story in which the past, present, and future are held in relation.[45] Rooted in this causal nexus, therefore, is the notion of time.

The vanishing yam of Yakel offers us readings of time that push the boundaries of the 'causal nexus' beyond chronological cause and effect. It becomes a window to let these readings of time refigure the interpretive tools of climate change discourse, perhaps making it possible to adapt them to the diffuse temporality of climate change. In the following section, I reflect on how the vanishing yam as part of the textual corpus of the Opinion enriches the temporal imagination of the reader.

1. Reading Time in the Causal Nexus: The Precautionary Principle and Intergenerational Equity

Judge Charlesworth in her Separate Opinion suggests that the Court could have offered more guidelines on the dynamic between the obligation of prevention and the precautionary principle in the context of climate change. In doing so, she reads these concepts not only as legal doctrines but also as temporalities. She observes that prevention speaks to 'risk' while precaution speaks to 'uncertainty',[46] and that these two are in a temporal continuum with each other: 'it is possible for a certain conduct to be initially governed by the precautionary principle, and subsequently, as greater scientific certainty is gathered in connection with the conduct in question, for the obligation of prevention to apply.'[47] Although the Court acknowledges the precautionary principle as an important 'guiding principle for the interpretation and application of most directly relevant rules,'[48] it does not dwell on this continuum. Its statement that 'States should…not refrain from or delay taking actions of prevention in the face of scientific uncertainty' hints at the link but leaves it underdeveloped.

45 PaulRicœur, 'Narrative Time', *Crit. Inq.* 7 (1980), 169–190, 171. See also Hayden White (n. 44).

46 Separate Opinion of Judge Charlesworth, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 4.

47 Separate Opinion of Judge Charlesworth (n. 46), para. 6. While doing so, she cites International Law Association, Resolution 2/2014, 'Declaration of legal principles relating to climate change', Article 7B. 3 which also sets out this continuum between precaution and prevention.

48 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), para. 161.

Judge Charlesworth's opinion presses further. She stresses that although the high level of scientific certainty and consensus on scientific facts about climate change gestures towards the heightened scope of the obligation of prevention, the precautionary principle retains an underexplored but distinct scope of obligations. In her view, the Court ought to have offered some guidelines as to applying the precautionary principle in cases of scientific *uncertainty* in the context of climate change. Her suggestion is to look to ITLOS, which has drawn more directly on the precautionary principle to flesh out States' obligations to conduct environmental impact assessments as part of the general obligation of due diligence.[49]

Judge Charlesworth's framing of prevention and precaution as temporal postures (*initial* precaution as interpretive principle, *subsequent* prevention as obligation), juxtaposed with the vanishing yam, allows us to read time differently into the Advisory Opinion. The testimonies of the inhabitants of Yakel[50] fold together and open multiple readings of time. First, we read mythic time- the stories of Kalbapeng, of the Wildcane, and of the Yam Spirit and the Taro Spirit belong to a 'sacred' time that is made cyclically present through their community rituals.[51] Mythic time does not move forward; it is grounded in the present by returning, through periodic rituals, to the register of a timeless primordial beginning. Secondly, we read historical time- more familiar to us as international lawyers.[52] The cyclones with the oddly banal names (Pam, Kevin, Judy, Lola) that destroyed the yam harvests are 'events' arranged in a chronology of cause and effect. This

49 Separate Opinion of Judge Charlesworth (n. 46), para. 7, citing ITLOS, *Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024, case no. 31, paras. 353, 361.

50 See *Book of Exhibits* (n. 24) Exhibits F-N.

51 Mircea Eliade has called this *illud tempus* ('that time'), in which primordial events are re-enacted in ritual. He contrasts linear time (*profane* time) with cyclical time (*sacred* time) and argues that 'sacred time' is indefinitely recoverable and repeatable. It is an 'eternal mythical present that is periodically reintegrated by means of rites.' Mircea Eliade, *The Sacred and the Profane: The Nature of Religion*, trans. Willard R. Trask (Harcourt, Brace & World 1959), esp. 'Profane Duration and Sacred Time', 68–79.

52 See for example Thomas Kleinlein and Jean d'Aspremont, 'The Turn to Historiography in International Law: Limitations and New Horizons', J. History Int' l L. 27 (2025), 7-35. See also Anne Orford, *International Law and the Politics of History* (Cambridge University Press, 2021). For work specific to climate change, see for example Eliana Cusato, Progress and Linear Time: How to Rethink International Law to Account for Ecologically Precarious Presents?, Völkerrechtsblog, 19 September 2023.

is the time of the causal nexus, where the loss of the yam can be linked to climate change in the grammar of state responsibility. Thirdly, there is proleptic time, a 'flash forward' foreshadowing.[53] The knowledge of the yam will no longer be passed to future generations. There is a collective shame that ceremonies will never be the same. There is grief that children will never taste the yam of the past. This is the collective anticipation of loss, a future grief folded into the present.

PaulRicœur's account of narrative time clarifies what the vanishing yam adds to the precautionary principle that the Court in the main Opinion cannot. ForRicœur, time becomes human time only when it is narrated. The *plot* of a narrative gathers episodic succession into a configuration that holds past, present, and future in tension.[54] To explain briefly, narrative time always moves across three interwoven registers- repetition (the retrieval of foundational or mythic beginnings), extension (the historical chain of datable events), and anticipation (the sense of narrative closure that draws the story forward).[55] These are not distinct kinds of time but entangled layers of temporal experience in a narrative. Seen through this lens, the vanishing yam is not merely a chronicle of loss lodged into the margins of *Climate Change* Advisory Opinion dossier, but a *narrative configuration* in which mythic repetition, historical extension, and proleptic anticipation coexist. The inhabitants of Yakel narrate a story that synthesises the temporal modes that the Court's mandate cannot accommodate.

At the center ofRicœur's framework lies the idea of care.[56] He argues that to exist in time is to *care*, to act within a web of inheritances and possibilities that bind us to what has been and what may come.[57] Care here does not mean sentiment or benevolence, but involvement. It is the unity of remembering, acting, and anticipating that makes time meaningful. Narrative gives this care a discernible form. It gathers what is remembered, done, and hoped for into a structure that can be inhabited. In the personal narratives that form the microhistory of the vanishing yam, the people of Yakel live this temporality of care through cultivation and ritual; their land and soil itself become a medium of remembrance and foresight.

53 Ricœur(n. 45), 182.
54 Ricœur (n. 45), 171.
55 Ricœur (n. 45), 182.
56 Ricœur (n. 45), 171.
57 Ricœur (n. 45), 171.

The precautionary principle is a notion broadly conceived. As a general 'interpretive principle' of applicable rules on climate change, it can be read more generously than the 'obligation' of prevention but does not have the latter's teeth. As part of the 'general obligation of due diligence,'[58] it remains shaped by impact assessments and scientific projections of risk. However, the precautionary principle as a *temporal gesture* (as noted by Judge Charlesworth) is greatly enriched by multiple understandings of time when read with the vanishing yam. The narrative of the vanishing yam allows precaution to be emplotted as *care*- a temporality of attention, tending, and preservation rather than risk assessment and calculation.

This can also be read into the Court's engagement with intergenerational equity. The Advisory Opinion also treats intergenerational equity as an interpretive principle- a 'manifestation of equity in the general sense' to be read alongside sustainable development and precaution in giving effect to States' climate obligations.[59] The word 'intergenerational' indicates a role in the emplotment of climate change narratives; as a temporal gesture, it converges the past, present, and future into a coherent narrative as theorised byRicœur. The Court does not read much into the principle of intergenerational equity,[60] perhaps because of its State-centric mandate. The vanishing yam offers that missing embodiment. In its emplotment of mythic, historical, and proleptic time, the yam performs the very work that intergenerational equity names but cannot perform in this Opinion. It gives the principle a narrativity rooted in lived experience. In this sense, the vanishing yam transforms intergenerational equity from an interpretive principle into a lived practice of temporal care, an enactment of continuity that international law recognises but cannot itself perform.

InRicœur's terms, the vanishing yam performs the configuration that the Advisory Opinion cannot. It allows us to read both precaution and intergenerational equity as interpretive principles with a rich, multi-layered *temporal imagination*, one that keeps the future and the past co-present. These principles, as narrated through the vanishing yams of Yakel, are not only about *acting under uncertainty* but about *inhabiting uncertainty*

58 ITLOS, *Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 49), paras. 353 and 361.

59 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), para. 146.

60 This contrasts with the Inter-American Court of Human Rights. IACtHR, *Advisory Opinion on Climate Emergency and Human Rights*, 29 May 2025, AO-32/25. See Ignacio Vásquez Torreblanca, 'Not Only Humans, Not Only the Present – The Leap Toward Intergenerational Justice', Opinio Juris, 2 October 2025.

as a form of care. It discloses that the task international law attributes to the precautionary principle, acting before full knowledge, is already being actively sought through the simple presence of the vanishing yam in the Court's corpus. The story of the Yam Spirit is already a cautionary tale in Vanuatu's folklore.[61] When annexed in the Advisory Opinion, the vanishing yam becomes another kind of spirit, the trace of a *precautionary* tale. It signals to international legal discourse that there are temporalities beyond its grammar, and that these other temporalities may already embody the ethical stance that law seeks but cannot yet perform.

It must be noted here that I do not critique the linear temporality of international law's progress narratives in this piece; a significant body of scholarship already makes this argument convincingly.[62] My attempt is to highlight, rather, how reading the vanishing yam into the Opinion can contribute to refiguring this linearity; it does not yield to a tidy chronology, but presents a palimpsest of mythic, historical, and proleptic time. It also demonstrates the entanglement of time with *space* by showing that a people's lived experience of time is inseparable from their connection with land and biodiversity,[63]

61 *Book of Exhibits* (n. 24) Exhibits F–N (for personal testimonies from Yakel on yam cosmology and ceremonies). See also the explanatory note by the authors where they mention the cautionary tale.

62 See for example Jean d'Aspremont, 'Critical Histories of International Law and the Repression of Disciplinary Imagination', Lond. Rev. Int. Law 7 (2019), 89–115; Eliana Cusato, 'Against temporal abstractions: the battle for colonial and climate reparations in international law,' Int. J.L.C. (2025), 281–299; Damien Cueni and Matthieu Queloz, 'Theorising the Normative Significance of Critical Histories for International Law,' J. History Int' l L. 24 (2022), 561–587; Valentina Vadi, 'International Law and its Histories: Methodological Risks and Opportunities,' Harv. Int'l. L.J. 58 (2017), 311–353. For time and decoloniality, see Katharina Hunfeld, 'The Coloniality of Time in the Global Justice Debate: Decentering Western Linear Temporality', Globalizations 19 (2022), 1–18; For general critique on the progress narrative and international law as a history of events, see Thomas Skouteris**,** *The Notion of Progress in International Law Discourse* (TMC Asser Press 2010), and Nathaniel Berman, *Passion and Ambivalence: Colonialism, Nationalism and International Law* (Martinus Nijhoff Publishers 2011).

63 On the entanglement of nature, time, and ontology, see Anne Salmond, 'Ontological pluralism and the politics of nature, Cult. Anthropol. 29 (2014), 623–637.

2. Reading Time in the Causal Nexus: Reparations

Precaution and intergenerational equity, read through the vanishing yams, name an ethic of continuity and anticipation in reading the Advisory Opinion. Reparations, the last element in the 'causal nexus' of the deferred *in concreto* assessment, names international law's demand for narrative closure. The braiding of temporalities in the story of the vanished yams now meets the hard edge of doctrine – operative clause 4(c) and its promise of 'full reparations' to future injured States. What happens when a harm emplotted as cumulative and diffuse is asked to settle into the grammar of attribution and remedy? Put differently, what becomes of the reparations regime when the 'event' of harm is not a single moment in the past?[64] The narrative of *care* presses on the juridical register of *repair*. Can a reparations framework built for discrete injury receive a loss that arrives as attrition, recurrence, and proleptic grief?

The Opinion affirms that an injured State is entitled to 'full reparation' once the general conditions of responsibility are met (attribution and the breach of an international obligation) and is quick to specify that 'specially affected' or 'vulnerable' States are subject to the same remedies as 'other injured States'. The general conditions of responsibility include a 'direct and certain causal nexus' between the injury and an internationally wrongful act attributed to a particular State or group of States. It states that this nexus, though 'tenuous,' is not impossible to draw scientifically in the context of climate change.[65] It even goes so far as to concede that the forms of reparation are hard to imagine in climate-related cases but insists that they are not excluded altogether. Reparations, along with state responsibility, are to be decided case-by-case through future *in concreto* assessments.

In the Court's narrative, this seems to make sense. There cannot be reparations without a specific injury to curate them for. The reparations regime in operative clause 4 (c) returns us to the juridical demand for narrative closure; it is telling that the Court brings it up at the very end of the Advisory Opinion. Reparations are the law's narrative devices for ending a particular story of state responsibility. They presume an identifiable event, a coherent linear plot, and finally a restoration of equilibrium (in narrative terms, even if this may not always translate into material

64 Eliana Cusato engages with these questions in detail. My analysis on reparations attempts to add a narratological element to her prolific work on climate change and time. See Cusato (n. 52), and Cusato (n. 62).

65 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), para. 438.

reality). By deferring the matter of reparations to case-by-case assessments in the future, the Court both insists on reparation as narrative closure and distances itself from this closure in the present Opinion. It gestures towards an achievable, if challenging, closure and in the same breath defers this closure to a future case; it cannot be *this* Opinion that provides it. Once again, it limits itself both in terms of its mandate in advisory opinions, and its reading of the questions posed to it.

There is a significant amount of scholarship on intangible harm and reparations in scholarship on cultural heritage and international law; it is not my attempt here to draw from or add to this exceptional and convincing vein of work.[66] My reflection here is based on how reparations are emplotted in a narrative of state responsibility, and whether this emplotment works for climate harm. There are two narrative dimensions to be considered here. The first is that of the 'event' and its attribution,[67] and the second is that of the tension between reparations as closure and the diffuse and continuing temporality of climate harm.

Attribution requires, at the very least, an event that can be traced to a certain State or States. But what, here, is the 'event'? In the testimonies from Yakel, the vanishing yam is not a single moment of rupture but an accumulation of storms (the recurring motifs of Pam, Judy, Kevin, Harold, Lola) that destroyed crops and coral reefs in an erratic and lateral timeline. The vanishing yam resists being emplotted as an 'event' leading to a seamless attribution of responsibility to specific States. It becomes, once again, a metonym for the diffuse, cumulative, and fragmented time-space of climate harm.

This difficulty of speculating and adjudicating around an 'event' in the abstract recalls *Nuclear Weapons*. There, too, the Court was asked to imagine state responsibility for a catastrophe that had not yet occurred,[68] and stopped itself from doing so even as it left a window open for an absurd situation in which the legitimacy of 'self-defence if the very survival of a

66 See for example Ana Filipa Vrdoljak, *International Law, Museums and the Return of Cultural Objects* (Cambridge University Press 2006); Francesco Lenzerini, 'Intangible Cultural Heritage: The Living Culture of Peoples', EJIL 22 (2011), 101–120; Philippe Sands and Ashrutha Rai, 'After the Dust Settles: Transitional Justice and Identity in the Aftermath of Cultural Destruction', in: James Cuno and Thomas G. Weiss (eds), *Cultural Heritage and Mass Atrocities* (Getty Publications 2022), 357–372.

67 Johns, Joyce, and Pahuja (n. 43).

68 Derrida calls this a 'non-event'. See Jacques Derrida, 'No Apocalypse, Not Now (Full Speed Ahead, Seven Missiles, Seven Missives)' Diacritics 14 (1984) 2, 20–31.

State is at stake' would be confirmed in a concrete judicial assessment in a future ridden with the fallout of a nuclear war.[69] Yet, though *Nuclear Weapons* already demonstrates this absurdity, there is an important distinction to be made here with the present Opinion that complicates the matter further: attributability. The wrongfulness of a future nuclear war in terms of survival-based self-defence was still eminently attributable in a future contentious case, hence subject to closure in the grammar of reparations. Although *Climate Change* also envisages future 'events' that would eventually be subject to *in concreto* assessments, the event of climate harm is everywhere and nowhere at once. It is an event without eventfulness. The vanishing yam does not vanish in a single blast followed by radioactive fallout, but in the attritional churn of seasons, erratic rainfall, and violent cyclones.[70] It resists the attributional closure that the Court's reparations framework presupposes.

This resistance disrupts the framing of the 'injured State' that the Opinion links to the reparations regime. The classic model of reparation assumes an injured State and an injuring State, a subject and an object, with the harm between them bridged by causal nexus. The vanishing yam testimony does not fit this template. For example, the nine women who mourn the absence of yam in ceremonies are not 'victims' in the sense that the reparations regime (as expressed in the Opinion) can articulate.[71] The harm they suffer is not episodic or quantifiable; it is not reducible to calories lost or income foregone. It is an affective rupture of ritual, a severing of ancestral bonds, a shame they 'cannot explain.' In the story of the vanishing yam, it is hard to code the narrative symmetry between act and consequence.

In this context, the vanishing yam marks a tension between international law and the lived experience of climate harm. The Court's schema of restitution, compensation, and satisfaction depends on a story with identifiable actors, a definable act, and a reparable end. The vanishing yam refuses this closure. Restitution is impossible; no cyclone can be undone, no crop restored. Compensation collapses into absurdity; the notion that any currency could measure the broken tie between Mangau Iokai and the Yam Spirit is a little baffling to wrap one's head around.[72] This also has a

69 ICJ, *Nuclear Weapons* (n. 11), para. 105 (1) (E).
70 See generally Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard University Press, 2011) on the attritional lethality of environmental crises.
71 *Book of Exhibits* (n. 24), Exhibit I.
72 *Book of Exhibits* (n. 24), Exhibit H.

cynical air reminiscent of compensation's colonial logic, the belief that all loss can be rendered legible through the currencies of the 'most responsible States'.[73] An attempt to 'price' loss like this reinscribes the same extractive logic that made the loss possible in the first place. Satisfaction, extended to encompass symbolic or moral repair, might be even more absurd and cynical. A memorial or apology cannot return yam to the everyday life of Yakel.

The reparations regime falls flat in the face of the complex, multi-layered personal narratives brought forth by Vanuatu's *Book of Exhibits*. The yam thus becomes a narrative marker of something that cannot be repaired. Its very presence in the archive is a reminder that some harms remain beyond the reparations framework, not only because they are 'unreal' or 'intangible' but because they do not conform to the narrative grammar of causality and closure that the reparations regime requires. The Court's deferral to future *in concreto* assessments is less a promise than an acknowledgement that it has reached the edge of what it can say.

In this sense, the yam does double work. It exposes the structural limits of the reparations regime by unraveling its reliance on discrete events, causal certainty, and an injured-injuring framing. It also functions as a counter-narrative, one that insists on the presence of irreparable harm in the corpus of international law. The vanishing yam does not allow for closure through reparation. It lodges instead as a wound, reminding the reader that some stories cannot have closure, and that deferral to an *in concreto* assessment may be the Court's only way of naming this impossibility.

VI. The Epistemic Limits of the ICJ

In our reading of the *Climate Change* Advisory Opinion, the yam disappears twice. One is a narrated disappearance by the inhabitants of Yakel; we read of it in Vanuatu's *Book of Exhibits*. The second is a disappearance

73 See Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2004) on the colonial genealogy of valuation in international legal thought. See also Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011), arguing that the logic of compensation reiterates the developmentalist premise that all value can be rendered economic. On the moral economy of reparations and its limits, see Vasuki Nesiah, 'Reparations, Redemption and the Moral Economy of Law' (2006) 22 Constellations 10.

in the reading experience of the 'main text' of the Advisory Opinion; we read its absence into the Court's formal reasoning. The Court in its advisory function cannot speculate.[74] The presence of the yam in the *Climate Change* archive, however, gives the *reader* tools to speculate. This Opinion carries history and futurity,[75] both of which involve narration and speculation. The vanished yam becomes a narrative point of departure into the past and the future; it collapses the Court's deferral to the future to a *present* reckoning based on an *in concreto* past. It enables Vanuatu to demonstrate that its past is already the future that the Opinion is attempting to improve.

The vanishing yam, therefore, fills the gap left by the narrative limits of the Advisory Opinion by giving us a microscopic window into what an '*in concreto* assessment' might look like for the people of Yakel, Vanuatu. It even goes beyond this; it puts the Opinion in conversation with the broader context of our present. If the yam has a microhistory, so do the olive tree,[76] the sorghum,[77] the tuna.[78] The reader is pushed to consider other contexts of hunger (and starvation) in international law.

Nonetheless, some might ask why we bother with personal narratives before the ICJ when they are superfluous to the Court's formal reasoning. After all, the Court did not *need* the microhistory of the yam to come to its conclusions. Of course, we are bound to lose something when we translate particular stories into the totalising language of international law. This may not be a bad thing in itself; totalising language is sometimes necessary to maintain the law's legitimacy and norm-making capacity.

The vanishing yam becomes, in the language of international law, something else. It is either subsumed into the register of rights or ignored altogether in the face of the State as protagonist. But having it *in* the corpus of the Court plays an important function: it is proof of this epistemic

74 ICJ, *Nuclear Weapons* (n. 11), para. 15.

75 Eliana Cusato, 'Progress and Linear Time: International Environmental Law and the Uneven Distribution of Futurity' HJIL 84 (2024) 865-893.

76 Ruwaida Amer, 'The olive tree, symbol of Palestine and mute victim of Israel's war on Gaza', Aljazeera 22 January 2024, available at: https://www.aljazeera.com/features/2024/1/22/the-olive-tree-symbol-of-palestine-and-mute-victim-of-israels-war-on-gaza.

77 'Staple grains vanish in Sudan's besieged El Fasher, prices soar' Sudan Tribune, 30 July 2025, available at https://sudantribune.com/article/303407.

78 Benjamin Long, 'Climate change threat to 'tuna dependent' Pacific Islands economies', University of Wollongong Australia Media Centre30 July 2021, available at: https://www.uow.edu.au/media/2021/climate-change-threat-to-tuna-dependent-pacific-islands-economies.php.

translation, the erasure that results from it, and of the gaps that it leaves and fills. Its function is to make the gap, the lacuna, a *part* of the historical account instead of setting it *outside* the account.[79]

It is not so important, therefore, for the ICJ to *use* microhistories like the vanished yam in its legal reasoning, the way it has used science[80] or economics. It is crucial, however, for them to be present in the Court's corpus anyway: to signal the places where international law cannot go, and to build narrative bridges for these places to exist in the cultural memory of the discipline nonetheless. Their absent-present nature makes the narrative limitations of international law clear for the reader to encounter. Even if incommensurable with modernist framings of law, their presence de-necessitates a totalising 'theory of everything' in which only one truth or reality is possible.[81]

VII. Concluding remarks

This chapter has traced how the microhistory of the vanishing yam from Vanuatu's *Book of Exhibits* unsettles the ICJ's narration of its own limits. By reading the vanishing yam as a narrative device within the Court's corpus, I have shown how small island States use personal testimony before the Court in a way that expands the epistemic and temporal horizons of international law. Juxtaposed with motifs of precaution, intergenerational equity, and reparation, the vanishing yam reveals the limits of the Court's emplotment of state responsibility, exposing both its proclivity for erasure and the (not so secret) fragility of its storyworld.

International courts and tribunals are obliged to curate their narration to be in line with their mandates, and to abide by the unspoken rules of the interpretive community to stay within the 'grand narratives' of progress, State-centrism, etc. Indeed, the Court's repeated invocation of its own limits is very much part of international law's 'grand narratives.'[82] My attempt

79 Ginzburg (n. 25), 28.

80 See Katalin Sulyok, 'On the science-coloured glasses of the ICJ: harmfulness, wrongfulness, and climate accountability', in this volume.

81 See generally Anne Salmond, *Tears of Rangi: Experiments Across Worlds* (Auckland University Press, 2017).

82 I note here that although the constraints on the Court (limited jurisdiction, State-centrism etc.) are often invoked as if they were objective constraints on judicial narration, this chapter posits that they too are narrative constructs. The language

here is not to reiterate the now-familiar postmodern skepticism towards these narratives; their historical and ongoing misuse by powerful actors is hardly new information. This is perhaps why the Court concludes the Opinion by cautioning us that international law can only do so much, and that climate change can only be combatted through collaboration.[83]

The *Book of Exhibits* of the Republic of Vanuatu subverts our expectations of what such collaborations might look like. In foregrounding the '*Book of Exhibits*' as part of law's archive, we not only encounter the limits of legal narration but also its latent possibilities. Having less utility for the ICJ in normative terms, the *Book* poses less risk of being distorted by those in power for their benefit. At the same time, it pushes the epistemic and narrative boundaries of international law, and enables the reader to imagine forms of care, continuity, and accountability that the Court itself cannot yet name. It is this unique paradox that makes the vanishing yam a quiet motif of resistance in the archive of the Climate Change Advisory Opinion.

of jurisdictional restraints, cautious readings of questions posed, and strict interpretations of the advisory function are not neutral descriptions, but narrative moves that bolster the Court's self-characterisation as a prudent, State-centered institution. The invocation of mandates and jurisdiction is not based on an unyielding external normative framework but is itself an act of emplotment that shapes the story of the Court's authority.

83 ICJ, *Obligations of States in Respect of Climate Change* (n. 2), para. 456.