Chapter 3

Climate Change and Ocean Governance in the Pacific: Challenges of Sovereignty and Political Agency

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Funafala, one of the many islet in Funafuti Atoll, Tuvalu, often experiences king tides which sweep across the tiny island from both sides with little to no protection for the community (Photo: POCCA team, 2023).

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Abstract

Chapter 3 looks at governance of the climate/ocean nexus in the Pacific region. It focuses on Pacific Islands Countries and Territories (PICTs) as global norm entrepreneurs in international and regional frameworks to successfully manage the threats to their sovereign rights at the time of climate crisis. The chapter begins with examples of international ocean and climate regimes in which PICTs have played an influential role as political actors, framing the norms of global governance and international law. It then looks at sea level rise as a threat to state sovereignty in the Pacific region. Furthermore, the chapter looks at the work done by the Pacific Islands Forum to protect regional state sovereignty and maritime boundaries, as well as the innovative national approach adopted by Tuvalu. Finally, the chapter discusses ocean management by looking at the examples of Pacific engagement with critical marine resources.

Glossary of key terms

Falepili	Reciprocity, care
Kaitasi	Shared responsibility
Olaga fakafenua	Communal system

> “The seawall gives us more space to the ocean side and also improves the sea breeze in the hall. Before the seawall we experience water coming in our hall”

Lise Suiola
Disaster Relief & Recovery Officer
Funafuti
Tuvalu
(POCCA research team interview, 2023)

Land reclamation projects in Funafuti, Tuvalu are an ongoing effort increase land size and elevation as a part of the Tuvalu Coastal Adaptation Project (TCAP). (Photo: POCCA team, 2023).

3.1 Introduction

> To secure a future for our people, we will deepen our collective responsibility and accountability for the stewardship of the Blue Pacific Continent and protect our sovereignty and jurisdiction over our maritime zones and resources, including in response to climate change induced sea level rise, and strengthen our ownership and management of our resources (PIFS, 2022, p. 10).

The status of of Pacific Small Island Developing States (PSIDS)[1] in international climate and ocean regimes is intriguingly twofold. On the one hand, PSIDS together with other SIDS are considered to share characteristics that make them uniquely vulnerable to the negative impacts of climate change (Mycoo et al., 2022). On the other, PSIDS have for decades played an important and innovative role in the (re)construction of climate and ocean policies and laws, with examples varying from the early negotiations of the United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Framework Convention on Climate Change (UNFCCC) to the Paris Agreement. Through their active participation at various global forums, PSIDS have become recognised as norm entrepreneurs in international climate and ocean politics and international law-making (Betzold et al., 2012; Corbett et al., 2019; Corbett et al., 2021).

This chapter analyses the relationship between the ocean and climate from the perspective of different levels of governance, specifically looking at how PSIDS have responded to the challenges through legal and political mechanisms available for them. The focus of this chapter, therefore, is on the Pacific states and their international and regional political agency. The chapter begins by demonstrating how PSIDS have influenced the crucial moments in the development of international climate and ocean regimes. The first section therefore looks briefly at the history of important United Nations oceans and climate frameworks, highlighting the role PSIDS have played in the governance of the global ocean/climate nexus. The section illustrates how, since the development of the international law of the sea, as well as the international climate regime, PSIDS have had an instrumental role in shaping international norms.

The chapter then addresses sea level rise as a specific concern of low-lying atoll nations and explores its potential impact on state sovereignty and territorial entitlements in the Pacific context.

By elaborating the regional approach on maritime boundaries and state sovereignty, as well as national policies, practices and laws adopted by the state of Tuvalu, the section examines how Pacific states have attempted to mitigate the risks to their sovereignty by adopting innovative approaches to international law and foreign policy. As we will illustrate, the Pacific approach to sovereignty incorporates the ocean as an inseparable element of territoriality of Large Ocean States.

1. *This chapter refers to the Pacific Islands Countries predominantly by using the term PSIDS. The decision to do so derives from the chapter's focus on state actors in international and regional settings, in which PSIDS has become a common reference in relation to the independent Pacific Islands Countries and as a sub-group of SIDS that includes Small Island Developing States from other regions.*

In the final section, the chapter provides an examination of the global and regional regulation of the ocean. Here, the capacities of ocean governance in the Pacific are examined by looking at different maritime sectors and the ways in which PSIDS have engaged with either managing or utilising marine resources. The purpose of this section is to identify some key issues and concerns of the ocean/climate nexus that not only have a particular importance in the Pacific context but also emphasise the political agency of PSIDS in governing the ocean internationally and regionally.

3.2 PSIDS as the global norm entrepreneurs

Small Island Developing States, including those in the Pacific region, are considered 'uniquely vulnerable' by the international state system. These unique vulnerabilities were recognised by the United Nations at the Conference on Environment and Development (the Earth Summit) in 1992. As stated in the UN Framework Convention on Climate Change (UNFCCC),

> ...low-lying atolls and other small island countries, other countries with low-lying, arid semi-arid areas or areas liable to floods, droughts and desertification, and developing countries with mountainous ecosystems are particularly vulnerable to the adverse effects of climate change (United Nations, 1992, pp. 4-5).

According to Corbett et al. (2019, p. 648), the unique vulnerability of PSIDS is based on three factors: first, PSIDS have a narrow export base, making them vulnerable to global economic changes and shocks; second, many PSIDS have fallen into the 'middle income trap,' being dependent on international aid yet having weak prospects to develop to the level of industrialised nations; and, third, most PSIDS have a high level of indebtedness, often worsened by the regular need to borrow for reconstruction after adverse climate events. Despite these shortcomings, PSIDS have skillfully used the international recognition of vulnerabilities to their benefit in different global settings by utilising various forms of groupings and coalitions to collectively draw attention to the matters important to them.

Through multiple multilateral groups and alliances (e.g., AOSIS, G77, LDC), PSIDS have been able to influence international norms and policies at different frameworks of global governance in the international organisations (Carter, 2016; Manoa, 2016). While participation in international regimes can indeed raise the profile of PSIDS, there are also significant capacity limitations that cannot be ignored when thinking about the role of small states in influencing the international climate and ocean laws and policies and these have been covered in relevant literature (see e.g., Baldacchino, 2023; Corbett & Connell, 2015). That said, several studies show how PSIDS have been instrumental in developing the international norms of climate change and ocean governance, and below we will highlight four such instances, show-casing PSIDS as global norm entrepreneurs (Corbett et al., 2021; Goulding, 2016; Carter, 2016).

3.2.1 United Nations Convention on the Law of the Sea: Implications on the Pacific

SIDS together with other coastal and archipelagic countries, played a crucial role in the development of the UN oceans regime. In the post-Second World War era, many of the newly independent, decolonised states were island and coastal communities and it was in their national interest to guarantee the protection of maritime entitlements. The international law of the sea can be historically traced back at least to Hugo Grotius, who famously, in his Mare Liberum (published in 1609), defined the ocean as 'the common to all' (Powers & Stucko, 2013, pp. 124-125). Due to imperial Europe's 'terrestrial bias', the ocean was consequently viewed as 'mare nullius' – no one's sea – and it was not until the process of decolonisation that its status became genuinely internationally challenged (de Carvalho & Leira, 2023). While there were failed attempts to codify the law of the sea already by the League of Nations, as well as by the United Nations in the late 1950s, it took three rounds of international negotiations between the UN member states before the United Nations Convention on the Law of the Sea (UNCLOS) was adopted in 1982 (Powers & Stucko, 2013). Fiji was the first country to ratify the treaty.

One of the key functions of UNCLOS is to provide a legal framework within which maritime entitlements and boundaries are negotiated and determined, while at the same time maintaining 'mare liberum' in the Grotian sense – an open and peaceful access to the oceans by all nations (Singh 2022, 73). UNCLOS divides the seas into five general zones: internal waters, territorial waters, the contiguous zone, the exclusive economic zone (EEZ) and the high seas. It further spells out the specific rules for maritime jurisdictional areas of archipelagic states (Powers & Stucko, 2013, p.126). According to Article 2 of UNCLOS, 'the sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea'. The outer limit of territorial sea, furthermore, is defined in Article 4 as 'the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea'.

According to UNCLOS, every state with a coast has a right to establish the breadth of its territorial sea up to 12 nautical miles, measured from the baseline (Article 3). A normal baseline2 is the low-water line along the coast as marked on large-scale charts officially recognised by the coastal State (Article 5).

The EEZ, in turn, is defined as 'an area beyond and adjacent to the territorial sea, subject to the specific legal regime…under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention' (Article 55). The state's EEZ shall not, as stated in Article 57, extend beyond 200 nautical miles from the baseline.

As explained in the previous chapter, and illustrated by Figure 3.2 below, PSIDS hold substantial exclusive economic zones:

> …as large oceanic States within a Blue Pacific Continent, Pacific countries have a profound connection to and reliance on the exclusive economic zone, which is at the heart of our geography, cultures and economies (PIFS, 2021a).

2. It is important to note that UNCLOS defines different ways to determine baselines (see International Law Commission 2020, p. 23). We would like to thank Karen Scott for emphasising this point. For the purposes of this work, whether baselines are considered permanent or ambulatory (see next section), is the significant matter.

Because PSIDS have small land territories, it has been in their interests to actively engage in the development of the law of the sea. Ambassador Satya Nandan, who was Fiji's principal negotiator at the Third Conference of UNCLOS negotiations, explains in his memoirs how Fiji, which had become independent only in 1970, took a proactive role in the process leading to the ocean treaty (Nandan, 2021). During the negotiations, Nandan served as a rapporteur of the Second Committee and therefore had a crucial drafting role for example in relation to Article 121 of the Treaty, establishing for the regime of islands (Nandan, 2021 pp. 138-141). Fiji also joined the Committee on the Peaceful Use of the Seabed and Ocean Floor, influencing therefore the articles important to the 'common heritage of mankind'.3

In the words of deLoughrey, 'in many ways, the 1982 Convention legitimated Indigenous philosophemes of environmental guardianship, particularly those drawn from the Pacific Islands' (deLoughrey, 2007, p. 33). UNCLOS became what she calls 'the most important remapping of the globe in recent history – a remapping of global sovereignty and common space (deLoughrey, 2007, p. 99) While UNCLOS brought significant changes into the ways in which the Pacific traditionally approached the ocean as vast and open (Hau'ofa, 2008; Hills et al., 2022), it also provided important 'maritime sovereignty' through territorialisation at sea (Strating & Wallis, 2022). The maritime zones recognised by UNCLOS, providing for territorial sovereignty at sea, transformed SIDS into significant political actors; the Large Ocean States (Baldacchino, 2022, p. 600).

The Pacific engagement with UNCLOS has continued to be active to this day. In 2021, Tuvalu together with a Caribbean SIDS Antigua and Barbuda initiated the establishment of the Commission of Small Island States on Climate Change and International Law (COSIS). The purpose of COSIS is to promote and contribute to implementation and progressive development of rules and principles of international law concerning climate change and maritime law. In the agreement founding the entity, the parties to the Commission affirm that maritime zones, 'as established and notified to the Secretary-General of the United Nations in accordance with the 1982 United Nations Convention on the Law of the Sea, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea level rise' (ITLOS, 2021). The current membership of the Commission includes, in addition to the founding members of Tuvalu and Antigua and Barbuda, Niue, Palau, St. Lucia, Vanuatu, Saint Vincent and the Grenadines, Saint Kitts and Nevis, and the Bahamas.

In 2022, COSIS requested for an Advisory Opinion from the International Tribunal for the Law of the Sea (ITLOS), an independent judicial body established by UNCLOS adjudicating disputes arising from the interpretation and application of the Convention, to provide for two legal questions related to the treaty.

3. In his memoirs, Nandan describes the tensions between the developing and developed countries in negotiating the Part XI deep sea mining provisions: 'The ideological divide between developing states and industrialised states became readily apparent. While developing states readily lined up in support of the common heritage of mankind principle, believing deep seabed mining activities would provide the opportunity for the fair and equitable distribution of wealth amongst the rich and the poor. Industrialised states, on the other hand, driven by national interests and the opportunity to secure mineral resources, argued that a new regime based on the common heritage of mankind would conflict with the freedom of the high seas and traditional uses of the oceans' (Nandan 2021, pp. 143-144). We discuss deep sea minerals in the last section. We would again like to thank Karen Scott for reminding us about the important role the Ambassador Nandan and Fiji played in these negotiations.

The first question asked what are the specific obligations of states to 'prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?'. In the second, ITLOS was asked to advise what are the specific obligations of states under UNCLOS 'to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?' (ITLOS, 2022).

The Tribunal gave its Advisory Opinion on 21 May, 2024. In its ground-breaking opinion, ITLOS establishes that anthropogenic greenhouse gas (GHG) emissions in the atmosphere constitute pollution of the marine environment as defined in Article 1 of UNCLOS. The Tribunal further states that the state parties to UNCLOS have 'the specific obligations to take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions and to endeavour to harmonise their policies in this connection'. The Advisory Opinion confirms that the state parties have the specific obligation to take all measures necessary 'to ensure that anthropogenic GHG emissions under their jurisdiction or control do not cause damage by pollution to other States and their environment, and that pollution from such emissions under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights'. The Advisory Opinion also stipulates that the state parties have obligations to ensure laws and regulations, nationally and in cooperation with other states, that prevent, reduce and control pollution of the maritime environment (ITLOS, 2024). The Advisory Opinion is significant in terms of the ocean/climate nexus as it makes direct connections between due diligence obligations of states under UNCLOS and other relevant legal frameworks, such as the Paris Agreement and its climate change goals – most importantly, the goal to limit global warming to 1.5°C, which was a demand introduced to the Paris Agreement by PSIDS.

3.2.2 Regionalising the Paris Agreement

In 1991, when the United Nations Framework Convention on Climate Change (UNFCCC) was still being negotiated, Vanuatu on behalf of AOSIS proposed an article on permanent and irreversible loss and damage to be introduced to the new climate treaty (United Nations, 1991). As we now know, it took 20 more years before Article 8 on loss and damage was codified in the Paris Agreement in 2015. To that end, important interventions by both AOSIS and PSIDS were delivered (Burkett, 2015; Corbett et al., 2021; Fry, 2016). As will be discussed in detail in Chapter 14, loss and damage has since become a central mechanism for PSIDS to seek for climate justice.

In addition to loss and damage, the significant contribution of PSIDS to the Paris Agreement was the inclusion of 1.5°C ('to stay alive') into Article 2. The goals for PSIDS regarding the Paris climate conference were outlined in the Suva Declaration, adopted by the Pacific Islands Development Forum in September 2015. The Suva Declaration called for limiting the global average temperature increase to 1.5°C and demanded anchoring loss and damage as a standalone article, distinguished from adaptation measures (PIDF, 2015). Both 1.5°C and loss and damage were successfully included to the final climate treaty and have become important benchmarks for climate action and Pacific climate advocacy.

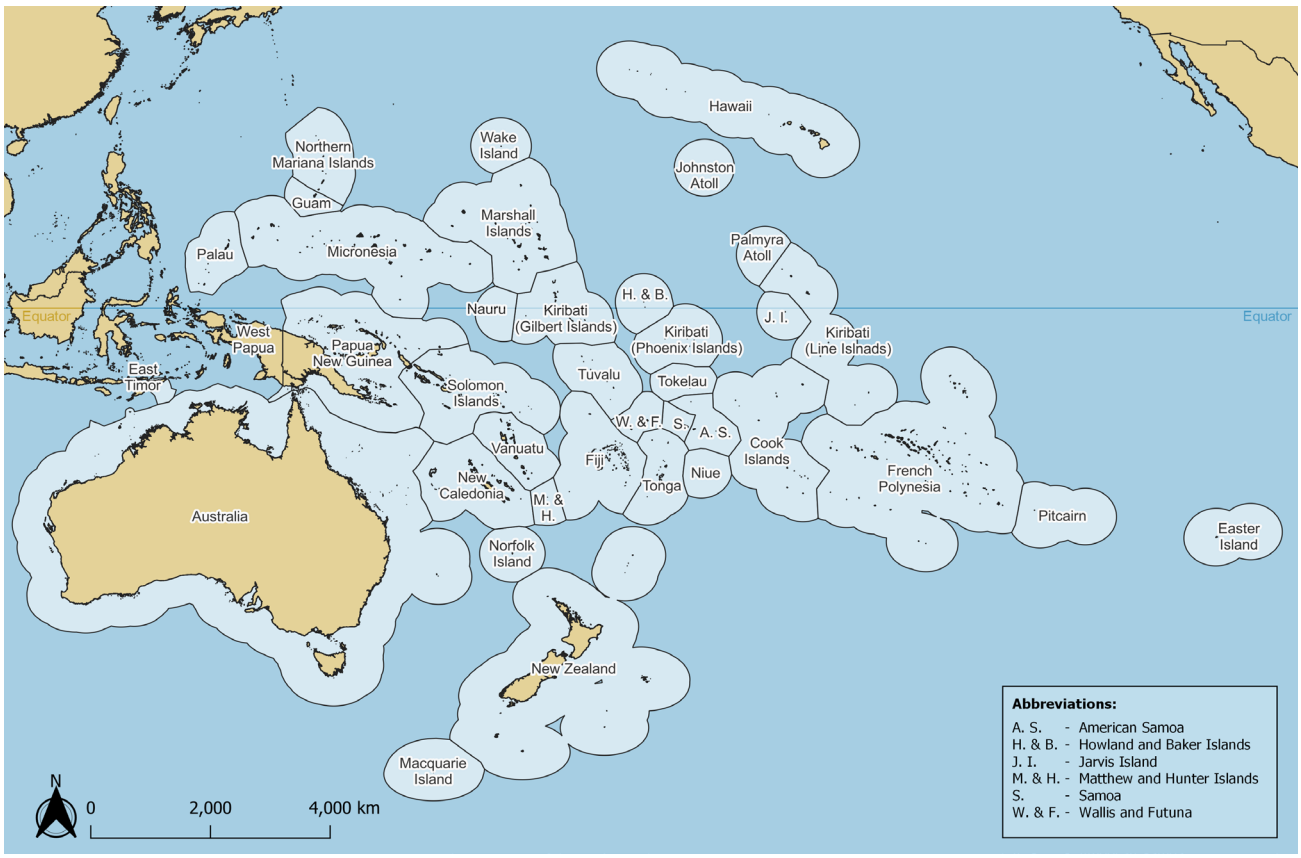

***Figure 3.1**: Pacific Island Countries and Territories, incl. Exclusive Economic Zones. Source: EEZ shapefile from Flanders Marine Institute (2023), countries shapefile from Flanders Marine Institute (2020), accessible at https://marineregions.org/*

The 1.5°C temperature goal also received an important global recognition in the ITLOS Advisory Opinion:

> ...such measures (to prevent, reduce and control marine pollution from anthropogenic GHG emissions) should be determined objectively, taking into account, inter alia, the best available science and relevant international rules and standards contained in climate change treaties such as the UNFCCC and the Paris Agreement, in particular the global temperature goal of limiting the temperature increase to 1.5°C above pre-industrial levels and the timeline for emission pathways to achieve that goal (ITLOS, 2024).

The Suva Declaration also called for additional measures that were not recognised in the final climate treaty, such as the global dialogue on international moratorium on the development and expansion of fossil fuel extractive industries. To that end, PICTs renewed their call to world states to join a Fossil Fuel Non-Proliferation Treaty in a meeting in Vanuatu in 2022. The treaty proposes a mechanism that aims explicitly to address fossil fuels as a source of global warming.

3.2.3 The 2030 Agenda for Sustainable Development and PSIDS

Pacific Island Countries (PICs), through the PSIDS grouping at the UN, were instrumental in the inclusion of Sustainable Development Goals 13 (climate action) and 14 (life below water) in the 2030 Agenda for Sustainable Development. As explained by Quirk & Hanich (2016), PSIDS successfully used their national and regional experience in ocean governance to lobby a stand-alone sustainable development goal on the oceans, positioning Large Ocean States as their global guardians.

PSIDS have increasingly recognised the importance of comprehensive management and governance of the ocean also at national and regional level (Hills et al., 2022, pp. 291-292). Several PICs have adopted National Ocean Policies (NOPs) to integrate the work of various agencies and regulations under one policy on management and governance of ocean spaces, as will be discussed in the following chapter. Regionally, 2050 Strategy for the Blue Pacific Continent, adopted by the Pacific Islands Forum in 2022, builds on numerous previous regional agreements and declarations and focuses on the security and development needs and aspirations of Pacific states. The 2050 Strategy emphasises the role of PSIDS as the stewards of the Blue Pacific Continent and articulates the commitment to

> ...safeguarding the integrity of our natural systems and biodiversity through conservation action and by minimising the activities that degrade, pollute, overexploit, or undermine our ocean and natural environment (PIFS, 2022, p. 10).

At the same time, the 2050 Strategy places people-centred development as one of the thematic areas by which to secure the wellbeing of Pacific peoples. Importantly, the 2050 Strategy highlights that the Blue Pacific is about Pacific peoples, their faiths, cultural values, and traditional knowledge. People who know their needs and potential; plan and own their development agenda; and act collectively for the good of all (PIFS, 2022, p. 11).

3.2.4 International Court of Justice advisory opinion: Pacific origin

In March 2023, the United Nations General Assembly adopted, by consensus, resolution 77/276 requesting an advisory opinion from the International Court of Justice (ICJ) on obligations of states in respect of climate change (United Nations, 2023a). The resolution asks the ICJ to answer two questions regarding the relationship of climate change and human rights:

- 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?

- 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:

- States, including, in particular, mall 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?

- Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

The process leading to the resolution was headed by Vanuatu with a coalition of 132 states. The Vanuatu government was instrumental in drafting the legal question to which the ICJ is now expected to answer, as well as in facilitating the work of regional bodies for submissions. The ICJ advisory opinion process itself was initiated by a group of students at The University of the South Pacific (USP), who came up with the idea in a classroom in 2019 and started what later became a worldwide, youth-led campaign for climate justice (Pacific Islands Students Fighting Climate Change (PISFCC), 2024). The call for written submissions closed in early 2024, with a record of 91 submissions from states and international organisations delivered for the Court's consideration. When this chapter was written, the Court was expecting responses to these written submissions, with oral proceedings to be scheduled at a later date (ICJ, 2024).

While the ICJ advisory opinions are not legally binding, they offer important guidelines on the interpretation of different international legal norms. Therefore, the forthcoming ICJ advisory opinion will clarify the legal obligations of states on emissions as well as on acts and omissions in relation to climate and environmental action. Importantly, the Court has been asked to deliberate on the rights of future generations as well as on the obligations of states to small island developing states with their unique vulnerabilities. The ITLOS advisory opinion of May 2024 discussed above will probably be important with regards to the applicable law beyond the Paris Agreement.

3.3 The ocean as a space of sovereignty

From the perspective of PSIDS, one of the most severe consequences, and one of the most fundamental losses in terms of loss and damage, is sea level rise as it is threatening to make their limited territories on land uninhabitable. In academic literature and international media discourse, 'sinking island states' have gained an increasing attention over the recent decade, despite problematic assumptions such a narrative is based upon. The 'sinking islands scenario' is founded on the premise that once the landmass of the state is submerged, the state loses its sovereign entitlements and internationally recognised status as a state. This is because the state, according to modern international law, is an entity with a defined territory on land (Crawford, 2007; Rayfuse, 2013; Stoutenburg, 2015; Vaha, 2015).

While modern statehood is in many respects a contested idea, it is founded on legal principles regulating what kind of entities are (currently) considered states. According to the criteria on statehood in international law and state practice, to be considered a state, a political entity must possess a) a permanent population, b) a defined territory, c) an effective government, and d) the capacity to conduct international relations (Montevideo Convention, 1933; Crawford, 2007). While climate change and sea level rise threaten all of these in one way or another, it is the defined territory that is of particular significance when we look at climate change as an existential threat to PSIDS.

From the perspective of state sovereignty, sea level rise has an impact on statehood in two significant ways: first, it may lead to inundation of land, and second, the inundation of land has an impact on maritime boundaries through shrinking baselines. As stated in the International Law Association's 2018 report, the question of baselines goes beyond the law of the sea and encompasses several other important elements of international law (ILA, 2018, p. 2). Changing baselines create a legal and political challenge to the international state system because the state is defined as an entity with a geographically defined territory and any territory at sea is dependent on the territory on land. Territory, therefore, has been traditionally understood only as a territory on land – as it makes sense to argue that the state cannot exist without land because the human embodiment requires a land to stand on.

At the same time, the idea of the state connected exclusively on territoriality on land is problematic in many respects and especially in the context of Pacific Islands. State sovereignty focusing on land undermines and even ignores the territorial embodiment and relationship the islanders have with space, time and place (Koro et al., 2023). It further undermines the future of PSIDS as sovereign states with the world's largest territorial oceanic entitlements.

3.3.1 Various sovereign statuses in the Pacific

The Pacific region is divided into Pacific Islands Countries and Territories (PICTs) with various sovereign statuses according to contemporary international law. This chapter focuses mainly on independent sovereign Pacific states (PICs). French outre-mer (overseas) territories of New Caledonia, French Polynesia and Wallis and Futuna, or the American territories of American Samoa, Guam, Mariana Islands and Hawaii are not covered in the report. It is important to mention that while all countries and territories are not covered by this report by case studies, they face similar challenges of climate change. They also share history, geography, culture, identity and relation to the ocean, and together with sovereign PICs form the 'sea of islands' as famously framed by Epeli Hau'ofa (2008).

It is equally important to recognise that the processes of colonisation and decolonisation have left the Pacific with these different sovereign statuses, which are not unimportant when we consider the ability and capacities of different countries and territories to respond to the challenges of climate change, or to participate in ocean and climate governance. The variety of political statuses in the Pacific is reflected at the regional and international levels, especially in the ways in which different countries and territories can participate in the decision-making processes or decide from whom and how they receive technical and financial assistance for climate adaptation and mitigation.

It is also important to keep in mind that even within the category of PICs, states differ from each other. Some PICs have close relationships with larger regional powers, such as the Federated States of Micronesia and the Republic of Marshall Islands (RMI), which are in the Compact of Free Association with the United States, or the Cook Islands and Niue, which are self-governing states under the Free Association with New Zealand. Therefore, the challenges regarding statehood and sovereignty cannot be universalised to all PICTs as these states and their citizens have different pathways, for instance, in terms of climate mobility (discussed in Chapter 17). PICTs also have varying political preferences and priorities in climate policies and ocean governance. One such prominent example will be explored in the final section in the form of deep-sea mining.

Furthermore, the states under PICTs category vary according to their geographical features, which have a great impact on the climate change challenges they face. Such geographical variations include whether the state is a low-lying atoll state (e.g., Tuvalu) or has significant highlands (e.g., PNG). Therefore, negative climate change impacts do not impact all PICTs and their people in a similar manner, although they are all affected by them. This is why multiple country studies and narratives are provided in this report that highlight the unique vulnerabilities, challenges and possibilities among PICTs (see country studies in volume two).

Finally, while this chapter focuses on sovereignty and governance in legalistic, state-centred terms of international law, it is important to note that the Pacific understandings of sovereignty do not necessarily correspond with the internationally recognised characteristics of the sovereign state.

3.3.2 Sea level rise and the contested rights of sovereign island states

As argued by Crawford and Reyfuse, the loss of one Montevideo criteria does not necessarily deprive the state from its status as a sovereign state (2012, pp. 246-247). States can, for instance, have long periods without effective governments. However, a permanent population on a defined territory are both considered fundamental criteria and thereby the loss of either creates what can be called a 'statehood dilemma' (Crawford & Reyfuse, 2012, p. 249). The question that the 'sinking island scenario' poses is whether the island states can continue to exist as states if they lose their land?

In his memoirs, Ambassador Nandan recollects how the question of inhabitability became central at the time of UNCLOS negotiations:

> ...for all the controversy, it is interesting to note that when Article 121(3)[4] was debated in the Third Conference, the language I proposed in the Second Negotiating Text was never improved or altered. The original idea was that for a rock to be able to support human habitation or economic life it must have its own sources of water and food (other than catching fish). Being able to sustain human habitation or economic life did not mean taking delivery of cases of food and Fiji water; it meant being self-sufficient.[5] Ultimately, I argued, and continue to argue, that common sense must apply[6] (Nandan, 2021, p. 140).

In addition to the Montevideo criteria, statehood also relies on international state practice and especially on the act of recognition of sovereign status by other states in the UN system. As a criterion for statehood, recognition becomes problematic when it is used to prevent statehood of peoples that otherwise would qualify as states but inhabit a territory within a territory of an already sovereign state. The Indigenous West Papuans have called for independence from Indonesia since the 1950s, resulting in a violent conflict between the region and the metropolitan state. One could argue that West Papua qualifies (or at least could qualify) as a state according to the Montevideo criteria. The struggle of West Papuans for independence has been acknowledged by some PICTs, but not by all. Internationally, there have been fewer calls for recognition of West Papuan independence and the territory is not, for instance, on the UN list of non-self-governing territories (United Nations, 2024a).

Despite its political limitations, the recognition has become an important strategy for PICTs in their policies against sea level rise and the 'statehood dilemma'. In what follows, we consider two ways in which PICTs have innovatively interpreted international law and the practice of state sovereignty and recognition to their advantage. First, we look at the Pacific Island Forum Leaders' declarations on securing maritime boundaries and continuous statehood. Second, we explore Tuvalu's approach to seek a bilateral recognition from world states to guarantee its permanent sovereignty.

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4. Article 121(3) of UNCLOS states: 'Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf'.

5. Important questions of human inhabitability in terms of food and water security are covered in Chapters 9 and 12.

6. Here, Ambassador Nandan's stand is challenging the idea that a mere uninhabitable rock in the ocean would satisfy the requirement of being an island and thereby provide for maritime entitlements that the island state had before sea level rise.

3.3.3 Regional approach: The PIF Declarations on Preserving Maritime Boundaries and State Continuity

To secure their sovereignty, PICTs have taken some bold steps to guarantee their maritime boundaries regardless of sea level rise and changes in baselines. In 2021, the Pacific Islands Forum adopted the Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise. A great concern for many PICTs is that climate change will irreversibly affect their legal entitlements regarding maritime territories. Territorial sea and EEZs are significant sources of income and subsistence to PICTs. As explained by Singh,

> ...from an UNCLOS perspective, global warming and the rise of sea levels will impact existing baselines and lead to the alteration of the maritime limits from the territorial sea to the EEZ which will give rise to a new set of difficulties on demarcating fresh boundaries (2022, p. 85).

Acknowledging that the consequences of sea level rise were not considered at the time UNCLOS was negotiated, the 2021 Declaration recalls the rights of island states to their maritime zones and calls for urgent collective action to secure them. According to the 2021 Declaration, UNCLOS imposes no affirmative obligation to keep baselines and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates once deposited with the Secretary-General of the United Nations (PIFS, 2021b).

Building on the 2021 Declaration, the Pacific Islands Forum Leaders' Meeting in the Cook Islands in 2023 adopted a second declaration on climate change and state continuity. While the 2021 Declaration concentrated on maritime zones, the 2023 Declaration on the Continuity of Statehood and Protection in the Face of Climate Change-Related Sea Level Rise takes significant further steps to declare that the statehood and sovereignty of Members of the Pacific Islands Forum will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of climate change-related sea-level rise. The leaders further affirm that the international law is based on the presumption of continuity of statehood and therefore does not contemplate 'its demise in the context of climate change-related sea level rise' (PIFS, 2023). In its 2023 report, the International Law Commission's (ILC) Study Group on sea level rise notes that there is no evidence of a new, evolving customary international norm providing for permanent baselines. The Study Group at the same time acknowledges, however, that what appears to be evolving is the new trend of practices and views of States based on a good-faith interpretation of the United Nations Convention on the Law of the Sea (ILC, 2023, p. 93). With a direct reference to the PIF 2021 Declaration, the Study Group further notes that there is no explicit provision in the United Nations Convention on the Law of the Sea requiring State parties to update their baselines and outer limits of maritime zones in response to changes in coastlines as a result of sea level rise. Viewing baselines either permanent or ambulatory are therefore both compatible with UNCLOS. The ILC continues its work on sea level rise and its implications on state sovereignty throughout 2024 and this work will provide important further analysis for the Pacific region. The legal analysis of UNCLOS and its interpretation will be crucial not only for PICTs but for other island and coastal states in other regions as well.

Both the 2021 and 2023 declarations confirm the Pacific call for permanent maritime boundaries as well as for the continuous statehood of PICTs. Regardless of their future political and legal implications, the declarations raise global awareness of the consequences of sea level rise to vulnerable island and coastal communities and illustrate the political agency of Pacific states to interpret international norms to their benefit. The 2021 Declaration on Preserving Maritime Zones is in line with the idea of the Large Ocean States, famously introduced by Hau'ofa in his various writings (2008). In his work, Hau'ofa stressed how the language used in relation to smallness of big oceanic states diminishes the role and status of Pacific states in world politics, depicting them as inferior and vulnerable. This belittlement is vividly absent from both declarations, in which the Pacific Large Ocean States boldly interpret international law to their benefit, unapologetically rejecting the oft-offered reading that the current legal framework might lead them to lose their maritime entitlements and assets, even their self-determination and sovereignty as states. In doing so, one could argue, PICTs are not only securing their sovereign territory at sea, but also powerfully exercising their right to self-determination (as guaranteed in several UN human rights conventions) and, in doing so, reinterpreting requirements of sovereign statehood in the global arena.

It can be argued that the difficulty of international politics and law to grasp territoriality beyond land is related to the history of international law focusing on certain key characteristics of the modern state. Of course, it makes sense to require a political community to have some territory on land. At the same time, the modern conceptions of the state are arguably preoccupied with this terrestrial bias, forgetting or ignoring other understandings of sovereignty, especially the perspectives of Indigenous peoples. Preoccupation with land overlooks the fact that for many states – especially island states – most of their territory is in fact formed by water and much of the identity of their citizens is inherently tied to the sea (Strating & Wallis, 2022; Vaha, 2021, pp. 113-132).

The PIF declarations and other work PICTs have done in this space – including Pacific Maritime Boundaries Programme of Pacific Community (Pacific Community, 2024) – provide for new interpretations of the sovereign entitlements of states. The declarations emphasise the role of the ocean in the self-determination of these entities, requesting the rest of the world to acknowledge and recognise the ocean as a fundamental part of the political, social and cultural existence of PICTs. The 2021 Declaration on maritime zones serves, at minimum, as a tool to unpack the contemporary 'key' characteristics of the state – especially regarding territoriality – beyond the sovereign state on land and is therefore an important initiative in times of climate crisis. By taking steps as a region to guarantee their maritime boundaries, PICTs have exemplified true ocean stewardship and political agency. By declaring their borders fixed regardless of changes to the baselines, PICTs have not only utilised the potential reading of UNCLOS but also contested notions of smallness and vulnerability and taken the first steps necessary to guarantee their future existence as sovereign states.

What must follow is a worldwide recognition and enhanced ambition to safeguard the rights and entitlements – the sovereign rights – of political communities that are put at risk by anthropogenic climate change. Acknowledging the importance of oceans to the self-determination of island communities is vital in this regard. Steps have already been taken in this direction by the Biden Administration, which in the declaration published after the meeting with the Pacific leaders in September 2022, announced that the United States of America acknowledges,

> The threats posed by climate change-related sea-level rise to regional security, peace, prosperity, and development. It is essential that maritime zones and the rights and entitlements that flow from them must be maintained without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise, recognising that PICTs and other coastal States have planned their development in reliance on their rights to such maritime zones (The White House, 2022).

While establishing international state practice requires more states to join the United States, having the recognition by one of the most powerful states in the world, and important geopolitical actor, is significant for the future of permanent sovereignty of atoll states such as Tuvalu and Kiribati.

3.3.4 Bilateral recognition – Tuvaluan approach

The realisation that the slow onset impacts of climate change, and particularly those related to sea level rise, would result in atoll nations such as Tuvalu becoming submerged and uninhabitable within this century, has shaken the foundations of Tuvalu as a recognised independent sovereign state. Viewing climate change as an existential threat, the Government of Tuvalu has introduced unconventional practices and initiated its own pathway to ensure continuous recognition of the permanency of its sovereignty.

In 2021, Tuvalu launched The Future Now project, which emphasises securing the culture, identity and sovereignty of Tuvaluans in the worst-case climate change scenario ('the sinking island scenario'). The Future Now Project entails four initiatives. First is promoting Tuvaluan cultural values that embrace ethical and moral principles relevant to and important for peacebuilding, maintenance of the rule of law and peace, and harmony between peoples and nations. These cultural values include olaga fakafenua (communal system), kaitasi (shared responsibility) and falepili (neighbourliness, reciprocity, care). Second is securing international recognition of Tuvalu's statehood as permanent and its existing maritime boundaries as fixed despite the adverse effects of sea level rise. Third is the vision to digitalise all administrative and governance services, cultural heritage and so forth to ensure the continuous existence of Tuvalu as a digital nation. Fourth and last is to encourage advocacy and representation that allows Tuvalu's foreign policy purview to be amplified at regional and international fora (Kofe, 2021).

Two of these initiatives draw our attention to the need to seek formal recognition of statehood on a bilateral basis and promote international recognition through customary international law. As of 2024, Tuvalu has already signed memorandums of understanding with more than a dozen of its diplomatic allies giving recognition of permanent statehood. The aim is to solicit the support of the international community of Tuvalu's existence in perpetuity as a recognised sovereign state at its current designated coordinates of territorial land and ocean space. A key to this is the need for an appropriate adaptation development plan that aims at maintaining the land and allows the people of Tuvalu to live in their ancestral home.

To this end, Tuvalu has developed its first technically feasible, science-based long-term adaptation plan known as L-TAP. The L-TAP is Tuvalu's flagship adaptation plan for survival, specifically designed to provide a safe elevated land territory that is large enough to accommodate the national population and secure its future. The land reclamation projects, such as the Tuvalu Climate Adaptation Project funded by the Green Climate Fund on the capital island Funafuti, are also a part of L-TAP, but global support and funding to scale it up is needed. It is important to note here that the conventional coastal protection methods such as normal seawalls, beach nourishment etc. have been proven unfeasible for low-lying atolls such as Tuvalu.

Supporting its bilateral approach, Tuvalu has also joined forces with countries such as RMI and Kiribati to launch the Rising Nations Initiative (RNI) in September 2022. The RNI seeks to amplify four interlinked demands of atoll nations to the international community.

First, the countries call for the international community to preserve the sovereignty and rights of Pacific atoll states. Second, the countries call for the creation of a comprehensive programme to build and finance adaptation and resilience projects to help the local communities sustain their livelihoods. Third, the countries are proposing the creation of a living repository to preserve their unique cultural heritage. Fourth, they seek support to acquire a UNESCO World Heritage designation (Global Centre for Climate Mobility, 2024).

Politically, Tuvalu has garnered support from like-minded countries and organised, for instance, a Breakfast Summit on the margins of the UNGA78 in 2023 to address the existential threats posed by sea level rise. The side-event was presided by the President of the General Assembly (PGA) and attended by over ten heads of state and government, ministers, representatives of civil society organisations and the private sector as well as philanthropists. The meeting led to the establishment of the Coalition for Addressing Sea-level rise and its Existential Threats, co-chaired by Tuvalu and Germany. Recognising the pressing need for action, the PGA convened the UN Informal Plenary in 2023, leading to Resolution 78/544 to hold a High-level Plenary Meeting of the General Assembly addressing the existential threats posed by sea level rise during the high-level week of UNGA79 (United Nations, 2024b)

Tuvalu's continued governance efforts to mitigate climate challenges also involve 26 amendments to its constitution, including a specific section on Tuvalu statehood underpinning its perpetual existence as a sovereign state, the permanency of its land area, maritime zone, and airspace notwithstanding the impacts posed by climate change related sea level rise. This is an unprecedented constitutional architecture in the supreme law of the country, reflecting the most significant and critical concerns of losing what Tuvaluans consider a God-given land. These amendments provide a legal basis for Tuvalu's climate governance and international advocacy endeavours and form a mandate bestowed by the people that must be upheld regardless of future changes in national leadership.

Furthermore, climate security concerns have resulted in Tuvalu's efforts to strengthen the current mobility pathways that allow dignified migration. In addition to the Pacific Access Categories with New Zealand and the Pacific Engagement Visa provided by Australia allowing Pacific countries, including Tuvalu, to access migration opportunities, Tuvalu has established a bilateral human mobility pathway with Australia. Known as the Falepili Union Treaty, the bilateral agreement is the first of its kind between Australia and a PICTs. The treaty offers, among other things, a special pathway for Tuvaluans to migrate to Australia and provides them with access upon arrival to medical and educational benefits that Australian citizens enjoy. One key provision of the treaty is the commitment for cooperation on security and stability in response to natural disasters, public health crises, and military threats. Under the treaty, Australia is obligated to offer support to Tuvalu upon its request. One of the most controversial aspects of the treaty pertains to the fact that Tuvalu will need to consult Australia on matters relating to security. This poses a challenge to Tuvalu's sovereignty as an independent state. Although the treaty's implementation plan is yet to be developed, and the treaty has raised some concerns of its intentions and processes leading to its adoption (see e.g., Kitara & Farbotko, 2023), Australia has reaffirmed its support to Tuvalu's interest of 'staying in their home with dignity' (DFAT, 2023).

This section has illustrated how Tuvalu has adopted a range of innovative legal and regulatory frameworks together with foreign policy initiatives that continue to be developed and extended as a response to climate change. They indicate the recognition for acceleratory mechanisms across diverse pathways of local and foreign partnership, as well as highlight the political agency and norm-entrepreneurship of the Pacific country.

3.4 PICTs, sustainability and ocean resource governance

According to UNCLOS, the ocean areas beyond the national jurisdiction of states are considered 'global commons'. What this means is that an open access and equal right of users must be guaranteed to enjoy 'the freedom of the high seas' (Reyfuse, 2013, p. 170). Problematic as the concept of global commons is – especially in the Pacific context in which the communities are considered the guardians and stewards of the ocean to which they have ancestral roots and entitlements – the ocean resource governance, internationally, relies on the idea of global commons and, consequently, on mitigation efforts to avoid what might be described as 'the tragedy of the commons'.

The tragedy of the commons famously describes a situation in which open access to a resource combined with undefined or incomplete property relations lead to over-use. It is based on an idea that individuals in a free market cannot be trusted to refrain from overgrasing; that the tragedy occurs rather naturally in such circumstances. From the perspective of environmental ethics, the tragedy of the commons is important as it illustrates the difficulty to respond to genuine collective action problems such as the protection of the atmosphere from air pollution. Individuals everywhere on the planet have an 'access' to air – the shared resource in this case – and use it according to their own interests (say, releasing emissions to advance the industrialisation of their societies), which has an impact on others (such as GHG emissions and global warming).

Fisheries offer a classic example of the tragedy of the commons. Most fish species are migratory by nature, and therefore move from territorial waters of one state to the high seas and further to the territories of other states. As only the EEZ and territorial waters until recently were under legislative protection of international and national laws, over-exploitation of migratory species has often occurred in the high seas. Some countries might want to maximise their economic revenue by overfishing within their territorial waters. Studies indicate that international regulation and at least some levels of privatisation (quotas) are needed to prevent the tragedy of the commons (overfishing) in the case of fisheries. To avoid the tragedy of the commons, collective measures must be taken to regulate and prevent the overuse of shared resources.

The tragedy of the commons is important from the Pacific perspective as the territorial entitlements of PICTs cover a great proportion of the world's oceans, yet the countries themselves have limited resources and capacities to protect and manage these waters. The Nauru Agreement of 1982 between eight Pacific countries is one successful example of coordination and resource management aiming at preventing the tragedy of the commons (for its development, see Aqorau, 2016). The section which follows provides three other examples of ocean governance of global commons in the Pacific context.

3.4.1 Marine resources: Traditional knowledge and the governance of the high seas

This section examines some regional approaches in sectors that are important for the region's sustainable economic development: marine resources, deep sea mining and marine transportation. Firstly, it looks at the Pacific influence in adopting the UN treaty on biological diversity of areas beyond national jurisdiction (the so-called High Seas Treaty, BBNJ). Secondly, it explores the contrasting views of Pacific countries to the future of deep sea mining and thirdly, it discusses the role of PICTs in developing the frameworks of maritime transportation.

In its resolution 72/249 of 2017, the UN General Assembly decided to convene an international conference to consider the earlier recommendations of the Preparatory Committee, established by UNGA resolution 69/292 in 2015, to elaborate the text of an internationally binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ). The proposed international instrument was to expand the current regulations under UNCLOS regarding the high seas and their resource management. Due to the complexity of the process, the UN members convened five times before the treaty was finally adopted in June 2023.

PICTs were a strong presence at the BBNJ negotiations from the very beginning. A robust and ambitious international treaty protecting marine global commons was a priority for Pacific leaders, calling for 'the improvement of international ocean governance, meaning breaking away from the status quo of fragmented governance,' as stated by the Secretary-General of PIF Henry Puna before the fourth UN meeting (OPOC, 2022). Especially important for PICTs was the need to guarantee that the vast amount of traditional knowledge of the ocean and its resources held by the Pacific communities was recognised in the final treaty.

As demonstrated by Mulalap et al., (2020), there are several types of traditional knowledge relevant to the biodiversity treaty, such as connectivity, pathways, cultural practices and stewardship of the ocean, existing environmental management best practices such as tabu areas and acknowledgment of seasons, and forms of traditional navigation. All these have guaranteed the protection of biodiversity of the ocean and some of these will be further discussed in Chapter 8. As further demonstrated by Smith & Huffer (2021, p. 49), PICTs were systematically keeping these issues on the negotiation agenda, together with the importance of regional ocean management and governance for sustainability, 'given that resources such as fisheries and minerals and challenges such as pollution are trans-boundary in nature'.

The final text of the BBNJ recognises the importance of traditional knowledge in several ways. Under Article 2 on general principles and approaches, it is acknowledged that in order to achieve the objectives of the treaty, traditional knowledge of Indigenous Peoples and local communities should be used when relevant. In addition, parties would be guided by the respect, promotion and consideration of their respective obligations, as applicable, relating to the rights of Indigenous Peoples or of, as appropriate, local communities when taking action to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Article 13 related to marine genetic resources, respectively, establishes that:

> Parties shall take legislative, administrative or policy measures, where relevant and as appropriate, with the aim of ensuring that traditional knowledge associated with marine genetic resources in areas beyond national jurisdiction that is held by Indigenous Peoples and local communities shall only be accessed with the free, prior and informed consent or approval and involvement of these Indigenous Peoples and local communities. Access to such traditional knowledge may be facilitated by the Clearing-House Mechanism. Access to and use of such traditional knowledge shall be on mutually agreed terms (United Nations, 2023b).

While the treaty is still new and not yet operationalised, it is safe to say that PICTs have been successful in having traditional knowledge recognised in the treaty throughout its drafting process (Smith & Huffer 2021, p. 54).

3.4.2 Minerals: Deep sea mining, a divided region

Deep sea exploration provides another important example of the potential tragedy of the commons in relation to the oceans. Under Part XI of UNCLOS, the 'Area' for deep sea exploration and extraction was established. The Area and its mineral resources are protected under UNCLOS as the 'common heritage of mankind' (Article 136). According to the Convention, the Area covers all seabed, oceans floor and subsoil thereof that are beyond the limits of national jurisdiction. As the common heritage of humankind the seabed and its use are strictly regulated:

a. No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognised.

b. All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part and the rules, regulations and procedures of the Authority.

c. No State or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with this Part. Otherwise, no such claim, acquisition or exercise of such rights shall be recognised.

The 'Authority', respectively, here refers to the International Seabed Authority, established under Article 156, and consists of all Parties to the Convention. Any exploration of the Area must be approved by the Authority (Article 157) and all activities exercised in the Area must benefit 'the mankind as a whole' (Article 140) as well as conducted exclusively for 'peaceful purposes' (Article 141). By defining the Area and its minerals as the common heritage of mankind, UNCLOS emphasises its importance to the ecosystem but also pre-emptively aims at preventing the tragedy of the commons in relation to deep sea exploration and exploitation. UNCLOS stresses the importance of protecting the marine environment (Article 145) as well as human life (Article 146) in any potential use of the seabed.

Over the last years, interest in seabed exploration has increased globally. Seabed minerals are considered essential in green energy transition. In 1994, the UN member states adopted the implementation agreement with respect to Part XI of UNCLOS, stating the conditions under which the member states can initiate seabed activities. In 1997, the government of Papua New Guinea granted the world's first exploration licence for underwater polymetallic sulphides. The licence was granted to the mining company Nautilus Minerals Ltd. The PNG government further granted the company its first mining licence in 2011. It is reported that PNG lost US$120 million in the process, as the business model, as well as mining plans, were flawed and the offshore mining never began (Filer et al., 2020).

Deep sea mining is an important matter regarding the governance of the ocean in the Pacific, not the least because the countries in the region do not have a unified stand on it. Nauru, Kiribati, and the Cook Islands have approved licences and Tonga has not rejected the possibility. Vanuatu, the Federated States of Micronesia, Fiji, Palau, Samoa and Papua New Guinea (with a change of heart) have called for a moratorium to allow more time to do research on potential risks. Tuvalu has rescinded its initial approval of deep sea mining exploration in its waters. In 2022, a group of Pacific parliamentarians united under the Pacific Parliamentarians Alliance on Deep Sea Mining, called for a moratorium. Recalling the high seas as the common heritage of humankind, the parliamentarians asked the Pacific leaders to join the more cautious ranks opposing such activities, as well as to provide support for those Pacific governments that have decided to explore this alternative (PPADSM, 2022).

3.4.3 Emissions: Marshalling the way in the shipping industry

The maritime industry, especially shipping, plays a vital role in the daily lives of Pacific Islanders through transportation and trade but is also one of the industries that is collectively responsible for increasing emissions of greenhouse gases (IMO, 2023). It also is a major source of ocean pollution through oil spillage and other blackwater and greywater discharges. The accumulation of discharges from ocean-going vessels coupled with increasing traffic over the Pacific Ocean is detrimental to marine life. Hence, while the shipping industry facilitates trade and supports the economies of PICTs, it also has potential negative impacts on marine life and biodiversity, which can eventually affect the livelihoods of Pacific Islanders.

PICs are some of the largest flag states in the world, meaning that they allow foreign ships, mainly merchant vessels, to operate under their jurisdiction. Merchant vessels will have the nationality of PICs since they are licensed under the law of the flag states and, in consequence, RMI is the third largest shipping registry in the world (Ruwet et al., 2023, p. 185). The shipping registries of PICTs function as the administrators, overseeing the operation of vessels registered under their national flags. The International Maritime Organisation (IMO), one of the 15 special agencies of the UN, has put in place certain regulatory frameworks such as the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and the London Convention and Protocol of 1972/1996 to assist member countries in their efforts to decarbonize and reduce pollution from the maritime sector.

In 2018, the IMO adopted its initial strategy to reduce greenhouse gas emissions (IMO 2018). The strategy was the first to accommodate contrasting interests of shipping industry and the coalition of states calling for more ambitious climate action.

The high ambition coalition of states at IMO negotiations was led by the RMI. According to Ruwet et al. (2023), much of the success of RMI at IMO negotiations can be credited back to the personal diplomatic skills of Tony de Brum, who also played a crucial role in the Paris Agreement negotiations (Ruwet et al., 2023, p. 188). It must be noted, however, that the regional efforts to decarbonise the shipping industry have also been relevant, and sustainable transportation was one of the key areas of the PIDF (Ruwet et al., 2023, p. 191). At the IMO, Tuvalu, Kiribati, Vanuatu and the Solomon Islands have all actively participated in developing the strategy (Ruwet et al. 2023). In 2023, the IMO adopted an updated strategy on reduction of GHG emissions to operationalise the initial strategy. The IMO GHG Strategy represents a framework for member states in which they set out the future vision for international shipping, the level of ambition and guiding principles to reduce greenhouse emissions as well as propose mid- and long-term measures (IMO, 2023).

Nationally, PICTs are working on adopting and integrating the international conventions to domestic laws and implementing national policies. Ratifying and operationalising international laws are especially important to PICTs because of the significant number of merchant vessels under their flags.

Paradoxically, while PICTs are advocating for climate action globally, their economies are highly dependent on fossil fuel to keep domestic and foreign ocean-going vessels in operation. The IMO is working together with the governments of PICTs through its Technical Cooperation Committee and Department of Projects and Partnerships to implement maritime GHG decarbonisation efforts. The projects include the GloLitter Project in collaboration with the Government of Norway and the UN Food and Agriculture Organisation, and the GHG SMART Program, which was jointly implemented with the Republic of Korea. These pilot projects are specifically designed for small island states to address ocean litter from the maritime and fisheries sectors and to decarbonise the maritime sector. The effectiveness of these projects is yet to be confirmed as their lifecycles are short and national maritime administrations in PICTs are not necessarily equipped with financial and human resources to follow through and keep the various projects and initiatives running.

3.5 Conclusion

This chapter has demonstrated the ways in which PICTs have been able to have their interests protected and voices heard in the frameworks of global climate and ocean governance. The aim of this chapter has been to illustrate some key areas of the ocean/climate nexus that are important for PICTs and through different governance examples show how PICTs have engaged with international, regional and national mechanisms, laws and practices to ensure their interests are protected. While the frameworks of global politics remain in many respects colonial and Eurocentric, including those of climate and ocean governance, PICTs have had important successes in navigating these structures with innovative proposals and a unique agenda. The Pacific communities have been recognised as the custodians of the oceans and through global stewardship they have had an impact on mitigating the tragedy of global commons in many important ways. That said, one should not diminish the limits and challenges that exist, especially internationally, in the climate and ocean governance. Despite the international agreements and treaties, some of which have been discussed in this chapter, global responsibilities are still unfairly distributed, and uniquely vulnerable PICTs have not (yet) been able to get all their demands recognised at international level. This has directed PICTs to find regional and national alternatives, which however can still, as part of international norm, be challenged by other states.

> ‘Communities in Tuvalu need to be trained and attend workshops on climate change to have access to more knowledge on the impact of climate change’

Leiti Fasiai
Community participant
Funafuti
Tuvalu
(POCCA research team interview, 2023)

Part of the Tuvaluan community during the POCCA consultation in Funafuti, Tuvalu (Photo: POCCA team, 2023).

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