

INTERNATIONAL LAW ASSOCIATION
VIENNA CONFERENCE (2026)
INTERNATIONAL LAW, HUMAN RIGHTS AND ISLANDS

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INTERIM REPORT

I. METHODOLOGICAL AND CONCEPTUAL CLARIFICATIONS ON THE REPORT

A. Methodological clarifications

1. The drafting process

1. The SG “International law, human rights and islands” (SG) was established in 2025 for a three-year term (2025-2028). The SG is chaired by Professor Donald R. Rothwell (Australian National University) and supported by Dr Aikaterini (Katerina) Tsampi (University of Groningen) as Rapporteur. This Report has been drafted by the Chair and the Rapporteur of the SG with the valuable contribution of its members.

2. Section II serves as an introduction to the SG, delineating its background and aims/purposes along the lines of the proposal submitted by Rothwell and Tsampi to the ILA Executive Council in spring 2025. This proposal will be separately published on the ILA website.

3. The members’ contributions were solicited on the basis of a short questionnaire shared by the Chair and Rapporteur in November 2025. Rosemarie Cadogan, Jane McAdam, Raphael Oidtmann, Photini Pazartzis, Duncan Pickard, Anita Rayegani, Gökey Saracyakupoglu and

Carla Williams provided written contributions, in December 2025-February 2026, which have been incorporated predominantly in Section IV of the Report. Naturally, the preliminary observations of the Report (Section V) are also enlightened by the member's input as they build on Sections III and IV. Relevant footnotes have been included in several sub-sections of these Sections to acknowledge the respective authors. This approach has been adopted not only in the interests of transparency and fairness, but also because the SG officers consider that it more effectively illustrates the diversity and complexity of the regional and thematic challenges faced by islands (especially in Section IV). By March 2026, all the SG members had the opportunity to comment on the draft report, enriching it further. For the rest, the text has been drafted by the Chair and/or the Rapporteur.

2. Structural elements

4. The Report consists of five Sections, including this first one on methodological and conceptual clarifications (I). The additional Sections present the SG overall (II), indicatively map the international law and practice relevant to islands (III), present an overview of regional and thematic challenges related to islands (IV), present some preliminary observations and propose next steps (V).

5. We clarify from the outset that this Report is not structured so as to directly address the six focal questions set out in the SG's mandate (see Section II). This is because this Report is conceived as a holistic and exploratory exercise, intended to provide a common analytical foundation for subsequent discussions within the SG. Nevertheless, the final Section (Section V), which sets out the preliminary observations, is organised around the six key questions, with a view to structuring future exchanges.

B. Conceptual clarifications

6. The present note does not aspire to exhaust the conceptual challenges implied by the topic of the SG. After all, "island"/"islandness" are concepts specifically envisaged in the mandate of the SG (II below). However, we note that the present Report will, for the most part, employ the term "islandness" to denote the condition of an island. Other related terms (such as "insularity") may nonetheless still appear where the text is attributed as the original contribution of a specific member-author.

II. INTRODUCTION TO THE SG

A. Background

7. The relation of islands with international law is a classic one. Even so, islands have never formed in and of themselves a topic of specific and separate study either under the *Institut de Droit International*, the ILA or the ILC. Island-related issues were often raised in connection with another topic, which formed the basis of analysis.

8. Furthermore, despite the numerous studies on islands and international law,¹ islands have not ceased to raise complex issues. Island issues are addressed by international courts and tribunals² and novel issues discussed in contemporary scholarly research.³ Even though admittedly less encountered in international law, islandness,⁴ as a conceptualisation of the condition of an island, is also raising interesting questions in international law and merits further assessment.⁵ Since “[i]t seems the future is at sea”, many different issues on islands need to be further explored.⁶ This holds particularly true for the human rights issues islanders face. A comprehensive study of how the conditions of islands affects the enjoyment of human rights on islands is yet to be conducted.

B. Aims and Purposes

9. The SG aims to put islands in the spotlight to offer answers to old and new challenges pertaining to them today. The SG mandate will focus on the areas listed below. The list includes issues that raise important questions as to islands from an international law perspective and eventually intersect with human rights on islands.

10. Namely:

- What is the definition of “island” under international law?
- What are the current challenges “islands” pose under international law?
- What are the definitions of “island”/“islandness” outside of international law?
- Can Island Studies enlighten the treatment of islands under international law and vice versa?
- Do we need a distinctive regime for islands in international law?
- Is the rethinking of islands in international law opening the gates to critical perspectives on international law based on islandness?

11. This report reflects on these focal questions in Section V below.

¹ Bowett, *The Legal Regime of Islands in International Law* (Oceana/Sijthoff and Noordhoff 1978); Papadakis, *The International Legal Regime of Artificial Islands* (Sijthoff 1977); Jayaraman, *Legal Regime of Islands* (Marwah Publications 1982); Jayewardene, *The Regime of Islands in International Law* (Martinus Nijhoff 1990); Murphy, *International Law Relating to Islands* (Brill/Nijhoff 2017); SFDI, *Iles et droit international* (Pedone 2020).

² Indicatively, *Island of Palmas (or Miangas) Arbitration (Netherlands v United States)*, 2 RIAA 829 (Perm. Ct. Arb. 1928); *Corfu Channel (United Kingdom v Albania)* [1949] ICJ Rep 4; *Minquiers and Ecrehos Case (France v United Kingdom)* (Judgment) [1953] ICJ Rep 47; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v Malaysia)*, [2002] ICJ Rep 625; *Chagos Islanders v the United Kingdom* (dec) App no 35622/04 (ECtHR, 11 December 2012); *In the Matter of the South China Sea Arbitration (Philippines v China)*, PCA Case No. 2013-19, Award (12 July 2016); *Legal Status of the Chagos Archipelago Advisory Opinion* [2019] ICJ Rep 95.

³ Rothwell, *Islands and International Law* (Hart 2022); Evans and Lewis, *Islands, Law and Context: The Treatment of Islands in International Law* (Edward Elgar Publishing Limited 2023).

⁴ Tsampi, ‘Islandness and the European Court of Human Rights: Marooning Rights on Islands?’ (2023) 17 *Netherlands International Law Review* 70, 171-204.

⁵ Hobbs and Rothwell, ‘Towards a Legal Era of Islands: The International and Constitutional Status of Island Territories’ (2024) 73 (3) *International and Comparative Law Quarterly* 609-640.

⁶ Evans and Lewis (n 3) 195.

III. MAPPING OF INTERNATIONAL (HUMAN RIGHTS) LAW AND PRACTICE ON ISLANDS-INDICATIVE ACCOUNT)

12. An exhaustive overview of the relevant international law and practice is not technically part of the SG's mandate. Nor does the SG aspire to reproduce work that has already been published by scholars on the matter. However, to match some of the analysis presented in Section IV and to support the preliminary observations in Section V, an indicative account is presented below. Findings from human rights bodies are particularly included and recent developments, such as the *ICJ Advisory Opinion on the Obligations of States with respect to Climate Change*⁷ are given specific attention.

A. Selected International Treaties Relevant to Islands

13. This subsection focuses exclusively on treaties/instruments that expressly refer to islands, island regions, archipelagos, or specific island categories in their text, rather than on instruments that are merely applicable to islands in practice.

1. Treaties Explicitly Referring to Islands and Archipelagos as a Legal Category

14. UNCLOS-1982: The treaty contains multiple references to islands. Its Article 121 is entirely devoted to the *regime of islands* and also contains the most known definition of island in international law. Part IV explicitly regulates archipelagic States, a category inherently linked to island configurations.

2. Treaties Explicitly Referring to Small Island Developing States (SIDS)/small island countries

15. United Nations Framework Convention on Climate Change (UNFCCC)-1992: The treaty explicitly refers to small island countries as particularly vulnerable to climate change impacts (e.g. Article 4(8)).

16. Paris Agreement-2015: The treaty explicitly recognises the special circumstances of Small Island Developing States in relation to climate change, adaptation, and loss and damage.

3. Treaties Explicitly Referring to Islands in Regional or Special Territorial Contexts

17. Treaty on the Functioning of the European Union (TFEU): Article 174 TFEU explicitly refers to island regions as territories suffering from severe and permanent natural or demographic handicaps. Article 349 TFEU refers to outermost regions, many of which are islands.

18. There is no legal definition of an “island”/“island region” provided by the EU regulations. Nevertheless, Eurostat established a definition of island regions for statistical purposes. They are three NUTS (Nomenclature of territorial units for statistics) regions entirely made up of islands. In this context, islands are defined as territories having: a minimum surface of 1 km²; a minimum distance between the island and the mainland of 1 km; a resident population of

⁷ *Obligations of States in Respect of Climate Change* (Advisory Opinion) (23 July 2025) [2025] ICJ Reps <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>.

more than 50 inhabitants; and no fixed link between the island and the mainland.⁸ For example, Mallorca, Menorca, Ibiza, Formentera qualify as such for Spain.

4. *Treaties Explicitly Referring to Specific Islands or Island Territories*

19. There are many examples of such treaties. This Report discusses the following:

- Inuvialuit Final Agreement/Western Arctic Comprehensive Land Claim (1984)
- Nunavut Land Claims Agreement (1993)
- Australia-Tuvalu Falepili Union Treaty (2023)

B. International courts, human rights and islands

20. International courts and tribunals have had occasion to deal with human rights issues associated with islands in many different and varied settings throughout the Twentieth and Twenty-First century. The decisions and Advisory Opinions of these courts and tribunals provide a helpful background and context to how international law views these issues in the 2020s. However, they are not comprehensive due to the focus given to a relatively narrow set of international law issues which themselves have evolved since 1900. What follows is some general observations with respect to specific decisions of international courts and tribunals, after which a more detailed assessment is undertaken of climate change and the International Court of Justice's 2025 *Advisory Opinion on Obligations of States in Respect of Climate Change*.⁹ The ITLOS *Advisory opinion*¹⁰ on the topic is also mentioned but given the word-limit for this Report, no separate mention will be made to rulings by domestic tribunals on the matter.¹¹

1. General Observations

21. Islands have been the subject matter of international disputes for resolution before international courts and tribunals in multiple different international law contexts since the beginning of the Twentieth century. The two most prominent legal focal points have been with respect to:

22. Territoriality: examples of which include:

- a. *Island of Palmas* (USA v Netherlands);¹²

⁸ European Union, Joint answer given by Ms Crețu on behalf of the Commission Written questions: [E-000546/18](https://www.europarl.europa.eu/doceo/document/E-8-2018-000443-ASW_EN.html), E-000443/18 (13 March 2018), https://www.europarl.europa.eu/doceo/document/E-8-2018-000443-ASW_EN.html.

⁹ *Obligations of States in Respect of Climate Change* (n 7).

¹⁰ Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, *Advisory Opinion* of 21 May 2024, ITLOS, Case No. 31.

¹¹ See in particular, the 2026 judgment of the District Court of The Hague (Court) issued in [Greenpeace Netherlands v. The State of the Netherlands \(the original Dutch text\)](#). The Court found that the Dutch State failed to adequately protect the island of Bonaire, in Caribbean Netherlands, from the effects of climate change and treated its inhabitants unequally compared to those in the European Netherlands, in violation of Articles 8 and 14 ECHR and Article 1 of Protocol No. 12 to the ECHR; Tsampi, 'From Vulnerability to Rights: The Bonaire Climate Case and Island Communities' (*Opinio Juris*, 2 March 2026). Just like in the case of the ICJ AO, the issue of cultural identity and islands will be focal to the future work of the SG.

¹² *Island of Palmas Case* (United States of America v The Netherlands) (n 2).

- b. *Legal Status of Eastern Greenland* (Norway v. Denmark);¹³
- c. *Clipperton Island* (Mexico v France);¹⁴
- d. *Minquiers and Ecrehos* (France/United Kingdom);¹⁵
- e. *Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indonesia/Malaysia);¹⁶ and,
- f. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* (Malaysia/Singapore).¹⁷

23. Maritime Boundaries: where islands have played a prominent role in the delimitation of maritime boundaries either because:

- a. the boundaries involved coastal States and/or islands such as in *Maritime Delimitation in the Area between Greenland and Jan Mayen* (Denmark v. Norway);¹⁸ or,
- b. the maritime boundary was between a mainland State and an island State as in *Continental Shelf* (Libyan Arab Jamahiriya/Malta);¹⁹ or,
- c. islands were significant features that needed to be taken into account in the delimitation of a maritime boundary between two continental states as occurred with Serpent (Snake) Island in *Maritime Delimitation in the Black Sea* (Romania v. Ukraine),²⁰ and St. Martin's Island in *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal* (Bangladesh/Myanmar).²¹

24. There have also been 'mixed' cases involving both land and maritime disputes in which islands have been prominent such as:

- *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Qatar v. Bahrain);²² and,
- *Land and Maritime Delimitation and Sovereignty over Islands* (Gabon/Equatorial Guinea).²³

25. However, these cases have rarely if ever focused on human rights issues associated with the islands in question.

26. A more prominent international law human rights issue that has arisen in certain cases has been the rights of peoples to self-determination. The rights of the East Timorese to self-

¹³ *Legal Status of Eastern Greenland* (Denmark v Norway) [1933] PCIJ Rep Series A/B No 53.

¹⁴ *Clipperton Island* (France v Mexico) (1931) 2 RIAA 1105.

¹⁵ *Minquiers and Ecrehos* (France v United Kingdom) (n 2).

¹⁶ *Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indonesia v Malaysia) (n 2).

¹⁷ *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* (Malaysia v Singapore) (Merits) [2008] ICJ Reps 12.

¹⁸ *Maritime Delimitation in the Area between Greenland and Jan Mayen* (Denmark v. Norway) (Judgment) [1993] ICJ Reps 38.

¹⁹ *Continental Shelf* (Libyan Arab Jamahiriya/Malta) (Judgment) [1995] ICJ Reps 13. Also, *Continental Shelf* (Tunisia/Libyan Arab Jamahiriya) (Judgment) [1982], ICJ Reps 18; *Arbitration between the United Kingdom of Great Britain and Northern Ireland and the French Republic on the Delimitation of the Continental Shelf* (Award, 18 ILM 397 (1979)).

²⁰ *Maritime Delimitation in the Black Sea* (Romania v. Ukraine) (Judgment) [2009] ICJ Reps 61.

²¹ *Delimitation of the maritime boundary in the Bay of Bengal* (Bangladesh/Myanmar) (Judgment) [2012] ITLOS Reps 4. Also, *Territorial and Maritime Dispute* (Nicaragua v. Colombia) (Judgment) [2012] ICJ Reps. 624.

²² *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Merits) (Judgment) [2001] ICJ Reps 40.

²³ *Land and Maritime Delimitation and Sovereignty over Islands* (Gabon/Equatorial Guinea) [2025] ICJ Reps <https://www.icj-cij.org/sites/default/files/case-related/179/179-20250519-jud-01-00-en.pdf>.

determination were famously highlighted by the ICJ in *East Timor* (Portugal v. Australia),²⁴ where the court in its concluding observations made clear that “the Territory of East Timor remains a non-self-governing territory and its people has the right to self-determination.”²⁵ That judgment of 30 June 1995 set in train a series of processes that eventually resulted in the independence of East Timor/Timor-Leste on 20 May 2002. More recently, the ICJ addressed issues of self-determination and decolonization in the context of the Chagossians of the Chagos Archipelago in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* Advisory Opinion.²⁶ Recalling the right of peoples to self-determination that had been noted in *East Timor*, the court observed that:

27. As regards the resettlement on the Chagos Archipelago of Mauritian nationals, including those of Chagossian origin, this is an issue relating to the protection of the human rights of those concerned, which should be addressed by the General Assembly during the completion of the decolonization of Mauritius.²⁷

28. The court’s principal finding was that the United Kingdom was under an obligation to bring its administration of the Chagos Archipelago to an end to enable the complete decolonization of Mauritius. Following ongoing political negotiations, including debate in the United Nations, the United Kingdom in May 2025 reached an agreement to transfer sovereignty of the islands back to Mauritius, while maintaining an initial 99-year lease of Diego Garcia.²⁸

29. Other examples of islands and human rights issues considered by international courts and tribunals include the Aaland Islands where the League of Nations sought an Advisory Opinion in 1920 from the International Committee of Jurists on the status of the islands as between Finland and Sweden and whether the islanders enjoyed a right of self-determination in the wake of World War I.²⁹

30. Finally, in the context of the aspirations of islanders for a clean and healthy environment and the obligations and responsibility of former colonial powers for environmental damage and impact caused to islands, the ICJ was asked to consider these issues in *Certain Phosphate Lands in Nauru* (Nauru v. Australia),³⁰ in the context of whether Australia bore responsibility for environmental damage in Nauru arising from phosphate mining.³¹

²⁴ *East Timor* (Portugal v. Australia) (Judgment) [1995] ICJ Rep 90.

²⁵ *Ibid*, 105-106 [37].

²⁶ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Reps 95.

²⁷ *Ibid*, 139 [181].

²⁸ ‘UK-Mauritius treaty on the Chagos Archipelago’ (26 June 2025) <https://lordslibrary.parliament.uk/uk-mauritius-treaty-on-the-chagos-archipelago/>. See also, *Tito v Waddell* (No 2) [1977] Ch 106, an English trusts law case on the eviction of the people from the island of Banaba, which also involved issues of self-determination.

²⁹ *Aaland Islands Case* (1920) LNOJ Spec. Supp. No. 3.

³⁰ *Certain Phosphate Lands in Nauru* (Nauru v. Australia) (Preliminary Objections) (Judgment) [1992] ICJ Reps 240.

³¹ In 1992 the ICJ concluded that it had jurisdiction to consider the claim brought by Nauru, after which in 1993 Australia and Nauru reached a settlement on the issues raised and the matter was removed from the court’s list. Relocation to Australia had been proposed, too: McAdam, ‘The High Price of Resettlement: the proposed environmental relocation of Nauru to Australia’ (2017) 48(1) *Australian Geographer* 7-16.

2. Climate change

1) *Climate change and the progressive loss of habitability on small islands*³²

31. Climate-related threats to small islands are often framed as a question of physical submergence under rising sea levels. While submergence is projected for some low-lying islands within this century, this framing obscures a more immediate and pervasive challenge: the progressive loss of habitability. Scientists predict that climate change will undermine the conditions necessary for sustained human life on many small islands well before total submergence. Habitability thus provides a more accurate lens through which to assess the climate-related risks facing all small islands, including those that are continental, sub-national, affluent, or geographically proximate to mainlands.

32. Sea-level rise remains a central driver of declining habitability, not only through long-term inundation but also through chronic flooding, shoreline erosion, and saltwater intrusion. Low-lying and high-elevation islands alike are suffering more frequent flooding of critical coastal infrastructure from storm surges and high tides.³³ Even incremental sea-level rise can double or triple the frequency of flooding events on small islands.³⁴

33. Freshwater insecurity is another critical habitability constraint. Many small islands rely on rain-fed groundwater lenses or limited surface catchments that are acutely sensitive to both sea-level rise and climate variability. Saltwater intrusion and drought can render potable water supplies unreliable long before physical inundation.³⁵ In the Pacific, drought conditions combined with wave-driven overwash events have repeatedly depleted freshwater reserves, forcing emergency imports and internal displacement.³⁶ Similar challenges are documented in the Mediterranean and North Atlantic, where reduced precipitation, higher evaporation rates, and over-extraction have pushed islands toward chronic water stress.³⁷

34. Extreme weather events further accelerate the loss of habitability. Intensifying tropical cyclones, storm surges, and extreme rainfall have disproportionate impacts on islands due to their coastal settlement patterns and limited redundancy in critical infrastructure. Hurricane Irma's destruction of Barbuda in 2017 illustrates how a single event can abruptly render an island uninhabitable.³⁸ Similar patterns are evident across the Pacific, Caribbean, and increasingly in higher latitudes, where climate change alters storm tracks and increases disaster risks.

35. Climate change further erodes island habitability through the degradation of terrestrial and marine ecosystems upon which island societies depend. Small islands host high levels of biodiversity and endemism, and their ecosystems – coral reefs, mangroves, seagrasses, forests – provide essential services including coastal protection, food provision, freshwater regulation, and cultural continuity. Coral bleaching, ocean acidification, and warming have already caused widespread reef mortality, reducing fisheries productivity and natural coastal defences. Most

³² Contribution by Duncan Pickard.

³³ Mycoo et al., "Small Islands" in *Climate Change 2022: Impacts, Adaptation and Vulnerability* (IPCC 2022), 2046, 2055.

³⁴ Ibid.

³⁵ Ibid, 2045-2046.

³⁶ Ibid, 2045, 2055.

³⁷ Ibid, 2052-2054.

³⁸ Ibid, 2045-2046, 2053.

coral reefs are unlikely to persist under warming beyond 1.5–2°C, with cascading consequences for island livelihoods and food security.³⁹

36. Terrestrial ecosystem degradation compounds these pressures. Loss of forest cover, soil salinisation, and invasive species reduce agricultural viability and increase vulnerability to landslides and flooding. Nearly half of terrestrial species at risk of global extinction occur on islands, and projected biodiversity losses are expected to undermine ecosystem functioning critical to human habitation.⁴⁰

37. These pressures produce interrelated and self-reinforcing habitability constraints on small islands, in which environmental degradation, infrastructure stress, and social vulnerability compound one another over time.

2) 2025 ICJ Advisory Opinion

38. On 29 March 2023 the United Nations General Assembly made a request to the ICJ for an Advisory Opinion (AO) which addressed two key questions:

- a. What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?
- b. 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?

39. The importance of this AO request for islands is highlighted by the role played by small island States in the diplomatic and political processes that ultimately resulted in the UNGA making this request. Vanuatu actively promoted and advanced these processes along with other small island States, especially from the Pacific and the Caribbean.⁴¹ It is also reflected in the direct reference made in the AO request to small island developing States which have been injured by climate change, or which are specially affected by or are particularly vulnerable to the adverse effects of climate change. With respect to human rights, the chapeau to the questions the General Assembly put to the ICJ made particular reference to:

- the Universal Declaration of Human Rights;
- the International Covenant on Civil and Political Rights;
- the International Covenant on Economic, Social and Cultural Rights; and,

³⁹ Ibid, 2045-2046, 2054.

⁴⁰ Ibid, 2045-2046.

⁴¹ See 'Vanuatu ICJ Initiative' at <https://www.vanuatuicj.com/>; and discussion in Farran 'Vanuatu leads drive to secure an opinion from the International Court of Justice on state responsibilities to turn words into action on climate change' (2023) 42 (3) *University of Queensland Law Journal* 411-432. Important to note that it was Malta which raised, for the first time, the issue of climate change and sea-level rise at UNGA in 1988. This initiative culminated in the adoption of Resolution 43/53 which characterised climate change as the 'Common Concern of Humankind'.

- the Convention on the Rights of the Child.⁴²

40. The ICJ's 2025 AO relevantly assessed the applicable law with respect to the obligations of States in respect of climate change and in doing so considered climate change treaties, the law of the sea, other environmental treaties, customary international law, international human rights law and other relevant principles. While ultimately the AO principally focussed on state obligations arising under international climate law, the court's observations with respect to international human rights law are of particular interest in the context of islands.

41. The court was faced with a variety of views from State participants in their submissions with respect to the applicability and relevance of international human rights law. The court observed, however, that the connection between the environment and the protection of human rights had been recognised as interdependent since the 1972 Stockholm Declaration⁴³ and which had been restated in the 2015 Paris Agreement the Preamble of which called upon States "when taking action to address climate change... [to] consider their respective obligations on human rights".⁴⁴ Noting that the relationship between human rights obligations and protection of the natural environment had been considered by regional human rights courts and United Nations treaty bodies,⁴⁵ the court concluded that the core human rights treaties were part of the applicable law. This included:

- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights; and,
- Human rights recognized under customary international law.⁴⁶

42. The court reviewed the adverse effects of climate change on the enjoyment of human rights, and without specifically considering the situation of islands, concluded on the basis of the assessments of bodies such as the IPCC, various UN Human Rights Committees, the Human Rights Council, and the Office of the UN High Commissioner for Human Rights that "adverse effects of climate change may impair the effective enjoyment of human rights."⁴⁷ Further developing the connection between the environment and human rights, the court assessed the importance of the right to a clean, healthy and sustainable environment and determined that under international law this is essential to the enjoyment of human rights.⁴⁸ The intersection of international human rights law, climate change law and other relevant environmental treaties was emphasised by the court when in its concluding observations of these areas of law it was observed that:

States must therefore take their obligations under international human rights law into account when implementing their obligations under the climate change treaties and other relevant environmental treaties and under customary international law, just as they must take their obligations under the climate change treaties and other

⁴² *Obligations of States in Respect of Climate Change* (Advisory Opinion) (n 7) 108 [369].

⁴³ *Ibid*, 51 [144]; Declaration of the United Nations Conference on the Human Environment (1972) 11 ILM 1416.

⁴⁴ *Obligations of States in Respect of Climate Change* (Advisory Opinion) (n 7) 51 [144].

⁴⁵ *Ibid*, 51 [144].

⁴⁶ *Ibid*, 51-2 [145].

⁴⁷ *Ibid*, 112 [386].

⁴⁸ *Ibid*, 113 [393]; this aspect is further reinforced and developed in the Separate Opinion of Judge Charlesworth, 3-4 [10-14]; and the Separate Opinion of Judge Aurescu, 10-17 [27-46] who was of the view that the right to a clean, healthy and sustainable environment had become a norm of customary international law.

relevant environmental treaties and under customary international law into account when implementing their human rights obligations.⁴⁹

43. Separate Opinion's attached to the court's Advisory Opinion specifically addressed human rights issues with a particular focus on islands including Vice-President Sebutinde⁵⁰ and Judge Charlesworth, who concluded that "States have a particular obligation to protect the human rights of vulnerable groups".⁵¹

44. The 2025 *Advisory Climate Change Opinion* is wide-ranging in its scope and addresses multiple areas of international law related to climate change. Climate change and human rights are only one dimension of the Advisory Opinion, however the specific context in which the court discusses those issues has particular significance for small island developing States given the background to the Advisory Opinion, and references to climate vulnerable groups. The Advisory Opinion further enhances and develops an appreciation of existing human rights treaties and obligations with respect to climate change, human rights and islands.

3) 2024 ITLOS Advisory Opinion

45. Earlier, in May 2024, the International Tribunal for the Law of the Sea (ITLOS) issued a unanimous advisory opinion on States' obligations to protect and preserve the world's oceans from climate change impacts within the UNCLOS framework.⁵² The advisory opinion was requested by a group of small island states and climate-vulnerable countries and it explicitly recognised the existential threats faced by small island states from climate change. Some judges' declarations supported a stronger grounding in international human rights obligations pointing toward a nexus between UNCLOS duties and human rights considerations.⁵³

C. International Human Rights Mechanisms and Islands

1. UN mechanisms

1. UN treaty bodies - General Comments (GC)

46. As documented in the literature,⁵⁴ the general comments of some treaty bodies seem to take islandness into account when providing interpretative guidance on the content of their respective treaties. Representative examples include: General Comment No. 15 on the right to water that regards people living on small islands as one of the groups that face difficulties with physical access to water;⁵⁵ General Recommendation No. 37 on Gender related dimensions of

⁴⁹ Ibid, 115-116 [404].

⁵⁰ *Obligations of States in Respect of Climate Change* (Advisory Opinion) (n 7), Separate Opinion of Vice-President Sebutinde, 2 [4-5].

⁵¹ Ibid, 9 [29].

⁵² *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n 10).

⁵³ Ibid, Declarations of Judges Infante Caffi and Pawlak.

⁵⁴ Tsampi, 'Islandness in Human Rights, Human Rights in Islandness: Missing Voices' (2023) 18(1) *Island Studies Journal* 248-263.

⁵⁵ Committee on Economic, Social and Cultural Rights, 'General Comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)' E/C.12/2002/11 (20 January 2003), [16h].

disaster risk reduction in the context of climate change refers to the particularly vulnerable situation of Small Island Developing States.⁵⁶

2. *UN treaty bodies - Reporting system*

47. As documented in published work,⁵⁷ the UN human rights treaty bodies have addressed a number of human rights issues that are linked to different island spaces, assessing the situation of human rights therein. Some indicative, yet representative, examples include:

- the situation of same-sex couples in maritime provinces like Prince Edward Island in Canada;⁵⁸
- the development of basic infrastructure programmes in order to improve access to basic services, including for those living on less developed islands or the recruitment of more specialized physicians, including on the less populated islands of archipelagic States;⁵⁹
- the use of customary or ‘island’ courts in particular in rural and remote areas of the archipelagic Vanuatu;⁶⁰
- intersectional discrimination against women with disabilities living on rural and dispersed outer islands of archipelagic States, like in the case of the Seychelles;⁶¹
- the absence of a national human rights institution in the self-governing archipelago part of a non-island State, like the Faroe Islands are to Denmark;⁶²
- secret island detention facilities like in the case of Guinea;⁶³
- the Committee on Migrant Workers explicitly recognised in its Concluding Observations for the Philippines that the geography of the State party in question, consisting of thousands of islands, is a factor that makes it challenging to effectively monitor the movement of people and control borders to prevent irregular migration and to safeguard the rights of all migrant workers.⁶⁴

⁵⁶ Committee on the Elimination of Discrimination Against Women, ‘General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change’ CEDAW/C/GC/37 (7 February 2018), [17].

⁵⁷ Tsampi (n 54).

⁵⁸ Human Rights Committee, ‘Concluding observations on the sixth periodic report of Canada’ CCPR/C/CAN/CO/6 (13 August 2015), [3b].

⁵⁹ Committee on Economic, Social and Cultural Rights, ‘Concluding observations on the initial report of Cabo Verde’ E/C.12/CPV/CO/1ECE (27 November 2018), [11, 59].

⁶⁰ Committee on the Elimination of Discrimination Against Women, ‘Concluding comments of the Committee on the Elimination of Discrimination Against Women: Vanuatu’ CEDAW/C/VUT/CO/3 (11 July 2007), [38].

⁶¹ Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of Seychelles’ CRPD/C/SYC/CO/1 (16 April 2018) [14].

⁶² Human Rights Committee, ‘Concluding observations on the sixth periodic report of Denmark’ CCPR/C/DNK/CO/6 (15 August 2016), [9-10].

⁶³ Committee Against Torture, ‘Concluding observations on Guinea in the absence of its initial report’ CAT/C/GIN/CO/1 (20 June 2014), [15].

⁶⁴ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, ‘Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families: The Philippines’ CMW/C/PHL/CO/1 (22 May 2009), [12].

3. *UN treaty bodies – GC; Reporting system; Individual communications (HRCttee and Climate Change)*⁶⁵

48. The practice of the Human Rights Committee (HRCttee) under the International Covenant on Civil and Political Rights (ICCPR) demonstrates an increasing recognition of the relationship between human rights and environmental protection, particularly climate change and its impact on small island States.

49. General Comment No. 36 on Article 6 ICCPR was a key moment in this respect.⁶⁶ The HRCttee expanded its interpretation of the right to life beyond protection against arbitrary deprivation, emphasizing States' positive obligations to ensure conditions for a life with dignity. Importantly, it expressly recognized that "environmental degradation, climate change and unsustainable development constitute some of the most serious threats to the ability of present and future generations to enjoy the right to life".⁶⁷

50. Following General Comment No. 36, the Committee began systematically addressing climate change in its reporting procedure, in particular, with respect to small island states. In its 2019 concluding observations on Cabo Verde, it included for the first time a specific paragraph linking the right to life and climate change. Recognizing the particular vulnerability of small island States, it urged Cabo Verde to strengthen sustainable resource management, adopt environmental standards, conduct environmental impact assessments, ensure access to environmental information, and apply precautionary measures to protect vulnerable populations from climate-related harm.⁶⁸

51. Since 2019, climate-related questions have regularly appeared in the Committee's lists of issues to States parties, particularly small island States such as the Bahamas, Antigua and Barbuda, Samoa, Sao Tome and Principe, and Fiji.⁶⁹ The Committee has requested information on mitigation and adaptation measures, sea-level rise, disaster prevention, relocation policies, and inclusive participation of civil society and Indigenous communities in climate policy. These concerns extend beyond Article 6 to include Article 17 (privacy and family life), Article 25 (participation in public affairs), and Article 27 (minority cultural rights), reflecting the broad human rights consequences of environmental degradation.

52. Climate change with respect to islands has also been addressed through individual communications. In *Teitiota v. New Zealand*, a national of Kiribati challenged his deportation from New Zealand, arguing that sea-level rise and environmental degradation made return unsafe and violated Articles 6 and 7 ICCPR. The Committee reaffirmed that the right to life includes living with dignity and protection from foreseeable threats.⁷⁰ However, it found no violation, reasoning that the most severe impacts in Kiribati were not yet imminent and that there was still time for protective measures. Nevertheless, it acknowledged that future climate

⁶⁵ Contribution by Photini Pazartzis.

⁶⁶ HRCttee, 'General comment No. 36 on the right to life (article 6)' [GC36], 30 October 2018, CCPR/C/GC 36.

⁶⁷ Ibid [62].

⁶⁸ HRCttee, 'Concluding Observations on the initial report of Cabo Verde', CCPR/C/CPV/CO/1/Add.1, 3 December 2019, [17].

⁶⁹ HRCttee, List of Issues prior to submission of the initial report of (LOIS), The Bahamas, CCPR, C/BHS/QPR/1, 19 August 2025; LOIS, Antigua and Barbuda, CCPR/C/ATG/QPR/1, 25 July 2025, [11]; LOIS, Samoa, CCPR/C/WSM/QPR/1, 1 May 2025, [12]; LOIS Sao Tome and Principe, CCPR/C/STP/QPR/1, 22 September 2021, [14]; LOIS Fiji, CCPR/C/FJI/QPR/1, 9 August 2021, [12].

⁷⁰ HRCttee, *Teitiota v. New Zealand*, Communication No. 2728/2016, Views adopted on 24 October 2019, CCPR/C/127/D/2728/2016.

conditions could trigger non-refoulement obligations, signalling that similar claims may succeed if risks become more immediate.⁷¹

53. In a 2019 communication brought by Torres Strait Islanders against Australia, the applicants claimed that rising seas and inadequate adaptation measures violated their rights under Articles 6, 17, and 27 ICCPR. This was the first legal action brought by climate-vulnerable inhabitants of low-lying islands against a State. The HRCttee recognized the extreme vulnerability of Indigenous island communities⁷² and found violations of Articles 17 and 27, holding that Australia failed to take adequate measures to protect their private and family life and their minority culture, which is inseparably linked to their ancestral lands. The Committee did not find a violation of Article 6, concluding that there was still time for Australia to take positive measures to protect the authors. The conclusions of the HRC concerning the remedies are also relevant in terms of the right to remain and the duty of a State to prevent displacement.⁷³

4. Human Rights Council⁷⁴

54. Indicative examples that can be mentioned here refer to the ‘Pacific Archipelagic Island States’ (‘PAIS’, i.e. Fiji; Kiribati; Marshall Islands; Tuvalu; Vanuatu; Solomon Islands), with a thematic focus (right to health),⁷⁵ in the context of the Human Rights Council (HRC) Universal Periodic Review⁷⁶ (UPR). Reports for the six PAIS reveal a correlation between access to public services and standards of human rights enjoyment.

55. Five of the six⁷⁷ PAIS’ UPR reports highlight constraints on the right to health for outer island residents attributable to the uneven distribution of health services between the main and outer islands.⁷⁸ For example, in the UPR report for Fiji, the Special Rapporteur⁷⁹ observes that the “geography and population distribution of Fiji posed a significant challenge to the accessibility of healthcare”,⁸⁰ noting a lack of access to mental health services,⁸¹ safe water and adequate sanitation⁸² for outer island residents.

56. Similarly, the UPR report for Solomon Islands documents concerns of the Committee on the Rights of the Child regarding discrepancies in access to health care across the country,

⁷¹ Ibid [9.14].

⁷² HRCttee, *Daniel Billy and others v. Australia*, Communication no. 3624/2019, Views adopted on 18 September 2023, CCPR/C/135/D/3624/2019, [7.10].

⁷³ Ibid, [11].

⁷⁴ Contribution by Carla Williams.

⁷⁵ The right to health is enshrined in Article 12 of the *International Covenant on Economic, Social and Cultural Rights*. Fiji, Solomon Islands and Marshall Islands have acceded or succeeded to this treaty, Kiribati, Tuvalu, Vanuatu have neither signed nor ratified it.

⁷⁶ The Universal Periodic Review (UPR) is a mechanism of the Human Rights Council that requires United Nations Member State to undergo a peer review of its human rights records every 4.5 years. As such, the UPR reports serve as a useful insight into the human rights challenges faced by a State. The ‘Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights’ for each country was used for the purpose of this review.

⁷⁷ It is noted that the absence of observations in the UPR report for Vanuatu regarding spatial inequality should not be interpreted as evidence that such inequality does not exist in the country.

⁷⁸ For the purpose of this review, the ‘main island’ is referred to as the island where the capital city and governing authority of the State is located.

⁷⁹ Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

⁸⁰ Human Rights Council, ‘Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights: Fiji’, UN Doc A/HRC/WG.6/48/FJI/2 (7 November 2024), [49].

⁸¹ Ibid, [52].

⁸² Ibid, [48].

urging increased investment in basic health services⁸³ and immunization⁸⁴ for residents of the outer islands.

57. Tuvalu's UPR report reflects analogous concerns from the same Committee regarding disparities in access to health services between Funafuti and the other islands,⁸⁵ while the UPR report for Kiribati notes the insufficient access to healthcare and mental health care services for children living in remote outer islands, as well as their limited access to reproductive and sexual health services.⁸⁶

58. Further, the UPR report for the Republic of the Marshall Islands likewise confirms that communities living in outer atolls and on Ebeye face challenges accessing health, water and sanitation services,⁸⁷ recommending expanded healthcare access for women and girls in outer islands.⁸⁸

2. Regional mechanisms

59. Future SG work will develop further insights from the regional human rights systems. At this preliminary stage, special reference should be made to the Advisory Opinion 32/25 of the Inter-American Court of Human Rights on climate change which contains noteworthy mentions to islands in general, noting that "[i]slands and small insular States share common challenges arising from climate change".⁸⁹

60. The case of the European Court of Human Rights (ECtHR) may be also noted here, as many cases brought before the ECtHR are related to islands. This does not always imply that the Court is comprehensively accounting for islandness.⁹⁰ Some representative issues addressed in case law pertain to: overseas territories and Article 56 ECHR;⁹¹ lack of appropriate detention facilities in Aruba;⁹² detention on İmralı Island that led to delays in bringing the applicant before a judge;⁹³ access to lawyers for migrants detained on the island of Chios⁹⁴; first stop islands for migrant influxes⁹⁵ or; environmental degradation claims on the island of Tinos.⁹⁶

⁸³ Ibid, [49].

⁸⁴ Human Rights Council, 'Compilation on Solomon Islands: Report of the Office of the United Nations High Commissioner for Human Rights', UN Doc A/HRC/WG.6/38/SLB/2 (12 February 2021), [49].

⁸⁵ Human Rights Council, 'Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights Council: Tuvalu', UN Doc A/HRC/WG.6/44/TUV/2 (24 August 2023), [24].

⁸⁶ Human Rights Council, 'Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights Council: Kiribati', UN Doc A/HRC/WG.6/49/KIR/2 (22 January 2025), [41].

⁸⁷ Human Rights Council, 'Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights Council: Marshall Islands', UN Doc A/HRC/WG.6/50/MHL/2 (28 August 2025), [9].

⁸⁸ Ibid, [28].

⁸⁹ I/ACtHR, *The Climate Emergency and Human Rights*. Advisory Opinion AO-32/25 of May 29, 2025. Series A No. 32, [111].

⁹⁰ Tsampi (n 4).

⁹¹ *Quark Fishing Ltd v United Kingdom* (ECtHR, App No 15305/06, Admissibility, 19 September 2006); *Chagos Islanders v United Kingdom* (ECtHR, App No 35622/04, Admissibility, 11 December 2012).

⁹² *Mathew v Netherlands* (ECtHR, App No 24919/03, Merits and Just Satisfaction, 29 September 2005).

⁹³ *Öcalan v Turkey* (ECtHR, App No 46221/99, Merits and Just Satisfaction, 12 May 2005).

⁹⁴ *O.S.A. and others v Greece* (ECtHR, App No 39065/16, Merits and Just Satisfaction, 21 March 2019).

⁹⁵ *Khlaifia and others v Italy* (ECtHR, App No 16483/12, Merits and Just Satisfaction, 15 December 2016).

⁹⁶ *Kyrtatos v Greece* (ECtHR, App No 41666/98, Merits and Just Satisfaction, 22 May 2003).

IV. MAPPING OF ISLAND-RELATED HUMAN RIGHTS CHALLENGES- PRELIMINARY ACCOUNT

61. The present account of the human rights challenges islands face is based on the input received by the SG members. Every members input is presented in an autonomous fashion in the form of case studies and cover a wide range of geographic areas and thematic perspectives.

62. Their presentation here revolves around 3 pillars that cover A) Conceptual challenges; B) Thematic challenges; and C) Intersecting (regional/geographical and thematic) challenges. These categories are not meant to be exclusive, static or normative in nature as per the issues raised. They just allow for the logical categorisation of the content for the purposes of this report.

A. Conceptual challenges

1. Islands and human rights: Questioning our entry points⁹⁷

Islands are “morphological anarchists” and the people who live in them do participate - whether they accept it or not - from [sic] this permanent questioning of the “central” power⁹⁸

63. The principle of universality, a cornerstone of international human rights law since the adoption of the UDHR (1948), implies that all individuals enjoy equal human rights regardless of location or identity. In theory, this guarantees that people living on islands should receive the same level of human rights protection as those on the mainland. Although existing scholarship has examined human rights issues on specific islands and in relation to particular rights, it does not largely address how islandness itself affects human rights standards and protections.⁹⁹ As a result, islands are often treated merely as sites of rights violations rather than as distinct spatial contexts with unique underlying causes.

64. In international law, particularly the law of the sea, islands are defined narrowly as physical land formations, a perspective that overlooks islandness as a holistic topological condition encompassing remoteness, smallness, sea-boundedness, and sociocultural identity.¹⁰⁰ While human rights scholarship has begun to explore the localisation of human rights and the relevance of geographic perspectives, these approaches have primarily focused on urban or municipal contexts and remain underdeveloped with regard to islands.¹⁰¹

⁹⁷ Contribution by Aikaterini (Katerina) Tsampi. This sub-section captures points raised in Tsampi (n 4); Tsampi (n 54); Tsampi, ‘A Global Approach between Islandness and Human Rights: the Future of European Islands’ (2025) 14 *Journal of Marine and Island Cultures* 7-21; Aikaterini Tsampi, ‘Reimagining Rights and Island Feminisms: Strategic Alliances and Mutual Enrichment’ in Karides and Rodríguez-Coss (eds), *Island Feminisms: A Critical Approach for Archipelagic and Oceanic Futures* (Routledge forthcoming).

⁹⁸ The statement belongs to Abraham Moles, the father of nissology, Abraham Moles, “On islands and isolation” (2009) 1 *Insula* 6-13.

⁹⁹ For an appraisal see, Tsampi (n 54).

¹⁰⁰ Tsampi, ‘Reimagining Rights...’ (n 97). On islandness, see Suwa, ‘The Space of Shima’ (2007) 1(1) *Shima: The International Journal of Research into Island Cultures* 6-14.

¹⁰¹ Ibid.

65. International human rights law does recognise certain spatial categories, such as rurality (see CEDAW¹⁰² and CRPD).¹⁰³ As previously indicated in this Report, islands might as well be considered in the context of Treaty Bodies General Comments. However, although this marks progress towards spatial sensitivity, it remains insufficient to capture the complex and multidimensional nature of islandness. The existing literature on rurality nonetheless supports the case for an islandness-based approach, demonstrating that locality influences stakeholdership and spatial equality within the human rights system. Overall, international human rights law has developed with an implicit continental bias.

66. Rethinking international human rights law through an islandness-based approach has the potential to place the individual in the center of the narrative.¹⁰⁴ “Islandness goes beyond the geographical category of an ‘island’ and addresses the idea of a topos that is made and remade by people”.¹⁰⁵ If so far islands are seen in international law through the spectre of a State-centric perspective as geographical entities relevant for sovereign claims, an islandness perspective introduces the “islander”, as a rights-holder, in the international framework. This, certainly, invites us to delve further into the notions of “social/spatial justice” and “vulnerability”.

2. Islands and international law: Questioning our entry points¹⁰⁶

*[T]he sea is our pathway to each other and to everyone else, the sea is our endless saga, the sea is our most powerful metaphor, the ocean is in us.*¹⁰⁷

67. When thinking about islands and international law, questioning our entry points is key. In reflections on the Pacific region, it is fair to say that most international law scholarship uncritically adopts the language and framing of “small island developing States”, defined by their “small size, geographic remoteness, narrow resource, and export base” which ‘makes them vulnerable to exogenous economic, social, and environmental shocks and crises’.¹⁰⁸ Whether consciously or not, it is built on “cartographical concepts of scattered land masses, fragmentation and global insignificance”.¹⁰⁹

68. The notion of the “small island developing State” is a western construct based largely on geographic and economic size. They are perceived as “much too small, too poorly endowed with resources, and too isolated from the centers of economic growth”.¹¹⁰ The renowned Pacific scholar, Epeli Hau‘ofa, has argued that “the idea of smallness is relative; it depends on what is included and excluded in any calculation of size”.¹¹¹ He has described the conventional western

¹⁰² Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) UN Doc A/34/46 (CEDAW), Article 14.

¹⁰³ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) UN Doc A/61/611 (CRPD) Articles 9(1), 25(c).

¹⁰⁴ Tsampi, ‘A Global Approach...’ (n 97) 15.

¹⁰⁵ Cyprian Broodbank, *Island Archaeology* (CUP 2000) 33.

¹⁰⁶ Contribution by Jane McAdam.

¹⁰⁷ Epeli Hau‘ofa, ‘The Ocean in Us’ (1998) 10(2) *Contemporary Pacific* 392, 409.

¹⁰⁸ United Nations Development Programme (Latin America and the Caribbean), ‘Small Island Developing States’, <https://www.undp.org/latin-america/small-island-developing-states>.

¹⁰⁹ Scanlan and Wilson, ‘Pacific Waves: Reverberations from Oceania’ (2018) 54(5) *Journal of Postcolonial Writing* 577, 578.

¹¹⁰ Hau‘ofa, ‘Our Sea of Islands’ (1994) 6(1) *Contemporary Pacific* 148, 150.

¹¹¹ Ibid 152; see also Riles, ‘The View from the International Plane: Perspective and Scale in the Architecture of Colonial International Law’ (1995) 6(1) *Law and Critique* 39, 45-46.

view as an “economistic and geographic deterministic” one that overlooks culture, history,¹¹² and the knowledge acquisition/transfer that comes with both regional and global Pacific mobility.

69. This perspective is fundamentally at odds with Pacific worldviews of Oceania (which is defined below) as “a sea of islands” rather than discrete “islands in the sea”.¹¹³ As Hau‘ofa wrote in 1994, there is a “world of difference” between these perspectives:

70. The first emphasizes dry surfaces in a vast ocean far from centers of power. Focusing in this way stresses the smallness and remoteness of the islands. The second is a more holistic perspective in which things are seen in the totality of their relationships.¹¹⁴

71. For Pacific peoples, the ocean is not a divider, but a connector: a shared “lived and living cultural space and a central part of human activity, connection and aspirations”.¹¹⁵ Traversing the ocean – mobility – has been a feature of Pacific life for thousands of years, resulting in a “cross-fertilisation of ideas and the articulation of resistant politics, cultures and languages” among Pacific peoples,¹¹⁶ with “implications for agriculture, subsistence, genealogies, [and] cultural transmission”.¹¹⁷ According to Hau‘ofa, all Pacific cultures have been shaped by such interactions, but “[i]n general, the smaller the island the more intensive are the interactions with the sea, and the more pronounced are the sea’s influences on culture”.¹¹⁸ Migration itself can be a form of adaptation and resilience-building.¹¹⁹

72. Politically, the interconnectedness of this vast regional space has been characterized by Pacific Islands Forum leaders as the Blue Pacific Continent: “As large oceanic countries and territories, we are the custodians of nearly 20 percent of the earth’s surface, and we place great cultural and spiritual value on our ocean and land, as our common heritage.”¹²⁰ It is based on the idea that the region is a united and interconnected entity ‘across a significantly large oceanic continent’.¹²¹

73. This is reflected in the terms typically used to describe the region. The “Pacific Islands” “denotes small areas of land sitting atop submerged reefs or seamounts”, whereas “Oceania” “denotes a sea of islands with their inhabitants”.¹²² Colonial expansion over the 19th century saw the construction of borders which “transform[ed] a once boundless world into the Pacific Island states and territories that we know today”,¹²³ and limited the ease with which people could move.

74. The creation of administrative “units” (colonies) within the region eventually gave way to independent States and territories that slotted into international legal constellations of

¹¹² Hau‘ofa ‘Our Sea of Islands’ (n 110) 151.

¹¹³ Ibid, 153.

¹¹⁴ Ibid, 152-53.

¹¹⁵ Lixinski, McAdam and Tupou, ‘Ocean Cultures, the Anthropocene and International Law: Cultural Heritage and Mobility Law as Imaginative Gateways’ (2022) 23(1) *Melbourne Journal of International Law* 1, 4.

¹¹⁶ Banivanua Mar, *Decolonisation and the Pacific: Indigenous Globalisation and Ends of Empire* (CUP 2016) 17.

¹¹⁷ Ibid, 36.

¹¹⁸ Hau‘ofa ‘The Ocean in Us’ (n 107) 403.

¹¹⁹ See eg Nansen Initiative on Disaster-Induced Cross-Border Displacement, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (Report, December 2015) vol 1, [87-93]; Pacific Regional Framework on Climate Mobility (2023) [28-32].

¹²⁰ *2050 Strategy for the Blue Pacific Continent* (Pacific Islands Forum, 2022) 8.

¹²¹ Teaiwa, ‘On Decoloniality: A View from Oceania’ (2020) 23(4) *Postcolonial Studies* 601, 602.

¹²² Hau‘ofa ‘Our Sea of Islands’ (n 110) 153.

¹²³ Ibid, 155.

organizing the world. At the same time, though, traditional Pacific ways of understanding space, connection and mobility persisted which were in tension with the Westphalian model.

75. The issue of what or who is a Pacific Islander would not arise if we considered Oceania as comprising people as human beings with a common heritage and commitment, rather than as members of diverse nationalities and races. Oceania refers to a world of people connected to each other. The term *Pacific Islands Region* refers to an official world of states and nationalities. John and Mary cannot just be Pacific Islanders; they have to be Ni-Vanuatu, or Tuvaluan, or Samoan first. As far as I am concerned, anyone who has lived in our region and is committed to Oceania is an Oceanian. This view opens up the possibility of expanding Oceania progressively to cover larger areas and more peoples than is possible under the term *Pacific Islands Region*. In this formulation, the concepts *Pacific Islands Region* and *Pacific Islanders* are as redundant as *South Seas* and *South Sea Islanders*. We have to search for appropriate names for common identities that are more accommodating, inclusive, and flexible than what we have today.¹²⁴

76. Lixinski, Tupou and McAdam analysed how the ocean as a geographical, cultural and economic connector is understood as a space by Pacific peoples, and the implications of this for the role and application of international law.¹²⁵ They argued that “relationships with the ocean are not just driven by the idea of the ocean as an outer limit to territory (on which identity is commonly based), but as territory – and therefore another source of identity – itself.”¹²⁶ Notions of statehood ‘tied to territory-as-land fail to account for a relationship of territory-as-ocean’: international law frameworks cannot easily accommodate this different conceptualization.¹²⁷

77. When it comes to sea-level rise and implications for statehood, there are now multiple authoritative statements from States, eminent jurists and the International Court of Justice itself that suggest that statehood will continue even if one of its elements disappears.¹²⁸ Pacific States have sought to crystallize this in the 2023 Pacific Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise.¹²⁹ As some scholars have noted, however, well before territory cannot sustain a population, people will have had to move elsewhere, and it is therefore loss of population (and potentially government) that may pose a more immediate risk. For this reason, it is essential that domestic laws safeguard nationality (including dual nationality and the ability to pass down nationality to children) and enable people to vote from abroad.¹³⁰

¹²⁴ Hau‘ofa ‘The Ocean in Us’ (n 107) 401–02.

¹²⁵ Lixinski, McAdam and Tupou (n 115).

¹²⁶ Ibid, 4.

¹²⁷ Ibid, 18.

¹²⁸ *Obligations of States in respect of Climate Change* (n 7), [363]; International Law Commission, *Final Report Sea level Rise* 2025, https://legal.un.org/ilc/texts/instruments/english/reports/8_9_2025.pdf; International Law Association, *International Law and Sea Level Rise: Lisbon Conference* (2022) 24ff; International Law Commission, *Sea-Level Rise in relation to International Law: Second Issues Paper by Patrícia Galvão Teles and Juan José Ruda Santolaria, Co-Chairs of the Study Group on Sea-Level Rise in relation to International Law (18 April–3 June and 4 July–5 August 2022)*, UN doc A/CN.4/752 (19 April 2022), [184–85], 187 (referring to comments by the Solomon Islands, Samoa and Tuvalu).

¹²⁹ 2023 Declaration on the Continuity of Statehood and the Protection of Persons in the face of Climate Change-Related Sea-Level Rise, [12, 13] (respectively), contained in Annex D to the Pacific Islands Forum, *Forum Communiqué* (52nd Pacific Islands Forum, November 2023). Tuvalu requires recognition of its ongoing statehood in bilateral treaties entered into with other States: eg Falepili Union (adopted 9 November 2023, entered into force 28 August 2024) art 2.

¹³⁰ See eg McAdam, ‘Preserving Statehood through Population and Government: Safeguarding Nationality and Franchise in the context of Sea-Level Rise and Mobility’ (2022) 20 *New Zealand Yearbook of International Law* 3; Foster, Hard, Lambert and McAdam, *The Future of Nationality in the Pacific: Preventing Statelessness and Nationality Loss in the*

78. This is linked to discussions about the “habitability” and “uninhabitability” of land, which again reflects stark ontological differences. As Farbotko and Campbell have explained,

there is not necessarily an objectively knowable point at which a place becomes uninhabitable – and thus questions must be asked about who can and should define habitability in particular places. Indeed, the process of defining habitability and uninhabitability should be recognised not only as a technical undertaking for experts, but as an inherently situated process that can only deliver climate justice when the affected population have an authentic and valid role.¹³¹

79. Building on this in the context of mobility, Burson, Kälin and McAdam have noted that:

the notion of diminishing territory has both a quantitative dimension (how much territory has been lost) and a qualitative dimension (the habitability/carrying capacity of the territory remaining). The interplay between the two will shape people’s decisions about mobility at the individual and household levels, and, in turn, affect relationships between individuals (as rights holders) and States (as duty bearers).¹³²

80. In thinking about this, it is important to reflect on what it means for islands (and islanders) to be “vulnerable”. Even with the ocean as a connector, distance may hamper access to infrastructure and resources, increasing expense and logistical challenges. At the same time, it may generate greater local resourcefulness, innovation and resilience because people have to be able to respond and adapt – and this local knowledge is crucial for future planning. A nuanced approach to vulnerability highlights its relational, intersectional nature and the *systems* that affect people’s resilience or otherwise.¹³³ Too often, *individuals* are considered to be vulnerable – as though this is an inherent personal characteristic, rather than something conditioned by social structures and government policies which ‘reinforce pre-existing power inequalities and endemic patterns of marginalisation’.¹³⁴ In considering whether the current human rights framework adequately addresses “vulnerability”, this framing will be particularly important.

81. A final angle noted but not explored here is the idea of islands as a place to/from which people can be moved, evacuated or relocated. During the colonial era, there were a few cases of whole communities being relocated to other islands – with little regard for traditional ownership of land, culture or identity, raising ongoing issues of rights entitlements and claims to self-determination.¹³⁵ Australia’s own colonial history, too, can be seen as part of a longer

context of *Climate Change* (Kaldor Centre for International Refugee Law, Peter McMullin Centre on Statelessness and UTS 2022).

¹³¹ Farbotko and Campbell, ‘Who Defines Atoll “Uninhabitability”?’ (2022) 138 *Environmental Science and Policy* 182, 189.

¹³² Burson, Kälin and McAdam, ‘Statehood, Human Rights and Sea-Level Rise: A Response to the International Law Commission’s Second Issues Paper on Sea-Level Rise in relation to International Law’ (2021) 4 *Yearbook of International Disaster Law* 265, 267.

¹³³ Cantor, ‘Divergent Dynamics: Disasters and Conflicts as “Drivers” of Internal Displacement?’ (2024) 48 *Disasters* e12589, 10.

¹³⁴ Mosneaga, ‘Solutions Discourse in Disaster Displacement: Implications for Policy and Practice’ (2023) 47(3) *Disasters* 676, 691 (fns omitted).

¹³⁵ McAdam, ‘Self-Determination and Self-Governance for Communities Relocated across International Borders: The Quest for Banaban Independence’ (2017) 24 *International Journal on Minority and Group Rights* 428; McAdam, “‘Under Two Jurisdictions’: Immigration, Citizenship and Self-Governance in Cross-Border Community Relocations’ (2016) 34 *Law and History Review* 281; McAdam, ‘Historical Cross-Border Relocations in the Pacific: Lessons for Planned Relocations in the Context of Climate Change’ (2014) 49 *Journal of Pacific History* 301.

pattern of relocating people to ‘far-flung’ islands as a form of incarceration,¹³⁶ a model it has continued into the 21st century with offshore processing in Nauru and Papua New Guinea.¹³⁷ There are interesting ideas here about containment, isolation and “remoteness” which deserve further exploration.

B. Thematic challenges

*1. Beyond climate change: governance-socio-economic vulnerabilities-mobility*¹³⁸

82. International human rights law engages islands in complex, yet oftentimes under-acknowledged ways. While climate change and sea level rise dominate global discussion, a broader mapping reveals three clusters of challenges: (1) structural governance constraints; (2) socio-economic vulnerabilities shaped by insularity; and (3) rights implications of demographic change and mobility. Together, these raise the question of whether existing human rights frameworks adequately capture the spatial, political, and socio-economic particularities of island life.

83. Governance, autonomy, and differentiated statehood: Island communities frequently occupy ambiguous positions within domestic (constitutional) orders. Examples range from the differentiated autonomy regimes of the Åland Islands, the British Crown Dependencies, or France’s Outermost Regions, to islands that are sub-national, but geographically remote (e.g. the Azores, Svalbard, or Greenland). Such arrangements, however, raise questions regarding political participation, representative equality, and effective access to state institutions – especially where physical distance or limited administrative capacity constrain rights implementation. Human right bodies have increasingly recognised these disparities: the ECtHR has addressed unequal access to healthcare and emergency services in remote regions, while UN treaty bodies have highlighted deficits in political participation among geographically isolated minorities. However, no systemic framework exists to date for assessing the human rights implications of territorial fragmentation within states.

84. Socio-economic rights and spatial inequality: Insularity exacerbates disparities in healthcare access, education, mobility, and welfare provision. Many islands face a structural “double exposure”: geographical distance increases service delivery costs, while small populations reduce economies of scale. The right to health thus is a prominent example: domestic cases in the Nordic region, the UK, and the Pacific reveal recurring issues regarding availability of specialist medical care, emergency transfers, and continuity of services. Similar concerns arise in relation to food security, where import dependence intersects with climate vulnerability, and housing rights, where tourism-driven property markets displace local populations. International bodies have thus begun to recognise these “island-specific” forms of socio-economic inequality, yet existing human rights instruments rarely articulate positive obligations tailored to spatial disadvantages.

85. Demographic change, mobility, and cultural rights: Many islands experience rapid depopulation, ageing populations, and out-migration of skilled workers. These processes jeopardise cultural continuity, local languages, traditional knowledge systems, and the viability of essential services. Conversely, other islands face pressures from in-migration, linked to

¹³⁶ McAdam, ‘Relocation and Resettlement from Colonisation to Climate Change: The Perennial Solution to “Danger Zones”’ (2015) 3 *London Review of International Law* 93.

¹³⁷ Gleeson, *Offshore: Behind the Wire on Manus and Nauru* (NewSouth Publishing 2016).

¹³⁸ Contribution by Raphael Oidtmann.

tourism, military presence, or resource extraction, raising concerns about community consent, land rights, and cultural erosion. UNDRIP-related jurisprudence and ILO Convention No. 169 mechanisms offer partial guidance for Indigenous island communities, but many affected groups fall outside these regimes. Climate-related human mobility – both from and towards islands – further complicates questions of self-determination, cultural survival, and intergenerational rights.

86. Conclusion: A preliminary mapping suggests that international human rights law provides important, but fragmented tools for addressing island-specific vulnerabilities. The central challenge for the SG therefore is to articulate a conceptual and doctrinal framework that recognises insularity as a legally relevant condition – not merely a geographical descriptor – shaping how rights are realised in practice. A more systemic account is needed to integrate island contexts into human rights analysis, identify normative gaps, and guide states and international bodies in developing context-sensitive obligations.

C. Intersecting challenges

*1. Caribbean SIDS, international law and security*¹³⁹

87. International law largely defines islands based on geography, notwithstanding various indicators in social science disciplines.¹⁴⁰ Economists use smallness of scale, while political scientists and international relations practitioners view smallness as instrumental for authentic, representational government. Conversely, small islands in the Commonwealth Caribbean are subject to extraction and exploitation, as peripheral players without influence on a global scale.¹⁴¹

88. Caribbean SIDS' islandness ranges between insularity, vulnerability and resilience in the face of economic and climate change shocks. Many non-contiguous, sovereign Caribbean States possess more maritime jurisdiction than land territory, and present anomalies for international law, as their sovereign status is not matched by competence in international relations and equal capacity to manage such jurisdiction.

89. Post-independence legislative frameworks have not aligned with metropolitan systems in abolishing the death penalty. Although abolitionist in practice, the death penalty remains on most Caribbean islands' statute books. However, changing geopolitical interests and self-interest are weakening fragile regionalism. Increased US military action in the Southern Caribbean Sea involving the US, Venezuela and Trinidad and Tobago, as signatories and non-signatories to UNCLOS,¹⁴² are testing international legal and humanitarian principles on territorial integrity, use of force and treatment of shipwrecked survivors. Resulting tensions affect vulnerable populations and question the efficacy of international law and norms in the face of these emerging threats.

90. Foley and Baldacchino's arguments that the social bonding and connectedness innate in islands are not necessarily conducive to democracy and equitable governance, appear to have

¹³⁹ Contribution by Rosemarie Cadogan.

¹⁴⁰ Articles 121(1) and 121(3) of the United Nations Convention on the Law of the Sea (UNCLOS) utilise 'a naturally formed area of land, surrounded by water, which is above water at high tide', and the incapability of sustaining human habitation or economic life of their own to define islands and rocks. Both criteria are further examined in the *South China Sea Arbitration* (n 2)

¹⁴¹ Foley et al, 'Understanding "Islandness" (2023) 113(8) *Annals of the American Association of Geographers* 1800, 1803.

¹⁴² Although party to the UN Charter, the US and Venezuela are nonparties to UNCLOS.

merit when elevated to regional and international levels.¹⁴³ Increasingly, international legal precedent regarding threats and the use of force (unavoidable, reasonable and necessary)¹⁴⁴ are not being applied. Notwithstanding the death of two Trinidadians in approximately 29 US boat strikes, Trinidad and Tobago's support for the use of force based on its particular national interests,¹⁴⁵ repudiates CARICOM Leaders'¹⁴⁶ reaffirmation of their shared vision of maintaining the Caribbean Region as a "Zone of Peace".¹⁴⁷ This raises the question of whether Caribbean islands are losing islandness in the face of emerging global geopolitical shifts, and whether international law adequately addresses these realities.

2. Applicability of human rights treaties on islands: the ECHR colonial clause¹⁴⁸

91. The European Convention on Human Rights (ECHR)¹⁴⁹ protects the fundamental human rights/basic freedoms of over 700 million people in its 46 state parties. Article 56 ECHR is widely regarded as one of the most controversial provisions of the Convention, largely due to its unmistakable colonial origins.¹⁵⁰ The clause allows Contracting States to determine whether and how the Convention applies to "territories for whose international relations they are responsible".

92. The colonial clause was from the outset contested within the Council of Europe¹⁵¹ and the controversy persists today.¹⁵² The European Court of Human Rights has applied Article 56 in an exclusionary manner, treating State declarations as decisive for the territorial applicability of the Convention. Certainly, the Court has acknowledged the anachronistic nature of the provision. Article 56 sits uneasily alongside the Court's expansive reading of Article 1 ECHR, particularly through the development of the "effective control" doctrine, most notably in *Al-Skeini*.¹⁵³ Unless the colonial clause will be modified, the result is a striking inconsistency: while the Convention may apply extraterritorially wherever a State exercises effective control, it may nonetheless fail to apply to overseas territories under that same State's authority absent an Article 56 declaration.

93. This tension has particularly detrimental consequences for islands. As a matter of fact, the vast majority of overseas territories covered by Article 56 are islands or (pen)insular territories.¹⁵⁴ As commentators have observed, this leads to the paradoxical outcome that

¹⁴³ Foley et al (n 141) 1806.

¹⁴⁴ *Guyana v Suriname* (Arbitral Award, Permanent Court of Arbitration, 17 September 2007) PCA Case No. 2004-04.

¹⁴⁵ Whilst Colombian petitioners challenged the legality of strikes before the Inter-American Commission on Human Rights, Trinidad and Tobago's Prime Minister stated that "the US military should kill them all violently".

¹⁴⁶ The Caribbean Community (CARICOM) membership includes islands and coastal developing countries Guyana and Belize, <https://caricom.org/member-states-and-associate-members>.

¹⁴⁷ CARICOM, 'Statement from the Caribbean Community - Security Build Up in the Region', 18 October 2025, <https://caricom.org/statement-from-the-caribbean-community-security-build-up-in-the-region/>.

¹⁴⁸ Contribution by Aikaterini Tsampi. See the relevant points analysed in Tsampi (n 4).

¹⁴⁹ European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS 5.

¹⁵⁰ Indicatively, see Marco Duranti's observations in Piekuszewski and Wagner, 'Blog Series: Behind the Scenes of the ECtHR's Practice – "It Is Amazing That the Court Actually Came and This Convention Got Adopted"' (*Human Rights Here*, 24 May 2024) <https://www.humanrightshere.com/post/behind-the-scenes-of-the-ecthr-s-practice-it-is-amazing-that-the-court-actually-came-and-this-convention-got-adopted>.

¹⁵¹ Miltner, 'Revisiting extraterritoriality after *Al-Skeini*: the ECHR and its lessons' (2012) 33 *Michigan Journal of International Law* 693-747, 710.

¹⁵² *Georgia v Russia (II)* (ECtHR, App No 38263/08, Merits, 21 January 2021), dissenting opinion of Judge Pinto de Albuquerque.

¹⁵³ *Al-Skeini and Others v United Kingdom* (ECtHR, App No 55721/07, Merits and Just Satisfaction, 7 July 2011), [140].

¹⁵⁴ Tsampi (n 4) 176-177.

individuals in overseas island territories may enjoy less human rights protection than those in foreign territories under temporary military occupation.¹⁵⁵

94. Ultimately, Article 56 not only reflects an outdated colonial logic but also risks creating indirect discrimination against island populations. This concern was already articulated during the Convention’s drafting by Léopold Senghor, who warned that the clause conflicted with both Article 1 and the principle of non-discrimination (Article 14 ECHR).¹⁵⁶ Rather than mitigating these effects, the “local requirements” clause in Article 56(3) appears to exacerbate them, reinforcing the marginalisation of islands within the ECHR system.¹⁵⁷

3. *Pacific Archipelagic Island States (‘PAIS’) and the right to health*¹⁵⁸

95. Universality¹⁵⁹ is a foundational principle of international human rights law, affirming that human rights attach to all individuals by virtue of their humanity, irrespective of who they are or where they reside. Spatial inequality, the uneven distribution of resources, opportunities and services across geographic areas,¹⁶⁰ poses a significant challenge to the practical realisation of this principle.

96. Archipelagic¹⁶¹ Island States¹⁶² face unique human rights challenges that arise in the context of spatial inequality. Pacific-based mid-ocean¹⁶³ Archipelagic Island States (Fiji, Kiribati, Republic of the Marshall Islands, Tuvalu, Vanuatu and Solomon Islands), herein referred to as ‘Pacific Archipelagic Island States (‘PAIS’), rank amongst the world’s smallest, most remote and most geographically dispersed nations.¹⁶⁴ Each PAIS comprises numerous islands scattered over extensive territories, across which their populations are unevenly distributed (see **Table 1**).

¹⁵⁵ Alegre/Island Rights Initiative, *Mapping the UK’s responsibilities for human rights in Crown Dependencies and Overseas Territories (CDOTS)*, 2019, <https://susiealegre.com/mapping-the-uks-responsibilities-for-human-rights-in-uk-overseas-territories-and-crown-dependencies-update/>.

¹⁵⁶ *Collected Edition of the ‘Travaux Préparatoires’ of the European Convention on Human Rights*, Volume VI (1985), 174 - Second Session of the Consultative Assembly (7-28 August 1950).

¹⁵⁷ Tsampi (n 4) 178-182.

¹⁵⁸ Contribution by Carla Williams.

¹⁵⁹ As articulated in the preamble of the Universal Declaration of Human Rights (adopted 10 December 1948) GA Res 217 A (III) (UDHR).

¹⁶⁰ For example, United Nations Department of Economic and Social Affairs, *World Social Report 2020: Chapter 4, “Urbanization: Expanding Opportunities but Deeper Divides”* (World Social Report 2020, UN DESA 2020).

¹⁶¹ UNCLOS art 46(b) defines an “archipelago” as a “group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such”.

¹⁶² UNCLOS, art 46(a) defines an “archipelagic State” as “a State constituted wholly by one or more archipelagos and may include other islands”.

¹⁶³ Papua New Guinea is removed from this analysis as it is not a mid-ocean Archipelagic State, due to its proximity to Indonesia and Australia.

¹⁶⁴ Utz (ed), *Archipelagic Economies: Spatial Economic Development in the Pacific – Synthesis Report* (World Bank 2021), 9-11.

Table 1: PAIS islands

Country	Population¹⁶⁵	Number of inhabited islands and/or atolls¹⁶⁶	Percentage of population that reside on the main island¹⁶⁷
Fiji	928,784	110	80%
Kiribati	134,518	22	35%
Marshall Islands	37,548	24	50%
Tuvalu	9,646	8	55%
Vanuatu	327,777	65	25%
Solomon Islands	819,198	147	25%

97. This unique geographic fragmentation and population dispersion results in spatial inequities for PAIS,¹⁶⁸ one of which is the uneven distribution of public services between their main and outer islands due to the economic, logistical, administrative, technical and cultural challenges associated with servicing such vastly dispersed populations that are separated by sea.¹⁶⁹

98. Access to public services, and the quality of those services, is critical to Pacific Islanders' human development and livelihoods.¹⁷⁰ Consequently, the challenges faced by PAIS' governments with respect to equitable service delivery directly impact their capacities to uniformly respect, protect and fulfil the human rights of their citizens.

99. This is evident in the Human Rights Council (HRC) Universal Periodic Review¹⁷¹ (UPR) reports for the six PAIS, which reveal a correlation between access to public services and

¹⁶⁵ World Bank, 'Fiji' (*World Bank Data*, 2024), <https://data.worldbank.org/country/fiji>; World Bank, 'Kiribati' (*World Bank Data*, 2024), <https://data.worldbank.org/country/kiribati>; World Bank, 'Marshall Islands' (*World Bank Data*, 2024), <https://data.worldbank.org/country/marshall-islands>; World Bank, 'Papua New Guinea' (*World Bank Data*, 2024), <https://data.worldbank.org/country/papua-new-guinea>; World Bank, 'Tuvalu' (*World Bank Data*, 2024), <https://data.worldbank.org/country/tuvalu>; World Bank, 'Vanuatu' (*World Bank Data*, 2024), <https://data.worldbank.org/country/vanuatu>; World Bank, 'Solomon Islands' (*World Bank Data*, 2024), <https://data.worldbank.org/country/solomon-islands>.

¹⁶⁶ PALM scheme, *Fiji Country Fact Sheet* (Commonwealth of Australia, August 2021), <https://www.palmscheme.gov.au/resources/fiji-country-fact-sheet>; Commonwealth, 'Kiribati' (The Commonwealth), <https://thecommonwealth.org/our-member-countries/kiribati>; Australian Government Department of Foreign Affairs and Trade, *Republic of the Marshall Islands Country Brief*, <https://www.dfat.gov.au/geo/republic-of-marshall-islands/republic-of-the-marshall-islands-country-brief>; Commonwealth Chamber of Commerce, *Tuvalu* (Member Countries), <https://commonwealthchamber.com/member-countries/tuvalu/>; Pacific Australia Labour Mobility Scheme, *Vanuatu Country Fact Sheet*, <https://www.palmscheme.gov.au/resources/vanuatu-country-fact-sheet>; Solomon Islands Government, *About Solomon Islands*, <https://solomons.gov.sb/about-solomon-islands/>.

¹⁶⁷ Data from Utz (ed), *Archipelagic Economies: Spatial Economic Development in the Pacific -Synthesis Report* (World Bank 2021), fig 6, 20.

¹⁶⁸ Ibid, see chapter 3.

¹⁶⁹ Ibid 9-12, 33.

¹⁷⁰ Ibid 33.

¹⁷¹ The UPR requires United Nations Member State to undergo a peer review of its human rights records every 4.5 years. As such, the UPR reports serve as a useful insight into the human rights challenges faced by a State. The 'Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights' for each country was used for this review.

standards of human rights enjoyment – the right to health in particular – and have been included in the previous Section of the present report (III).

100. The consistency with which the right to health is assessed with reference to a lack of access to health services by virtue of geographic fragmentation is illustrative of the intrinsic link between spatial inequality in PAIS and human rights realization.

101. While it may appear axiomatic that human rights standards decline when basic services are inaccessible, literature addressing the interplay between spatial inequality and human rights in the Pacific is scarce.

102. As global awareness of the human rights vulnerabilities of PAIS' populations continues to grow, particularly in relation to climate change (which disproportionately affects outer island populations), any proposed solutions grounded in international human rights law must incorporate the unique geographic realities of PAIS and the corresponding challenges these pose to achieving universal human rights protection.

*4. SIDS and the right to food*¹⁷²

103. The right to food as defined in Article 25 UDHR and Article 11 of the International Covenant on Economic, Social and Cultural Rights is a fundamental human right, and it will be realized when everyone has access to adequate food or the means to obtain it, according to the Economic and Social Council. The right to food also includes a duty to protect future generations from actions that could deprive them of access to food, emphasizing sustainability.¹⁷³

104. One of the key areas where this duty must be implemented is fisheries, which account for 15% of global animal protein demand and 5% of global protein demand.¹⁷⁴ As of 2024, annual fisheries and aquaculture production has reached 223.2 million tonnes, becoming a sector worth 472 billion dollars, and consumption has increased to 165 million tonnes, nearly double the annual growth rate of the world population since 1961.¹⁷⁵ The states with the highest consumption are small island developing states (SIDS), with annual per capita consumption of 15 kilograms.¹⁷⁶ In these states, fishing accounts for a significant share of total protein consumption and plays a major role in national economic development and individual livelihoods.¹⁷⁷ However, these states have been unable to transition from capture fisheries to aquaculture, a more sustainable and effective method, due to the scale of investment needed or its unfeasibility. Globally, although the share of capture fisheries has declined, it has increased in SIDS, especially since the 2000s. In total, SIDS produce 1,865,581 tonnes of fisheries, with only 32,906 tonnes from aquaculture, and 1,832,675 tonnes from capture fisheries beyond

¹⁷² Contribution by Gökey Saracyakupoglu.

¹⁷³ Committee on Economic, Social and Cultural Rights, 'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights', 1999, 3 and Office of the High Commissioner for Human Rights, 'CESCR General Comment No. 12: The Right to Adequate Food (Art. 11)', 1999, [7.5]; FAO, 'Global Blue Growth Initiative and Small Island Developing States (SIDS)' (2014) 4.

¹⁷⁴ FAO, 'In Brief to The State of World Fisheries and Aquaculture' (Blue Transformation in Action, 2024) 5.

¹⁷⁵ Ibid.

¹⁷⁶ SIDS is followed by the least developed countries (LDCs) at 12 kg. Regarding other groups, the per capita consumption is as follows: Net food-importing developing countries (NFIDCs) 11 kg, low-income food-deficit countries (LIFDCs) 6 kg and land-locked developing countries (LLDCs) 5 kg. (FAO, "Fishery and Aquaculture Statistics - Yearbook 2023" (FAO Yearbook of Fishery and Aquaculture Statistics, 2025). For state-based statistics on the share of aquatic products in the total animal protein consumption, see *ibid*, 171-173.

¹⁷⁷ FAO, 'Blue Growth Initiative and Small Island Developing States (SIDS)' (2014) 4.

internal waters.⁶¹⁷⁸ The fact that fisheries and, in this context, the right to food of individuals depend primarily on capture fisheries in the EEZ indicates that the sustainability of fisheries in these maritime areas is of vital importance for SIDS. Over the 37 year period from 1974 to 2021, the share of fisheries that are below biologically sustainable levels rose from 10% to 37%¹⁷⁹ One of the main reasons for this increase is illegal, unreported, and unregulated (IUU) fishing activities in these areas.¹⁸⁰ These activities occur in the high seas and maritime areas where states exercise sovereign rights, leading to overfishing and hence undermining local food security. The FAO aims to phase out all illegal, unreported, and unregulated activities, which account for about 20% of global fishing, as part of its goal of effective fisheries management to ensure healthy stocks and equitable livelihoods.¹⁸¹ From the perspective of SIDS, these states' failure to establish effective maritime law enforcement agencies, given their technical and institutional capacity, and their inability to implement effective fisheries management, leaves their fisheries directly vulnerable to IUU fishing. This situation leads to the rapid, uncontrolled depletion of these states' fisheries, on the one hand, while, on the other, it destroys the primary source of income for individuals who depend on small-scale fishing for their livelihoods.¹⁸²

105. In this context, IUU fishing creates a significant challenge to the right to food, particularly for the SIDS and island communities, whose economies and livelihoods depend on fishing. For SIDS in particular, the inadequacy of these states' maritime law enforcement agencies results in them lacking the power to deter IUU fishing activities in their own maritime areas.

5. Canadian islands and Indigenous rights¹⁸³

106. Canada comprises a continent and islands, and includes one entirely island province (Prince Edward Island), large islands within provinces (e.g. Newfoundland, Cape Breton, Vancouver Island), and the vast Arctic Archipelago, which forms part of the three northern territories. These islands vary significantly in population, accessibility, and governance arrangements. Some remain permanently inhabited, while others, though currently uninhabited, retain cultural significance and are used for seasonal hunting, fishing, spiritual rejuvenation, or as places of refuge.¹⁸⁴

107. When mapping these islands and their associated challenges, it is essential to consider not only their place within Canada's federal structure and Indigenous-Crown governance arrangements but also unaddressed Indigenous title to oceans. The Crown has entered into a

¹⁷⁸ Gordon-Strachan et al., 'The 2024 small island developing states report of the Lancet Countdown on health and climate change' (2025) 13 *The Lancet Global Health* 146, 147 and FAO, 'WAPI Factsheet to Facilitate Evidence-Based Policymaking and Sector Management in Aquaculture', 2020, 107.

¹⁷⁹ FAO, 'In Brief to The State of World Fisheries and Aquaculture' 21.

¹⁸⁰ Kellen, Macfadyen and Hosch, *The Illegal, Unreported and Unregulated Fishing Risk Index 2025 Update*, 2025, 11.

¹⁸¹ FAO, 'Blue Transformation - Roadmap 2022-2030: A vision for FAO's work on aquatic food systems', 2022, 10 and 'FAO Chief hails International Treaty Combating Illegal, Unreported and Unregulated Fishing' (2019), <https://www.fao.org/newsroom/detail/FAO-chief-hails-international-treaty-combating-illegal-unreported-and-unregulated-fishing/zh>.

¹⁸² UNCTAD, *UNCTAD Strategy to Support Small Island Developing States*, 2024, 39.

¹⁸³ Contribution by Anita Rayegani.

¹⁸⁴ E.g. Herschel Island – Qikiqtaruk Territorial Park, addressed in Cecco, "'The land is tearing itself apart': life on a collapsing Arctic isle' (*The Guardian*, 21 November 2024), <https://www.theguardian.com/environment/2024/nov/21/canada-arctic-herschel-island-qikiqtaruk-climate-permafrost-tundra-ecology-aoe>. The UNESCO World Heritage Site of the ancient Haida village of sGaan Gwaay provides an example of the deep spiritual values of Indigenous islands: <https://parks.canada.ca/pn-np/bc/gwaiihaanas/culture/cultural-sites-culturels/cultural-sites-culturels-5>

range of historic and modern treaties, agreements, and other constructive arrangements with Indigenous Peoples across most of Canada. Indigenous Peoples have “the right to the recognition, observance and enforcement” of these legal instruments,¹⁸⁵ which in some situations reflect rights “of international concern, interest, responsibility and character.”¹⁸⁶ These arrangements engage international human rights norms, including self-determination, participation in decision-making, cultural rights, and access to effective remedies, as reflected in instruments such as UNDRIP, which Canada committed to implementing in 2021.¹⁸⁷ In areas outside of these arrangements, such as the coast of British Columbia, Canada has not yet entered into arrangements consistent with UNDRIP that recognizes these international human rights norms to marine portions of Indigenous territories, including rights to self-determination and the right to promote, develop and maintain their laws.¹⁸⁸

108. Given the diversity and context-specific nature of Indigenous–Crown relations, useful generalizations are difficult. The following examples highlight how modern treaties encompassing islands raise distinct human rights and governance challenges.

109. Inuvialuit Final Agreement/Western Arctic Comprehensive Land Claim (1984): This treaty covers vast marine areas up to the disputed US-Canada maritime boundary and beyond Canada’s 200NM EEZ, including portions of Victoria Island, Banks Island, and Herschel Island–Qikiqtaruk Territorial Park. The region’s highly dynamic shorelines¹⁸⁹ are particularly susceptible to climate change, including coastal erosion and permafrost melt, which threaten community infrastructure and Inuvialuit ancestral sites.¹⁹⁰

110. Nunavut Land Claims Agreement (1993): This treaty encompassing significant portions of the Arctic Archipelago, including inhabited islands such as Baffin Island, Victoria, Cornwallis, and the Belcher Islands. Most communities are only accessible by air year-round, which contributes to high food cost and food insecurity, housing shortages, limited healthcare facilities and services, educational gaps, and constraints in law enforcement and access to justice. Increased ship traffic could exacerbate existing socio-economic challenges,¹⁹¹ and the cumulative impacts cannot be mitigated through financial compensation alone.

V. PRELIMINARY OBSERVATIONS & LOOKING AHEAD

111. While drawing conclusions at this stage is premature, we are hereby sharing preliminary observations in light of the analysis contained in the previous Sections, along the lines of the 6

¹⁸⁵ *United Nations Declaration on the Rights of Indigenous Peoples*, UNGA Res 61/295 (13 September 2007) UN Doc A/RES/61/295 [UNDRIP], Article 37.

¹⁸⁶ *Ibid.*, Preamble.

¹⁸⁷ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.

¹⁸⁸ UNDRIP (n 185), Articles 3 and 34.

¹⁸⁹ Couture, Forbes, Fraser, Frobel, Jenner, Manson, Solomon, Szlavko, and Taylor, *A Coastal Information System for the Southeastern Beaufort Sea, Yukon and Northwest Territories*, Geological Survey of Canada, open file 7778 (Ottawa: Natural Resources Canada 2015).

¹⁹⁰ O’Rourke, ‘Losing Ground: The Impacts of Anthropogenic Climate Change on Culturally Significant Coastal Landscapes of the Inuvialuit Settlement Region’ (Network in Canadian History & Environment, 24 August 2020), <https://niche-canada.org/2020/08/24/losing-ground-the-impacts-of-anthropogenic-climate-change-on-culturally-significant-coastal-landscapes-of-the-inuvialuit-settlement-region/>.

¹⁹¹ Zhu, Ng, Afenyo, Panahi and Bell, *Socio-economic impacts of shipping along the Northwest Passage: The cost to locals*, *Marine Policy*, 153 (2023), 105647, <https://doi.org/10.1016/j.marpol.2023.105647>.

foundational questions of the SG. This will allow us to provide the basis for answering them and/or organising the SG's work and activities for the future, in Vienna, in particular.

1. What is the definition of "island" under international law?

112. The issue of defining "island" in international law has known intricacies. However, the SG will not revisit definitions and debates related to specific international law regimes that have been crystalised (the law of the sea, being the predominant example). While the UNCLOS definition is the one widely invoked in international law, it is clear that along with other known definitions (e.g. EU Eurostat) they serve the needs of specific regimes of international law.

113. However, delving further into the issue of islands and human rights, underexplored intricacies emerge. How do "islands" differ from other maritime features in international law? What are the ramifications in international law of an island State vis-a-vis an island as defined under the 1982 UNCLOS? How to distinguish or not, in the SG work, between Island States and islands parts of a State? It becomes clearer that a number of terms and notions relevant to islands might need to be further elaborated and, possibly, reconsidered such as "SIDS", "remoteness", "smallness", "interconnectness", "habitability", "vulnerability". Furthermore, it makes us question whether the focus should not be exclusively on defining "island" in the abstract, but rather exploring and/or endorsing further notions such as "islandness" and how this relates to the challenges (to be) identified in our work. Should we distinguish between juridical-islands/juridical-islandness and the broader concept of islands/islandness?

2. What are the current [international law] challenges relating to "islands"?

114. The present report presented a wide range of challenges related to islands in general/under international (human rights) law. From a human rights perspective, these challenges pertain to the full range of rights i.e. civil, political, economic, social and cultural. There are different typologies involved, that can be further explored, including:

- A number of challenges relate to gaps in the legal framework and others in the interpretation and/or implementation of international (human rights) law/inconsistencies between law and State practice.
- A number of challenges relate to widely discussed issues (e.g. sea level rise and climate change) and others in issues less-explored (e.g. the right to health; the right to food).
- A number of challenges are presented with a regional focus (e.g. PAIS/Caribbean/Canada/Australia/Europe)/pertaining to (a specific group) of islands (e.g. SIDS, small) while some other are discussed in a more holistic fashion, for all islands.
- A number of challenges pertain to intersecting regimes across international law (e.g. statehood or international security & human rights), while others pertain to intersectionalities within the human rights framework (islanders and gender, islanders and Indigenous peoples).

3. What are the definitions of "island"/"islandness" outside of international law? And to what extent are they relevant to international law?

115. A considerable part of the report already refers to definitions of islands/islandness found in other fields of knowledge and study, from Island Studies in its wide sense. The definition of

islands in Island Studies is not strictly delineated and is widely debated in the academic community.

116. However, such definitions may be relevant to international law to the extent that they may expand the understanding of islands from geographical to topological entities. In international law, “islands” are mostly seen as geographical entities and in that sense, static and formal (useful for delimitation, jurisdiction, statistics). Topological understandings (related to separation, boundedness, connectivity, isolation and culture) are dynamic and functional. “Islandness”, in that sense, is a topological condition that shapes economic, social, legal, and political relations beyond mere physical geography. It can be further explored if topological understandings of islands are useful for analysing human rights, including vulnerability, access to rights, governance, and inequality. It brings the cultural rights of island populations to the forefront of our considerations.

4. Can Island Studies enlighten the treatment of islands under international law? And vice versa?

117. Island Studies is a wide field of study focused on islands with inherent interdisciplinary traits. Geography, sociology, anthropology, economics, political sciences and governance studies, cultural studies, are only some of its components. The richness of knowledge developed in Island Studies is partially reflected in some parts of this report. As a preliminary observation, this knowledge can enlighten the SG’s aims both conceptually and pragmatically (identifying human rights challenges inherent to islands/occurring on islands).

118. The planned exchange with Island Studies scholars will provide further insights. It will also allow us to understand the extent to which international law can contribute to the knowledge and aspirations of Island Studies.

5. Do we need a distinctive regime for islands in international law?

119. While it would be premature at this stage to draw conclusions on whether a distinctive regime for islands is necessary, the SG will examine this question in greater depth in its future work. Should the SG ultimately consider that such a regime is warranted, it will assess the various regimes that currently exist in international law and the extent to which they may offer appropriate responses to the challenges identified.

120. Different approaches may be envisaged. For example, one option may be a ‘Convention on Islands’ establishing common principles and standards tailored to island conditions. Another could be an “Island Rights” approach, whereby “islandness” (or another appropriate definition) is recognised as a status requiring tailored obligations, analogous to instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) or the 2016 American Declaration on the Rights of Indigenous Peoples. Alternatively, the issues may be better addressed through targeted legal instruments that articulate island-specific standards in particular domains of international law. A further possibility is the development of a cross-cutting interpretive principle that relates to “islandness”, guiding the application of existing human rights obligations in light of the distinct circumstances of islands. Ultimately, it may even be concluded that the island challenges are sufficiently unique to justify a combination of the above, or a completely new and novel regime under international law.

121. At this juncture, the SG neither endorses nor rejects any of these possibilities, nor does it take a position on whether a distinctive regime is required. These examples illustrate the range of potential avenues that may inform the SG’s future work.

6. Is the rethinking of islands in international law opening the gates to critical perspectives on international law based on islandness? Can we frame the problem of islands and international law as a quest for de-continentalising international law?

122. Critical perspectives are identified in the present report and could form the basis of further investigation on the matter. Their further development will be part of the future work of the SG.