SYbIL | Spanish Yearbook of International Law

No Land but Sovereign: Sea-Level Rise, Cultural Heritage, and the Possibilities of International Law

**Vanesa Menéndez Montero*
and Emma Segelke****

Abstract: This paper examines the challenges posed by sea-level rise to the protection of cultural heritage in Small Island Developing States (SIDS), with a focus on the implications of potential submersion of state territory for both tangible and intangible cultural heritage. The paper begins by critically assessing the legal feasibility and limitations of emerging forms of deterritorialized statehood for the purposes of cultural heritage protection. It also considers alternative theoretical proposals as mechanisms to ensure the functional continuity of SIDS' statehood and the cultural rights of relocated communities despite territorial loss. Taking SIDS as a case study, it addresses three main questions: what cultural heritage should be safeguarded, who is responsible for its protection, and how such protection can be operationalized under international law. In answering these questions, the analysis balances decolonial perspectives with the traditional role of states and international institutions, as framed by two key UNESCO Conventions: The World Heritage Convention and the Convention for the Safeguarding of the Intangible Cultural Heritage. Relying on the principle of fairness in international law, the paper further advocates both an evolutive interpretation of relevant treaties and the application of the mutually supportive interpretation doctrine between cultural heritage conventions, human rights law and climate change instruments. By recognizing the fluidity and resilience of culture, and by ensuring the active participation of affected communities, this paper underscores the necessity of progressive legal frameworks to respond to sea-level rise, offering insights with implications for SIDS, relocated populations, and the broader international community.

Keywords: Sea-Level Rise, Cultural Heritage, Small Island Developing States, UNESCO.

Received: September 24, 2025 - *Accepted:* December 24, 2025.

(A) INTRODUCTION

Cultural heritage faces multiple threats from climate change, sea-level rise being just one among them. Yet, what makes the study of this phenomenon of particular interest is the prospect of a *disappearing state* and the implications for the protection, management, and promotion of tangible and intangible cultural heritage. Notably, sea-level rise has posed an existential threat to Small Island Developing States (SIDS), which have already called for the adoption of drastic measures, such as the relocation of entire populations.[1]

* Postdoctoral Research Associate in International and European Law, Hertie School Jacques Delors Centre. (vanesa.menendez.montero@gmail.com).

** PhD Researcher in International Law, University of Kent and Autonomous University of Madrid. (ell.segelk@hotmail.fr)

1 See the Australia-Tuvalu Falepili Union Treaty (adopted November 2023, entered into force August 2024), Article 3.

https://doi.org/10.36151/SYBIL.29.04

Taking the SIDS as a case study, this paper aims to reflect upon the quest to protect cultural heritage in the event of complete submersion of a state's territory. Examining this issue also allows us to delve deeper into other pressing topics, such as the theoretical and practical challenges of new forms of deterritorialized statehood and the protection and promotion of the right to cultural self-determination of relocated populations.[2]

This paper addresses the questions of *what*, *who*, and *how* to safeguard cultural heritage located in SIDS. At the core of these inquiries lies the issue of cultural property ownership. While an exhaustive examination of the theoretical framework on the subject exceeds the scope of this paper, the analysis herein adopts Lucas Lixinski's "third way" of thinking about cultural property.[3] The rationale for this choice is twofold: first, it enables a departure from the paradigm of "cultural internationalism", which is often associated with the interests of developed states. Second, it ensures the participation of relevant communities in decision-making processes and cultural governance while preserving the role of states and international institutions in the management and safeguarding of cultural heritage.[4]

Further inspired by the idea of fairness in international law and given the multiplicity of applicable norms to the situation at hand, this paper advances an evolutive interpretation of the relevant international treaties to ensure that they "do not lose touch with present notions of what is fair".[5] Due to their particular attachment to the territory, immovable and intangible cultural heritage are most threatened by sea-level rise. Thus, this paper focuses on the World Heritage Convention and the Convention for the Safeguarding of the Intangible Cultural Heritage.[6] It suggests that these two conventions should be interpreted in a *mutually supportive manner* with human rights norms and climate treaties. To that aim, it resorts to treaty harmonization techniques, such as the mutually

---

2 The right to self-determination has an internal and external aspect which should not be conflated. While the right to external self-determination amounts to a "right of secession" or "statehood", the right to internal self-determination, under which cultural self-determination is comprised, refers to the groups' political autonomy and agency. See S. Torrecuadrada, V. Aguilar, '¿Derecho a la Libre Determinación?', in S. Torrecuadrada, V. Aguilar (eds), *Políticas, Derechos y Territorios Indígenas en Venezuela* (Universidad de los Andes, Mérida, 2015), at 71-96.

3 See the seminal theory of J.H. Merryman, 'Two Ways of Thinking About Cultural Property', 80 *The American Journal of International Law* (1986), 831-853 [doi: 10.2307/2202065]; revisited in 'Cultural Property Internationalism', 12 *International Journal of Cultural Property* (2005), 11-39 [doi: 10.1017/S0940739105050046]; and the re-interpretation of such theory in L. Lixinski, 'A Third Way of Thinking about Cultural Property', 44 *Brooklyn Journal of International Law* (2019), 563-612, at 570.

4 Lixinski, *A Third Way…*, *supra* n. 3, at 578-579.

5 See A. von Arnauld, 'Fairness and International Law: Within or Without?', 6 *Academy of European Law Working Paper* (2024), 1-8 [doi: 1814/76749]. This approach has been favoured by the ILC to ensure the preservation of the rights of states affected by sea-level rise and promote legal stability, predictability, certainty and equity among them. See GA Supplement No. 10 (A/80/10), Chapter IV, para. 41.

6 Intangible cultural heritage is attached to a people, which arguably makes its protection contingent upon such people's physical existence. Yet, compared to its material counterpart, the adverse effects of climate change in intangible cultural heritage are more difficult to quantify and monitor. Moreover, some intangible expressions are undetachable from the land (e.g., *biocultural heritage*), making it particularly at risk. See F. Lenzerini, 'Protecting the Tangible, Safeguarding the Intangible: A Same Conventional Model for Different Needs', in S. von Schorlemer, S. Maus (eds), *Climate Change as a Threat to Peace – Impacts on Cultural Heritage and Cultural Diversity* (PL Academic Research, Dresden, 2014), 141-160, at 151.

supportive interpretation doctrine,[7] the systemic integration strategy,[8] or the principle of complementarity.[9]

The paper is structured as follows: it begins by situating the protection of cultural heritage threatened by sea-level rise within the broader debate on emerging forms of deterritorialized statehood. The physical disappearance of SIDS challenges UNESCO's cultural heritage conventions, which are premised on a classical, Westphalian notion of the territorial state to articulate their mechanisms of protection. The second section addresses *who safeguards*, clarifying the duties of management, preservation, and restoration of cultural heritage, with special attention to the legal status of relocated populations as holders of cultural and Indigenous rights. The third section turns to the question of *what to safeguard*, analysing the procedural obligations of deterritorialized and host states in identifying and safeguarding cultural heritage. The fourth section considers *how to safeguard* through a critical assessment of the proposals advanced by different stakeholders. It gives prevalence to those proposals more closely aligned with international standards of human rights and Indigenous rights in terms of access, enjoyment, and sustainable use of cultural resources. The paper concludes by reflecting on the most suitable fora to ensure the relational and communal protection of the cultural heritage of SIDS in this unprecedented scenario.

(B) SEA-LEVEL RISE, DETERRITORIALIZED STATEHOOD, AND RELOCATED POPULATIONS

(1) The existential threat of sea-level rise for SIDS

More than one-third of states are expected to be directly affected by sea-level rise, while many others will face indirect consequences, including the reception of relocated populations and the loss of access to natural and economic resources.[10] Given that sea-level rise affects the international community as a whole, responses to this phenomenon must necessarily be articulated at the international level. In particular, the irreparable

---

7 See R. Pavoni, 'Mutual Supportiveness as a Principle of Interpretation and Law-Making: A Watershed for the 'WTO-and-Competing Regimes' Debate?', 21 *European Journal of International Law* (2010), 649-679 [doi: 10.1093/ejil/chq046]; X Zheng, *The Complementarity Between the Nagoya Protocol and Human Rights* (Springer, Singapore, 2023), at 3-16; E. Morgera, 'Against all odds: The contribution of the Convention on Biological Diversity to International Human Rights Law', in D. Alland *et al* (eds), *Unity and Diversity of International Law: Essays in Honour of Professor Pierre-Marie Dupuy* (Martinus Nijhoff, Leiden, 2014), 983-995.

8 The systemic integration strategy is contained in Article 31(3)(c) of the Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 *UNTS* 331. This strategy has been recently articulated in the ITLOS Advisory Opinion on Climate Change, where the Tribunal looked into Article 237 of UNCLOS as one of the so-called rules of reference and acknowledged the importance of coordination and harmonization between UNCLOS and external rules in order to inform the meaning of the former and ensure that it serves as a living instrument. See *Advisory Opinion on the Obligations of States in Respect of Climate Change and International Law*, Case No. 31 (2024), paras. 130-137.

9 See V. Chetail, 'Moving Towards an Integrated Approach of Refugee Law and Human Rights Law', in C. Costello *et al* (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press, Oxford, 2021), 202-220.

10 ILC, Open-Ended Study Group on Sea-Level Rise in Relation to International Law (2018), at 224-230, para. 1.

harm that sea-level rise inflicts upon cultural heritage and, by extension, cultural diversity goes beyond SIDS and coastal populations, raising concerns of global public interest. First, because World Heritage sites are part of the cultural heritage of humankind regardless of their location.[11] Second, because the inherent value of cultural diversity, embedded in the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, forms a "common heritage of humanity" that should be preserved for the benefit of all.[12] However, when dealing with climate change and related environmental disasters, states have shown an informal hierarchy in the protection of cultural expressions. In fact, under the United Nations Framework Convention on Climate Change (UNFCCC), only those cultural manifestations that could be useful to the states have been considered worthy of protection.[13] However, before considering any substantive measures, the issue of the statehood of potentially submerged states must be addressed.

(a) Strategies for the preservation of SIDS' territory

As the threat of partial or total submersion of SIDS intensifies, several strategies have been put forward to safeguard their physical existence. Among these, the construction of shoreline protections, reinforcements, and sea defences are lawful means of artificially preserving the SIDS' territory under international law.[14] However, this option is not only economically inefficient but it also creates additional problems, including marine pollution and the erosion of the territory's environmental and cultural integrity. A second strategy is the creation of artificial islands or new wetland and coastal ecosystems with a similar environment as the original island state. Although not forbidden under international law, the creation of artificial islands is limited by Article 60 of UNCLOS.[15] Moreover, for islands situated on atolls, it would go a long way in providing their inhabitants with an ideal terrain to recreate their intangible and mixed cultural heritage, which are inseparable from the land.[16] A third proposal calls upon SIDS to acquire new territory in advance in order to progressively relocate their government and population before submersion takes place. This acquisition can be carried out either through a purchase agreement in the case of a privately owned territory or by a treaty of cession, as exemplified by the case of Alaska.[17] In 2008, the President of the Maldives publicly

---

11 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted 16 November 1972, entered into force 17 December 1975), 1037 *UNTS* 151, preamble, para. 6.

12 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005, entered into force 18 March 2007), 2440 *UNTS* 311 (2005 UNESCO Convention), preamble, para. 2.

13 See E. Segelke, 'Incorporar una perspectiva de "derechos humanos" en el régimen del Derecho internacional climático con respecto al conocimiento ecológico tradicional de los pueblos indígenas y de las comunidades locales', 50 *Tempo Exterior* (2025), 26-44 [doi: 10.64130/temex.50.26].

14 R. Rayfuse, 'W(h)ither Tuvalu? International Law and Disappearing States', *International Symposium of Islands and Oceans* (Tokyo, Japan, 22-23 January 2009), at 4. See also ILA, *Final Report of the Committee on International Law and Sea-Level Rise* (2024), accessed 22 December 2025.

15 United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 *UNTS* 3, (UNCLOS).

16 See GA Res. 18/317, 16 July 2024, para. 29.

17 See the Treaty concerning the Cession of the Russian Possessions in North America by his Majesty the Emperor of all the Russias to the United States of America (adopted on 20 June 1867), by virtue of which Russia sold Alaska to the United States for USD7.2 million.

declared his intention to purchase new land for relocation.[18] Yet, these acquisitions raise many concerns: first, virtually all territory is subject to state sovereignty, and the few unclaimed lands cannot be lawfully appropriated.[19] Second, there is no certainty that other states will make such offers, given fears of opening the floodgates to similar claims and triggering geopolitical tensions.[20] Moreover, even if an offer is made, negotiations would be marked by an inherent power imbalance due to the economic constraints of SIDS. Lastly, differences in climate, environment, space, and infrastructure at the relocated land may affect the preservation and development of cultural heritage. The same can be argued regarding the permanent lease of state territory.

Two pathways for the pre-emptive protection of SIDS' territories have been tested so far. In 2014, the government of Kiribati purchased 5,460 acres of land located in Fiji's second-largest island, Vanua Levu, from the Church of England.[21] This acquisition facilitated the relocation of some population under the framework of a culturally sound labour migration policy.[22] An alternative pathway stems from the belief that land can be wholly spiritual and/or immaterial. This view underpins Tuvalu's initiative to establish a digital twin state in the metaverse, or what Tuvalu's former Minister for Justice, Communication, and Foreign Affairs called "the world's first digital nation".[23] The idea of preserving the state digitally, with the wholeness of local communities' culture, spirituality and territory — also known as *fenua* — has merit, as it is based on the reclaimed agency of Tuvalu's Indigenous peoples and their right to self-determination.[24] It not only reconciles Indigenous cosmologies with Western institutions through a process of de- and re-territorialization of the metaverse, but it is also an insightful example of what performative or lived sovereignty means in the eyes of Indigenous peoples.[25] Still, moving into the digital space brings up issues regarding the international recognition of the sovereign digital state, inequalities in access to digital technology and the internet, and potential cybersecurity risks.[26] In addition, developing and maintaining a digital twin state requires substantial computing resources, which increase carbon

---

18 D. Hodgkinson *et al*, "The hour when the ship comes in': a convention for persons displaced by climate change' 36 *Monash University Law Review* (2010), 69-120, at 70 [doi: 10.26180/5db7fcddd2c4a].

19 See, as a matter of example, Article IV of The Antarctic Treaty (adopted 1 December 1959, entered into force 23 June 1961) 402 *UNTS* 71.

20 M.J. Aznar, 'El Estado sin territorio. La desaparición del territorio debido al cambio climático', 26 *Revista Electrónica de Estudios Internacionales* (2013), 1-23, at 8 [doi: 10.36151/].

21 A. Kraler *et al, Climate Change and Migration. Legal and policy challenges and responses to environmentally induced migration*, European Parliament (2020), at 59, accessed 22 December 2025.

22 See Kiribati's "Migration with Dignity" policy in S.N. McClain, C. Bruch, 'Migration with Dignity: A Framework to Manage Climate Change and Prevent Conflict', 9 *The Peace Chronicle* (2021). This relocation strategy has been criticised in K.E. McNamara, 'Cross-border migration with dignity in Kiribati', 49 *Disasters and displacement in changing climate* (2015), at 62, accessed 22 December 2025.

23 See Simon Kofe, *The First Digital Nation COP28 Update*, accessed 22 December 2025. This proposal has received mixed reactions by Tuvaluans. See G. Di Fonzo, 'Small Island Digital States: Exploring the Relationship Between Digitization, Statehood, and Climate Change-Induced Sea-Level Rise in Tuvalu' (PhD Thesis at McGuill University, Montreal, 2025), at 35-40; D. Rothe, *et al.*, 'Digital Tuvalu: State Sovereignty in a World of Climate Loss', 100 *International Affairs* (2024), 1491-1509, at 1502 [doi: 10.1093/ia/iiae060].

24 Rothe, *et al.*, *supra* n. 23, at 1492.

25 *Ibid.*, at 1503.

26 Within these risks is the threat of the digital state being absorbed by digital superpowers such as China or the US, in a sort of "digital colonialism". Cf., C. Pérez, 'Cambio climático, soberanía desterritorializada

emissions that may worsen climate change, making it a measure of last resort.[27] In light of these challenges, most SIDS have shifted the debate to what follows the physical disappearance of their territory.

(b) New forms of statehood beyond the 1933 Montevideo Convention

Under Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, there are four criteria for statehood: a defined territory, a permanent population, a government, and the capacity to enter into international relations. According to the principle of effectiveness in international law, if a state does not meet these criteria, it ceases to exist, with the unintended consequence of rendering its population stateless. To prevent this outcome, a view has emerged that Article 1 of the 1933 Montevideo Convention only governs the creation of states, but not their continuity or extinction.[28] In particular, SIDS have argued that international law does not contemplate the demise of statehood in the event of partial or total loss of territory due to climate change-related sea-level rise.[29] In turn, the continuity of statehood is consistent with various international law rules and principles, such as the right to self-determination or the principle of equity and fairness.[30] This argument has been further supported by the International Court of Justice in its Advisory Opinion on the *Obligations of States in respect of Climate Change*.[31]

Recognizing deterritorialized statehood allows SIDS to retain functional sovereignty over the natural and cultural resources formerly present in their territories and maritime zones.[32] This means that SIDS could retain their sovereignty to perform fundamental governmental functions, upheld through a juridical community of people acting as a relocated government. SIDS would also have their maritime entitlements preserved as they may be politically and economically imperative for their long-term survival as deterritorialized entities.[33] Crucially, it also ensures that SIDS continue to be

---

y continuidad ¿digital? del Estado: reflexiones en torno a los pequeños Estados insulares en desarrollo del Pacífico', 76 *Revista Española de Derecho Internacional* 2 (2024), 143-169, at 167-168 [doi: 10.36151/REDI.76.2.6].

27 V. Seshadri, 'Why Tuvalu's digital twin plan is a cry for help, not a sustainable solution', *Illuminem* (2022), accessed 22 December 2025.

28 GA Supplement No. 10 (A/80/10), Chapter IV, para. 42. See also J. McAdam, "Disappearing States', Statelessness and the Boundaries of International Law', in J. McAdam (ed), *Climate Change and Displacement: Multidisciplinary perspectives* (Hart Publishing, Oxford and Portland, 2010), 105-129, at 106.

29 See the Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise (adopted 6 August 2023), preamble, paras. 8 and 12 (2023 Declaration on the Continuity of Statehood); and the AOSIS Declaration on Sea-Level Rise and Statehood (adopted 23 September 2024), preamble, para. 6 and Article 2 (2024 AOSIS Declaration).

30 See the 2023 Declaration on the Continuity of Statehood, preamble, para. 9; and the 2024 AOSIS Declaration, preamble, para. 7.

31 *Obligations of States in respect of Climate Change*, Advisory Opinion, ICJ General List No. 187, 23 July 2025, para. 363: "Once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood". This statement was criticized for understating the effects of sea-level rise, which affect both SIDS' territory and population. In his Separate Opinion, Judge Aurescu argued that this "one" element should not be interpreted in a strictly mathematical, restrictive manner (para. 20).

32 To ensure access to these resources, SIDS and some scholars have advanced an interpretation of Article 5 of UNCLOS allowing for the freezing of baselines in light of the principle of equity (systemic interpretation of Articles 59 and 74 of UNCLOS and SIDS' subsequent practice in light of Article 31(3)(c) VCLT). See some examples in Rayfuse, *supra* n. 14; J. Ödalen, 'Underwater Self-determination: Sea-level Rise and Deterritorialized Small Island States', 17 *Ethics, Policy & Environment* (2014), 225-237, at 228 [doi: 10.1080/21550085.2014.926086].

33 Rayfuse, *supra* n. 14, at 10.

member states to the UN and other international organizations such as UNESCO, which constitutes a vital support for the protection of their cultural heritage.

While continuity of statehood seems to be widely supported by the UN member states, no consensus exists on the shape that a deterritorialized state may take.[34] The recognition of deterritorialized statehood calls for a readaptation of the concept of *territory* to include non-physical spaces where state sovereignty can be exercised in compliance with the state's international obligations. This implies that treaty-based territorial requirements should be interpreted in an evolutive manner, considering non-Western, Indigenous, and decolonial performativity.[35] One of the most discussed theoretical proposals in this regard is Maxine Burkett's establishment of *ex-situ* nationhood, which "affords the benefits and rights of the state in perpetuity".[36] This proposal, although normatively central to recognizing the feasibility of the deterritorialized state, is not fully tenable on its own.

First, the notion of rights – including cultural rights – being held in perpetuity is hard to fathom from a state whose territory will eventually disappear. Emma Allen and Mario Prost suggest the "zombie state thesis" to conceptualize states *in limbo* and their need for a transitional period from full to diminished statehood.[37] By contrast, Jane McAdam doubts the long-term viability of displaced governance.[38] In response, Rosemary Rayfuse argues that functional sovereignty is transitional in nature, lasting either one generation (30 years) or one human lifetime (100 years).[39] Although she supports an *ex-situ* nationhood, she admits that it is unattainable within an international legal order based on the Westphalian notion of the state. Indeed, the concept of "*ex-situ* nation" reflects an evolutive interpretation of statehood shaped by the realities of the Anthropocene.[40]

The *ex-situ* nation comprises a government in exile coupled with a diasporic population that maintains a collective cultural identity beyond any territorial borders.[41] This setting invites critical reflection on the external dimension of the right to self-determination of deterritorialized states. SIDS have generally favoured an interpretation of self-determination which emphasizes cultural continuity over political sovereignty.[42] However, some scholars question whether the tandem of government in exile and diasporic communities constitute *real* self-determination, arguing that the latter can only be realized through the "moral and political authority to establish justice within

34 GA Supplement No. 10 (A/80/10), Chapter IV, para. 43.
35 Rothe, *et al.*, *supra* n. 23, at 1497.
36 M. Burkett, 'The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era', 2 *Climate Law* (2011), 345-374, at 346 [doi: 10.3233/CL-2011-040].
37 Both authors advocate for a "legally proximate non-state status" as an alternative to the deterritorialized state. See E. Allen, M. Prost, 'Ceci n'est pas un Etat: The Order of Malta and the Holy See as precedents for deterritorialised statehood?', 31 *Review of European Comparative and International Environmental Law* (2022), 171-181, at 174 [doi: 10.1111/reel.12431].
38 McAdam, *supra* n. 28.
39 Rayfuse, *supra* n. 14.
40 Rothe, *et al.*, *supra* n. 23, at 1497.
41 Burkett, *supra* n. 36, at 369.
42 Rayfuse, *supra* n. 14. Cf., A. Torres, *Statehood under Water – Challenges of Sea-Level Rise to the Continuity of Pacific Island States* (Brill Nijhoff, Leiden, Boston, 2016).

a geographical region".[43] A more nuanced approach conceptualizes self-determination as a spectrum, with complete sovereignty and political independence at its endpoints.[44] Along this spectrum exist varying degrees of political autonomy, wherein sovereignty is distributed across different spheres of governance.[45] In this context, a government in exile would be able to safeguard the rights and interests of its citizens vis-à-vis host states in a lawful exercise of its functional sovereignty.[46]

Some examples of *ex-situ* nationhood can be found in the Palestine Liberation Organization and the Palestinian diaspora in Jordan, Lebanon and Syria; the Sahrawi Arab Democratic Republic, led by the Polisario Front and with a diasporic population in Algeria, Spain or Mauritania; and the Kurdish National Movement, with Kurdish presence in Turkey, Iraq, Iran, and Syria. Nevertheless, these cases differ from the SIDS, as they generally arise from temporary and exceptional circumstances involving unlawful occupation under international law. Even the notion of "exile" is problematic for SIDS, as it does not fully depict the situation of their governments. Overall, the issues of *ex-situ* nationhood are self-evident, yet concerning the protection of cultural heritage, the way these diasporic communities operate can be a valuable source of inspiration.

Maxine Burkett further proposes a UN trust territory for Pacific Island states, an international trusteeship designed to administer core governmental functions while preserving the legal personality of deterritorialized polities.[47] While institutionally appealing, reliance on UN trusteeship agreements modelled on the League of Nations Mandate System and the UN Trusteeship Council raises some concerns. The practice of the Mandate System and the UN Trusteeship Council shows that these regimes were rarely neutral mechanisms of temporary administration; rather, they often entrenched asymmetrical power relations that conditioned the exercise of self-determination on standards defined by the administering authorities. Precisely, Spanish and foreign scholarship have long emphasized that mandates and trusteeships functioned as techniques of internationalized governance rather than mere fiduciary agreements.[48] Historical examples of these trusteeship agreements already involved SIDS such as Nauru, Western Samoa, and Tanganyika, all of which suffered from institutionalized prolonged external control over their economic resources and political institutions.[49] Transposing this model to the context of deterritorialized SIDS due to sea-level rise,

---

43 Ödalen, *supra* n. 32, at 232. See also G.E. Wannier, M.B. Gerrard, 'Disappearing States: Harnessing International Law to Preserve Cultures and Society', in O. Ruppel *et al* (eds), *Climate Change: International Law and Global Governance* (Nomos, Baden-Baden, 2013), 615-655.

44 Ödalen, *supra* n. 32, at 226.

45 Rothe, *et al.*, *supra* n. 23, at 1495.

46 Ödalen, *supra* n. 32, at 227.

47 Burkett, *supra* n. 36, at 370.

48 A. Miaja de la Muela, 'La emancipación de los Pueblos Coloniales y el Derecho Internacional', 39 *Anuales de la Universidad de Valencia* (1965), 1-173, at 56 *et seq* [doi: 10550/56008]; A. Remiro (ed), *Derecho internacional* (Tirant lo Blanch, Valencia, 2019), at 115-116. As to foreign doctrine, cf., A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, Cambridge, 2005), at 115-195, esp. 121; regarding the Mandate System, see H. Duncan, *Mandates, Dependencies and Trusteeship* (Carnegie Endowment for International Peace, Washington DC, 1948) at 84-87.

49 See all the relevant GA resolutions in The United Nations and Decolonization, accessed 22 December 2025. This situation was also visible in the claims made by Nauru in the *Case Concerning Certain Phosphates Lands in Nauru*, ICJ Reports (1992) 240.

therefore, poses significant risks. To avoid replicating past structural deficiencies, any adaptation of these mechanisms requires stringent safeguards, such as clear temporal limits, robust participatory rights for affected populations, and enforceable guarantees of international recognition.

During the transitional phase from a territorial to a deterritorialized state, not only will sovereignty be reconfigured, but entire populations will also be relocated. In the latter process, the principle of proximity plays a crucial role. This principle requires the "least separation of persons from their cultural area", meaning that the selection of the host state should be guided by cultural and environmental affinities.[50] This principle has informed the Maldives' preference for relocation to Sri Lanka and India, and has similarly shaped the strategies of Lohachara Island, Carteret Islands, and Papua New Guinea.[51] At the international level, the Australia-Tuvalu Falepili Union treaty provides a special human mobility pathway for Tuvaluan citizens to relocate to Australia.[52] Yet, while this framework offers relative stability, many other SIDS lack access to comparable bilateral agreements that facilitate such transitions.

Eventually, one may still argue that there is no substitute for a territory endowed with profound spiritual significance. In Fiji, for example, some communities cannot separate from the physical embodiment of their land, which is regarded as an extension of the self. Similarly, Marshall Islanders attach deep spiritual meaning to their land, and for Ni-Vanuatuans, land assumes a maternal role. In fact, in many Indigenous languages, the term "land" is equated with "placenta", a conceptualization that cannot be encapsulated in colonial languages.[53] Therefore, while the principle of proximity may promote internal self-determination and uphold the principle of fairness, the spiritual dimension of land may be irremediably lost upon relocation.[54]

(2) The legal status of populations displaced by sea-level rise

Deterritorialized statehood offers a significant advantage in protecting SIDS populations against the risk of statelessness.[55] It is often unclear which international law regime is

---

50 Hodgkinson *et al*, *supra* n. 18, at 79.

51 With regard to the Maldives, see G. Aktürk, M. Lerski, 'Intangible cultural heritage: a benefit to climate-displaced and host communities' 11 *Journal of Environmental Studies and Science* (2021), 305-315, at 308 [doi: 10.1093/acprof:oso/9780198267850.003.0001]; on the Carteret Islands, see J. Campbell, 'Climate-Induced Community Relocation in the Pacific: The Meaning and Importance of Land', in J. McAdam (ed), *Climate Change and Displacement: Multidisciplinary perspectives* (Hart Publishing, Oxford and Portland, 2010), 57-80, at 72.

52 Articles 2 and 3 of the Australia-Tuvalu Falepili Union Treaty. It is expected that up to 280 Tuvalu citizens a year will move to Australia, meaning that it could take less than 35 years for Tuvaluan people to be relocated. See D. Dingwall *et al*, 'Australia's small Tuvaluan diaspora is about to grow fast – and it's determined to keep traditions alive', *AABC News*, 12 July 2025, accessed 22 December 2025.

53 Campbell, *supra* n. 51, at 60.

54 Lenzerini, *supra* n. 6, at 152; P. Raschidi, 'Indigenous peoples at the heritage-climate change nexus: Examining the effectiveness of UNESCO and the IPCC's boundary work' 51 *Review of International Studies* (2025), 42-63 [doi: 10.1017/S0260210524000196]. John Campbell also notes that "critical people-land union will decline", see *supra* n. 51, at 67.

55 For a thorough analysis on statelessness and related conventions applicable to SIDS see L. Yamamoto, M. Esteban, *Atoll Island States and International Law – Climate Change Displacement and Sovereignty* (Springer,

best suited to deal with SIDS populations' human and cultural rights in contexts of displacement. Specifically, there is an ongoing discussion as to whether they should be treated as climate migrants or climate refugees. Under international law, refugee status is granted to individuals fleeing their own state due to a foreseeable risk of irreparable harm to the right to life upon return.[56] At the core of this definition lies the concept of "persecution", which implies a deliberate active human agent.[57] Against this backdrop, scholars have proposed ways to expand the understanding of persecution: some draw on human rights law to broaden international refugee law; others rely on the evolutive interpretation of "refugee" in other international instruments like the Cartagena Declaration; and still others view climate-displaced populations as a "particular social group" subject to persecution.[58]

Even if the conventional definition of "refugee" does not contemplate *climate refugees*, in its Advisory Opinion on the *Obligations of States in respect of Climate Change*, the ICJ conferred this status to individuals who flee their country of origin due to threats from climate change and recalled the host states' obligations under the principle of non-refoulement.[59] Still, to talk about refugees implies the possibility of return, sooner or later, to the territory of the national state once the threat posed to the individual is over. This is not the case for populations who flee their country due to sea-level rise. Additionally, the terminology of *climate refugees* has been rejected by some SIDS.[60] While the label may be strategically used in the political arena "evoking a cosmopolitan and humanitarian ideal" , it simultaneously risks undermining the right to internal self-determination of climate-displaced peoples.[61] In recent years, multiple initiatives have sought to draft a new convention for the specific protection of climate-displaced persons, an idea which has been more or less well-received by scholars, but with limited support from states.[62]

Berlin, Heidelberg, 2014), at 251; K. Hee Eun, 'Changing Climate, Changing Culture: Adding the Climate Change Dimension to the Protection of Intangible Cultural Heritage', 18 *International Journal of Cultural Property* (2011), 259-290, at 262 [doi: 10.1017/S094073911100021X]; McAdam, *supra* n. 28.

56 See Article 1(a)(2) of the Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 *UNTS* 137, (1951 Refugee Convention).

57 Yamamoto, Esteban, *supra* n. 55, at 265.

58 *Ibid.*, at 232-233; Chetail, *supra* n. 9.

59 See *Obligations of States in respect of Climate Change*, para. 378.

60 At the International Conference on SIDS held in Apia (Samoa), the former President of Kiribati, Anote Tong, rejected the climate refugees' terminology. ABC News, 'Pacific Islanders reject 'climate refugee' status, want to 'migrate with dignity' SIDS conference hears', *ABC*, 5 September 2014, accessed 22 December 2025. Tuvaluans also rejected this terminology: see C. Farbotko, H. Lazrus, 'The first climate refugees? Contesting global narratives of climate change in Tuvalu' 22 *Global Environmental Change* (2012), 382-390 [doi: 10.1016/j.gloenvcha.2011.11.014]. Lilian Yamamoto and Miguel Esteban clarify their fear of being considered as "second class citizens" in Yamamoto, Esteban, *supra* n. 55, at 225.

61 Burkett, *supra* n. 36, at 358.

62 The only notable discussions revolve around the drafting of a new disaster-related convention, which could encompass climate change-related sea-level rise. State practice in this domain is, overall, quite limited. See F. Biermann, I. Boas, 'Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees' 10 *Global Environmental Politics* (2010), 60-88 [doi: 10.1162/glep.2010.10.1.60]; B. Docherty, T. Giannini, 'Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees' 33 *Harvard Environmental Law Review* (2009), 349-403; A. Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', 30 *Law & Policy,* (2008), 502-529 [doi: 10.1111/j.1467-9930.2008.00290.x]; M. Prieur *et al*, 'Draft Convention on the International Status of Environmentally-Displaced Persons' 12 *Revue européenne de droit de l'environnement*, (2008), 395-406 [doi:

This situation, however, does not render international refugee law entirely inapplicable in the context of displaced SIDS populations, especially when interpreted and applied in conjunction with international human rights law.

If SIDS populations were instead regarded as *climate migrants*, a different legal framework would apply, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which arguably offers a more sustainable long-term solution. International migration law provides "an indirect mechanism for imposing human rights obligations, or a 'backdoor liability'" on states.[63] The first question to address, though, is whether the status of migrants is truly more appropriate than that of refugees in the present case. In light of the circumstances of permanently relocated populations, the answer may well be affirmative. In fact, this is the approach adopted by Kiribati under its "Migration with Dignity" policy.[64]

Moreover, as communities that will become non-dominant within host states and thus will qualify as *de facto* minorities, relocated SIDS populations might fall within the scope of minority rights protection. While essential, minority rights do not constitute a self-standing regime. They are integrated into the broader framework of international human rights law, primarily articulated in Article 27 of the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Although these provisions have been interpreted expansively by the UN Human Rights Committee and have been invoked by minority and Indigenous groups alike, they remain limited in scope and largely individual in their orientation.[65]

By contrast, Indigenous rights are expressly grounded in the collective rights to self-determination, cultural integrity, and land-related rights. Instruments such as the ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) provide a more robust legal framework, one tailored to communities whose cultural survival, traditional knowledge systems, and cultural identity are intrinsically linked to land and collective practices.[66] Since SIDS are "Indigenous states with majority populations of Indigenous peoples with their distinctive languages and cultures", they meet both the objective and subjective criteria of indigeneity and should be recognized

---

10.3406/reden.2008.2058]. Regarding state practice, see German Advisory Council on Global Change, *World in Transition: Climate Change as a Security Risk* (WBGU, Berlin, 2007).

63 Wannier, Gerrard, *supra* n. 43, at 638.

64 See, McClain, Bruch, *supra* n. 22.

65 See L. Lixinski, *International Heritage Law for Communities: Exclusion and Reimagination* (Oxford University Press, Oxford, 2019).

66 The ILO Convention (No. 169) concerning indigenous and tribal peoples in independent countries (adopted 27 June 1989, entered into force 5 September 1991) 1650 *UNTS* 1, is the only binding treaty on Indigenous peoples' rights to this day but it only counts with 24 states parties as of December 2025. In turn, the UN Declaration on the Rights of Indigenous Peoples (GA Res. 61/295, 2 October 2007) was adopted with the affirmative votes of 143 states. Despite its *soft law* nature, international practice increasingly applies it, facilitating the crystallization of some of its elements into customary international law. Still, this process is uneven, with some norms gaining firmer customary status than others. See M. Barelli 'The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous Peoples', 58 *International & Comparative Law Quarterly Forum* (2009), 957-983 [doi: 10.1017/S0020589309001559].

accordingly.[67] Thus, to conceptualize relocated SIDS communities merely as migrant minorities would strip them of the stronger guarantees embedded in Indigenous peoples' rights, relegating them to a weaker tier of international protection. Affirming their Indigenous status extraterritorially would, in turn, ensure the preservation of their rights and avoid reproducing the colonial patterns of marginalization that Indigenous rights were meant to redress.

(3) The gaps in the international cultural heritage law regime

During the proceedings that gave rise to the ICJ's Advisory Opinion on the *Obligations of States in respect of Climate Change*, both the Melanesian Spearhead Group and the Solomon Islands expressed that sea-level rise had triggered the loss of traditional harvesting sites and species, as well as tangible Indigenous cultural heritage such as ancestral homes, burial groups, and other sacred sites.[68] Tonga described how forced migration caused by climate change led to the loss of Indigenous knowledge, rituals, and customs.[69] These examples illustrate how climate change in general, and sea-level rise in particular, have led to the loss of tangible and intangible cultural manifestations of SIDS communities.

The existing UNESCO framework is insufficient to safeguard tangible and intangible cultural heritage against the risks posed by sea-level rise.[70] This circumstance is not surprising if one bears in mind that, at the time of the negotiations of most UNESCO conventions, sea-level rise was not a pressing issue, nor was it considered a potential threat to cultural heritage. The only exception is the general reference to "changes in water level" as a potential threat to World Heritage properties under Article 11(4) of the World Heritage Convention. Still, this provision was associated with all types of water phenomena such as Venice's *aqua alta* and cannot thus be said to be a "climate change provision" *stricto sensu*.[71] This initial gap was filled by the Operational Guidelines to the World Heritage Convention, where references to climate change multiplied, although a reference to sea-level rise is still missing.[72] The same can be said about the Operational Directives of the Convention for the Safeguarding of Intangible Cultural Heritage.[73] In this case, the absence of any reference to sea-level rise is even more striking, as by the year 2003, environmental awareness had advanced significantly compared to the 1970s.

---

67 D. Nakashima (ed), *Indigenous Knowledge for Climate Change Assessment and Adaptation* (Cambridge University Press/UNESCO Publishing, Cambridge, 2018), at 2.

68 See Melanesian Spearhead Group's written statement (paras. 18 and 71), and Solomon Islands' written statement (para. 29(4)).

69 Tonga written statement, para. 260. See also Kiribati's written statement (Annex 2, Statement 12, paras. 11-14) and the Expert Report by Anna Naupa and Dr Chris Ballard, in Annex A of Vanuatu's written statement (para. 7).

70 As suggested by Lenzerini, *supra* n. 6, at 151.

71 G. Carducci, 'What Consideration is Given to Climate and to *Climate Change* in the UNESCO Cultural Heritage and Property Conventions?', in S. von Schorlemer, S. Maus (eds), *supra* n. 6, 129-140, at 135.

72 The Operational Guidelines for the Implementation of the World Heritage Convention, WHC.25/01, 16 July 2025, paras. 111(d), 118, 118bis, 239(e). See also World Heritage Centre, *Policy Document on the Impacts of Climate Change on World Heritage Properties* (2008), accessed 22 December 2025.

73 Operational Directives for the Implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage, 10.GA, 12 June 2024, paras. 178(a), 182, 188 and 191.

Yet, the most decisive developments in international environmental law emerged in the following decade with the adoption of the Cancun and Paris Agreements, subsequent to both UNESCO Conventions.[74]

Therefore, even if UNESCO is equipped to protect varied types of heritage, including natural heritage, it remains a political agency with limited capacity to tackle environmental catastrophes. Even if combating climate change lies outside its mandate, it can still rely on climate normative frameworks such as the UNFCCC when implementing cultural heritage policies.[75] An alternative and more feasible pathway lies in the advancement of an evolutive interpretation of existing UNESCO conventions. Such an interpretation would allow the reading of these conventions in light of contemporary threats, including climate change-related sea-level rise.[76] This mechanism is somewhat reflected both in the Operational Guidelines to the World Heritage Convention and the Operational Directives of the 2003 UNESCO Convention.[77] Moreover, the incorporation of a *climate change variable* in the 2019 Operational Principles for Safeguarding Intangible Cultural Heritage in Emergencies and in the Updated Draft Policy Document on the Impact of Climate Change on World Heritage Properties evidences a gradual institutional acknowledgement of climate change threats to cultural heritage protection. However, all these mechanisms rely on the premise of a territorial state in charge of identifying, protecting, managing and promoting cultural heritage.

Regarding the specific protection of cultural heritage in SIDS, other UNESCO conventions also reveal several shortcomings. On the one hand, the Convention on the Protection of Underwater Cultural Heritage limits its scope *ratione materiae* to "all traces of human existence having a cultural, historical or archaeological character which have been partially or totally underwater, periodically or continuously, *for at least 100 years*".[78] While this time limit was introduced for pragmatic reasons, states can lower this threshold in their domestic laws for broader protection.[79] Yet, the 2001 UNESCO Convention does not apply to cases involving recent submersion.[80] On the other hand, the Convention

---

74 COP Decision 1/CP.16, *The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on long-term Cooperative Action under the Convention* (adopted 11 December 2010); Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016), 3156 *UNTS* 79.

75 Raschidi, *supra* n. 54, at 53.

76 For instance, Article 6(3) of the World Heritage Convention could be interpreted in order to place a duty on state parties to reduce their greenhouse gas emissions. See N. Higgins, 'Changing Climate; Changing Life Climate Change and Indigenous Intangible Cultural Heritage' 11 *Laws* (2022), 1-15, at 8 [doi: 10.3390/laws11030047]. As for the 2003 UNESCO Convention, Articles 11(a), 13(c) and 20(a) have been put forward as a way to access to international assistance and as a course for action against climate change. See Lenzerini, *supra* n. 6.

77 According to Federico Lenzerini, the Operational Directives represent a "formidable chance to update the global system of the 2003 UNESCO Convention in order to make it more responsive in the need of combatting the effects of climate change on intangible cultural heritage". See Lenzerini, *supra* n. 6, at 156. The same can be said concerning the Operational Guidelines to the World Heritage Convention.

78 Article 1(1)(a) of the Convention on the Protection of Underwater Cultural Heritage (adopted 2 November 2001, entered into force 2 January 2009) 45694 *UNTS* 1 (2001 UNESCO Convention) (emphasis added).

79 Only few countries have lowered this threshold, such as Australia (75 years). In the case of SIDS, there is little evidence about their will to do so. See A. Strati, *Draft Convention on the Protection of Underwater Cultural Heritage: A Commentary Prepared for UNESCO* (UNESCO, Paris, 1999), at 179.

80 The object and purpose of the 2001 UNESCO Convention is to protect underwater cultural heritage of historical and archaeological nature, which it is why it privileges *in situ* protection. See preamble, paras. 5

on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property also presumes the existence of a territorial state with a functional administration capable of managing inventories, carrying out maintenance and restoration works, and facilitating access to cultural properties.

Furthermore, both the World Heritage Convention and the 2003 UNESCO Convention have often been criticized for their limited normative force, notwithstanding their formal status as binding instruments of international law. Due to their non-self-executing character, many of their provisions are "intended as a matter of principles", and "virtually no real state obligation, in the technical sense of the term, are included in their texts".[81] In this regard, they epitomize the model of international standard-setting treaties, whose authority lies more in their persuasive and programmatic value than in enforceable state obligations.[82] This structural weakness is further exacerbated by the absence of effective enforcement mechanisms within UNESCO's institutional framework.[83]

As a result, an apparent normative gap persists within international cultural heritage law, leaving the safeguarding of cultural heritage at stake in emerging situations of sea-level rise. At the same time, the protection of the cultural rights of individuals, groups and communities affected by this phenomenon remains fragmented.[84] Building on the premise that cultural heritage constitutes an essential component of the protection, respect, and promotion of cultural rights, this paper frames the protection of the cultural heritage of SIDS populations through a human rights lens, thereby offering a more holistic and normative avenue to address this issue.

(C) THE INTERNATIONAL PROTECTION OF CULTURAL HERITAGE IN THE FACE OF SEA-LEVEL RISE AND DISAPPEARING STATES

(1) Who safeguards: the role of states, international organizations and local communities

In the event that SIDS become partially or totally submerged, the obligations to protect the cultural heritage of the displaced populations should be shared between the deterritorialized state and the host states. Regarding World Heritage sites and items inscribed on the Representative List of the Intangible Cultural Heritage of Humanity, UNESCO and its treaty bodies assume a central role in ensuring the continuity of their protection.[85] Given that "tangible and intangible [cultural heritage] often represent two

and 13, Article 2(5) and (10), and Rule I of Annex I.

81 Lenzerini, *supra* n. 6, at 144.

82 P.J. O'Keefe, L.V. Prott, *Cultural Heritage Conventions and Other Instruments: A Compendium with Commentaries* (UNESCO, Paris, 2011), at 78.

83 Scholars are divided about the need to create a specialized tribunal in cultural heritage matters: in favour, see M.C. Bassiouni, 'Reflections on Criminal Jurisdiction in International Protection of Cultural Property' 10 *Syracuse Journal of International Law and Commerce* (1985), 281-322, at 316; against A. Chechi, 'Evaluating the Establishment of an International Cultural Heritage Court' 18 *Art, Antiquity and Law* (2013), 31-58.

84 GA Supplement No. 10 (A/80/10), Chapter IV, para. 45.

85 Tuvalu and Nauru became party to the World Heritage Convention in 2023 and 2024, respectively. Out of the 1248 properties in the World Heritage List, 37 come from SIDS. In the case of the 2003 UNESCO

indissoluble components of the same complex cultural reality",[86] the following analysis will treat them in conjunction.

(a) The Duties of the Deterritorialized State

As previously mentioned, both the World Heritage Convention and the 2003 UNESCO Convention rely on the idea of a functional state administration to safeguard cultural heritage. However, when it comes to deterritorialized states, their administration may not be centralized nor even functional, especially during the first years after relocation. When it comes to the intangible cultural heritage of diasporic populations, the 2003 UNESCO Convention does not foresee an extraterritorial application of its provisions. It has been argued that, in these cases, the governments of the deterritorialized states would assume the role of trustees of the state assets on behalf of the displaced population while simultaneously promoting their cultural rights and interests vis-à-vis host state(s).[87] This way, the extraterritorial application of human rights norms and, in particular, the right to take part in cultural life in Article 15(1)(a) of the International Covenant on Economic Social and Cultural Rights, obliges the deterritorialized state to promote the protection of cultural heritage in the territory of any other states where immovable cultural heritage or its population have been relocated. According to the Committee on Economic Social and Cultural Rights, the right to take part in cultural life imposes a dual duty on states: a negative duty of abstention refraining from interfering with the exercise of cultural practices and access to cultural goods, binding upon host states ; and a positive duty to ensure participation, facilitation and promotion of cultural life, as well as access to and preservation of cultural resources, binding upon both the deterritorialized state and the host state.[88] Thus, it is upon the deterritorialized state to enable mechanisms in which the relocated populations can express their views about what cultural heritage should be protected and through which necessary means.

If deterritorialized states effectively retain their rights and obligations over their former maritime zones including the submerged territories treated as internal waters then they remain responsible for the protection of those elements of cultural heritage that could not be relocated pursuant to the relevant provisions in UNCLOS. However, UNCLOS only deals with archaeological and historical objects located within the Area and other areas under national jurisdiction, while, as previously mentioned, the material scope of the 2001 UNESCO Convention does not foresee the protection of recently submerged cultural properties.[89] There are, therefore, material and time constraints to the full protection of recently submerged cultural heritage.

Convention, out of the 849 listed items, only 38 are related to SIDS (updated December 2025).

86 Lenzerini, *supra* n. 6, at 156.

87 Rayfuse, *supra* n. 14, at 11.

88 CESCR, General Comment No. 21, E/C.12/GC/21, 21 December 2009, para. 6.

89 See Articles 149 and 303 of UNCLOS, respectively. Concerning underwater cultural heritage strictly so defined, deterritorialized states would continue to exercise jurisdiction over their territorial sea and adjacent zones, even if geographically remote, and would therefore remain bound by their obligations under the 2001 UNESCO Convention.

(b) The Duties of Host States

One of the primary concerns of climate-displaced communities is that host states would fail to appreciate the centrality of land to their cultural heritage, which could result in an insufficient protection of their cultural rights.[90] Regarding the protection of cultural heritage under the World Heritage Convention, cooperation and assistance follow the criteria set by the World Heritage Committee, irrespective of the location of the monument or site. This means that land-based, spiritual, and ancestral dimensions of cultural heritage tend to be protected even when communities are displaced or such heritage lies beyond their territorial control, as is the case, for instance, of the Old City of Jerusalem and its Walls.[91] The 2003 UNESCO Convention adopts a territorial and jurisdictional approach to safeguarding intangible cultural heritage, requiring state parties to protect that intangible cultural heritage present in their territory regardless of the nationality of the communities holding it. Despite acknowledging the impact of migration on intangible cultural heritage, the 2003 UNESCO Convention imposes a *territorial condition* aligned with the political borders of the state.[92] For displaced SIDS communities, this *territorial condition* means that only the state(s) in which intangible cultural heritage is practiced bear the responsibility to safeguard it. In such cases, communities are partly dependent on the protection granted by the host state, as well as cooperative mechanisms with other host states and the deterritorialized state.

With relocation, the intangible cultural heritage of SIDS communities' risks erosion and/or assimilation within the dominant culture of the host state. While, in theory, displaced communities may succeed in preserving their intangible cultural heritage for a limited period after relocation, in the long run these practices are inevitably subject, whether voluntarily or involuntarily, to the influence of the prevailing host culture. Intergenerational dynamics play a decisive role in this process: subsequent generations are more prone to adopt the customs, language and practices of the state in which they are born, thereby disrupting the chain of transmission that sustains "authentic" intangible cultural heritage.[93] This change is exacerbated in situations where there is a pronounced cultural divergence between the relocated community and the host state, as would likely be the case with many potential host states such as Australia, New Zealand or the US.[94]

In its Advisory Opinion on the *Obligations of States in respect of Climate Change*, the ICJ failed to mention that, under international human rights law, host states also have

---

90 McAdam, *supra* n. 28, at 126; Campbell, *supra* n. 51.

91 See, the most recent World Heritage Committee's Decision 47 COM 7A.38 (2025).

92 Articles 11-15 of the 2003 UNESCO Convention. Cf., B. Ubertazzi, 'The Territorial Condition for the Inscription of Elements on the UNESCO Lists of Intangible Cultural Heritage', in N. Adell *et al* (eds) *Between Imagined Communities and Communities of Practice: Participation, Territory and Making of Heritage,* (Universitätsverlag Göttingen, Göttingen, 2015), 111-122, at 113; S. Labadi, *UNESCO, Cultural Heritage, and Outstanding Universal Value* (AltaMira Press, Plymouth, 2012). This mechanism has been heavily criticized for contradicting the spirit of the 2003 UNESCO Convention in C. Bortolotto, 'Placing intangible cultural heritage, owning a tradition, affirming sovereignty', in M. Stefano, P. Davis (eds), *The Routledge Companion to Intangible Cultural Heritage* (Routledge, New York, 2017), 46-58, at 48.

93 Ödalen, *supra* n. 32, at 233. See also Lenzerini, *supra* n. 6, at 152.

94 Campbell, *supra* n. 51, at 78.

the positive obligation to take proactive measures to ensure that human rights, including cultural rights, are respected during the communities' presence in their territory.[95] It has been mentioned before that host states must refrain from interfering with the exercise of cultural practices and access to cultural goods. In turn, they must actively protect those cultural manifestations. By doing so, host states should comply with the principles of non-discrimination and national treatment enshrined in human rights law and international migration law, according to which they are obliged to provide migrants "at least as favourable treatment as that accorded to its nationals in comparable circumstances".[96] This means that those state parties to ICESCR have the specific legal obligation to take "the appropriate measures or programmes to support minorities or other communities, including migrant communities, in their efforts to preserve their culture".[97] On this basis, if migrants generally enjoy the protection of their cultural rights within host states, there is no reason why climate-displaced populations should not enjoy an equivalent standard of protection. While it is true that the obligations of host states are not heightened in the case of climate-displaced populations, extending them a preferential regime risks generating social tensions with other migrant communities, thereby raising issues of fairness and cohesion. A more constructive approach may thus lie in applying the principle of complementarity between international human rights law and international migration law, enabling a mutually reinforcing interpretation that strengthens the protection of cultural rights without formally creating a hierarchization among migrant communities.[98]

Given the interaction between international regimes on human rights, climate change law, and cultural heritage protection in the present case, we argue that these instruments should be interpreted in a mutually supportive manner following various treaty interpretation strategies. From the outset, it should be acknowledged that the mutually supportive interpretation is not a legal doctrine but part of a culture or mindset towards different legal institutions.[99] Initially, this doctrine was incorporated into almost every multilateral environmental agreement.[100] However, no authoritative body has yet

---

95 *Obligations of States in respect of Climate Change*, Separate Opinion of Judge Aurescu, para. 26. This view is reiterated in *Climate Emergency and Human Rights*, IACHR (2025), AO 32/25, para. 592. See also A/HRC/56/46, 24 July 2024, para. 76.

96 See Article 26 of the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 26 March 1976), 999 *UNTS* 171; Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 *UNTS* 3; and Article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990, entered into force 1 July 2003), 2220 *UNTS* 3, (ICRMW).

97 See CESCR, General Comment No. 21, *supra* n. 88, para. 52(f). This is further recognized in Article 31 ICRMW, according to which states shall not prevent migrant workers and their family members from maintaining their cultural links with their state of origin; in this case, their deterritorialized state.

98 See especially Chetail, *supra* n. 9, at 210 and 216, "human rights and refugee law interact in *a mutually supportive manner* when they address the same right" (emphasis added). The same can be affirmed when it comes to migration law.

99 See M. Ntona (ed), *Human Rights and Ocean Governance – The Potential of Marine Spatial Planning in Europe* (Routledge, London, 2024), at 9 and 169.

100 See the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (adopted 10 September 1998, entered into force 24 February 2004) 2244 *UNTS* 337; Cartagena Protocol on Biosafety to the Convention on Biological Diversity (adopted 29

clarified the legal consequences of applying it or not.[101] As a result, states retain significant discretion in the interpretation and implementation of this doctrine, which in practice leads to its uneven and rather flexible application. Interestingly so, in its Advisory Opinion on the *Obligations of States in Respect of Climate Change and International Law*, the International Tribunal for the Law of the Sea mentioned the mutually supportive interpretation.[102] Yet, the Tribunal did not recognize this doctrine autonomously or as a self-standing principle. Instead, it was attributed to the fact that UNCLOS contains several clauses that refer to external rules, aiming at avoiding conflicts between state obligations stemming from different international law regimes.

Alongside the systemic integration recognized in Article 31(3)(c) of the VCLT, the mutual supportive interpretation can help mitigate the fragmentation of international law, a concern of particular significance in the context of SIDS. Arguably, this doctrine extends beyond the principle of systemic integration by requiring that treaties be interpreted in a manner that reinforces and ensures their cumulative, rather than competitive operationalization. In sum, it provides a cross-interpretative bridge aimed at reducing the risk that climate instruments neglect cultural impacts while cultural instruments refrain from engaging with certain climate change scenarios.

In the same vein, the principle of complementarity provides an alternative interpretative tool designed to foster cross-pollination and synergies among overlapping norms governing the same subject matter, instead of privileging one norm over another.[103] Certainly, when applied to international environmental law and international cultural heritage law, this principle would facilitate "a horizontal and cumulative articulation between them".[104] These suggestions may seem original, given that these interpretative devices were not originally conceived to advance cultural heritage protection. Nevertheless, when applied in relation to rights that straddle multiple legal regimes, the outcome is promising. It is reasonable to suggest that these interpretative tools could facilitate the emergence of a coherent framework around the protection of cultural autonomy, collective cultural identity, or even a right to cultural heritage more generally.[105] When cultural heritage law provisions are read together with human rights instruments, under the combined application of the principle of complementarity and the doctrine of mutually supportive interpretation, a compelling legal pathway emerges. A combined approach, grounded in human rights law and

January 2000, entered into force 11 September 2003) 2226 *UNTS* 208; 2005 UNESCO Convention. See also Pavoni, *supra* n. 7.

101 Only the UN Special Rapporteur on Climate Change, Elisa Morgera, resorted to this doctrine when dealing with the intersections between international environmental law and international human rights law in matters concerning cultural heritage. See Morgera, *supra* n. 7; Zheng, *supra* n. 7.

102 *Advisory Opinion on the Obligations of States in Respect of Climate Change and International Law*, Case No. 31 (2024), para. 325.

103 Chetail, *supra* n. 9. This principle was originally developed between international human rights law and international humanitarian law.

104 *Ibid*., at 210.

105 Such a right to cultural heritage was suggested by the former Special Rapporteur in the field of Cultural Rights, Farida Shaheed in 2011. See, A/HRC/17/38, 21 March 2011, para. 2. For the opposite view, see L. Pérez-Prat, 'Observaciones sobre el derecho al patrimonio cultural como derecho humano', 15 *Periférica: Revista para el análisis de la cultura y el territorio* (2014), 319-342 [doi: 10.25267/Periferica.2014.i15.22].

Indigenous rights[106] while drawing on environmental law,[107] can justify protective measures in host states and help fill gaps where existing international obligations alone are weak or ambiguous.

(c) Listening to Indigenous Voices: Introducing Decolonial Methodologies in the Safeguarding of SIDS' Cultural Heritage

While the complementarity principle and the mutual supportive interpretation doctrine offer an evident advantage to strengthening the protection of cultural rights of climate-displaced populations from SIDS in the long term, one may argue that such an exercise would be redundant if states recognized these communities as Indigenous peoples and guaranteed their right to cultural self-determination in the first place. Cultural self-determination, understood in its indigenous dimension, means that affected Indigenous communities must retain the primary authority over decisions pertaining to their cultural heritage. As a result of the evolution of the principle of self-determination in international law, cultural self-determination stands as an integral part of the right to internal self-determination, accrue not only to subjects of colonial domination, but also to Indigenous peoples more generally.[108] This interpretation finds support in Article 13 of UNDRIP, which recognizes the right of Indigenous peoples to maintain, control, protect and develop their cultural heritage, as well as in the spirit of the ILO Convention No. 169 and in the interpretative practice of the Human Rights Committee.[109] Although limited in its regional scope, the Inter-American Court of Human Rights clarified the collective rights of Indigenous peoples in relation to territory, culture and environment. In its recent Advisory Opinions on *The Environment and Human Rights* and *Climate Emergency and Human Rights*, the Court explicitly linked climate change and sea-level rise to the protection of cultural identity, underscoring states' obligation to respect and ensure Indigenous peoples' rights to consultation, participation, and free, prior and informed consent in matters that affect them.[110]

Applied to the case of SIDS, the right to cultural self-determination empowers relocated communities to decide and voice, both domestically and in international fora, which elements of their cultural heritage they wish to safeguard and transmit to future generations. Given the collective dimension of the right to self-determination, states are bound by corresponding *erga omnes* obligations to facilitate its exercise.[111] A first

---

106 See CESCR, General Comment No. 23, E/C.12/GC/23, 7 April 2016 and General Comment No. 21, *supra* n. 89. The Committee interpreted the right to take part in cultural life in Article 15(a) ICESCR in an evolutive manner so as to encompass the protection of tangible and intangible cultural heritage of different groups, thereby obviating the need to rely on mutually supportive interpretation with other cultural instruments.

107 Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993)1760 *UNTS* 78; Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (adopted 29 October 2010, entered into force 12 October 2014), 3008 *UNTS* 3; and the Paris Agreement.

108 Torres, *supra* n. 42, at 269. See also A. Cassese., *Self-Determination of Peoples A Legal Appraisal* (Cambridge University Press, Cambridge, New York, 1995).

109 See CCPR, General Comment No. 12, CCPR/C/21/Rev.1/Add.9, 13 March 1984.

110 *The Environment and Human Rights*, IACHR (2017), AO OC-23/17, paras. 113-114 and 169; *Climate Emergency and Human Rights*, IACHR (2025), AO 32/25, paras. 407, 450 and 482.

111 *East Timor*, ICJ Reports (1995) 25, at 90, para 29.

step in fulfilling this obligation, alongside financial assistance, is to ensure that cultural self-determination is grounded in decolonial methodologies. Such methodologies seek to dismantle the epistemic hierarchies inherited from colonialism, which historically privileged Eurocentric understandings of law, governance and cultural heritage, over Indigenous worldviews and practices.[112] In the context of sea-level rise, these decolonial methodologies require embedding indigenous expertise and epistemologies into decision-making processes at every stage, from cultural heritage identification to the design of adaptation and relocation strategies.[113]

This new avenue brings a shift from a *consultative model*, where Indigenous voices are heard but rarely decisive, towards a *co-decisional model* of governance, aligned with the main tenets of the UNDRIP and UNESCO's 2018 Policy on Engaging with Indigenous Peoples.[114] It also advocates for the inclusion of Indigenous concepts of land, culture and intergenerational transmission of traditional knowledge. The example of Tuvalu's *Te Ataeao Nei* (Future Now) project, which mainstreams Tuvaluan cultural values such as *fale pili* (being a good neighbour) and *kaitasi* (shared responsibility) into international climate negotiations, demonstrates how decolonial methodologies can inform far beyond domestic adaptation strategies. but can also reshape global climate governance.[115] By grounding the protection of cultural heritage in decolonial approaches, both states and UNESCO can ensure that the response to sea-level rise respects both the cultural self-determination and the dignity of relocated Indigenous communities from SIDS.

(d) The Role of the International Community

The principle of international cooperation in protecting culture, cultural heritage and identity in the context of sea-level rise has been recognized in several international declarations.[116] The 2023 *Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise* affirms that the primary responsibility for such protection lies upon the members of the Pacific Islands Forum, both individually and collectively.[117] At the same time, states at the UN General Assembly high-level plenary meeting on 25 September 2024 emphasized the importance of equity, solidarity, and international cooperation in addressing issues related to sea-level rise. This position has been further reinforced by the ICJ in its Advisory Opinion on the *Obligations of States in Respect of Climate Change and International Law*.[118] The ICJ affirmed

---

112 L.T. Smith, *Decolonizing Methodologies* (Bloomsbury, London, 2021), at 38-39; see also W. Mignolo, C. Walsh, *On Decoloniality: Concepts, Analytics, Praxis* (Duke University Press, Durham, Washington DC and London, 2018).

113 Higgins, *supra* n. 76, at 10.

114 See Articles 10, 19 and 32 of UNDRIP; UNESCO, *Policy on Engaging with Indigenous Peoples* (2018), at 22-27.

115 Rothe, *et al.*, *supra* n. 23, at 1499.

116 2023 Declaration on the Continuity of Statehood, preamble, para. 10; 2024 AOSIS Declaration, preamble, para. 8.

117 See 2023 Declaration on the Continuity of Statehood, para. 14.

118 In its Advisory Opinion on *Obligations of States in respect of Climate Change*, the ICJ stated that, on the basis of Article 1 of the UN Charter, and within the context of climate change, states have a customary obligation to cooperate (paras. 115, 140-142, 301-308 and 364). See also, GA Supplement No. 10 (A/80/10), Chapter IV, para. 46.

that "cooperation in addressing sea-level rise is not a matter of choice for states but a legal obligation" and that such cooperation requires states "to work together with a view to achieving equitable solutions, taking into account the rights of affected states and those of their populations".[119] These principles, applicable to all states, therefore contribute to the protection of cultural heritage threatened by sea-level rise.

Within UNESCO's institutional framework, the principle of international cooperation plays a central role. It is expressly recognized in Articles 6(1) and 7 of the World Heritage Convention, as well as in Articles 5 and 19 of the 2003 UNESCO Convention, which jointly enshrine the obligation of state parties to cooperate in the identification, protection, conservation and transmission of cultural heritage of "universal value". This obligation was reaffirmed in broader policy instruments, most notably the 2014 SIDS Accelerated Modalities of Action (also known as SAMOA Pathway), and its successor, the 2024 Antigua and Barbuda Agenda for SIDS (ABAS). They both call upon the international community to support SIDS in designing and implementing their own cultural policies. The commitments articulated in the SAMOA Pathway and ABAS extend to a wide range of concrete actions: assisting SIDS in identifying, inventorying and nominating heritage sites to the World Heritage Tentative List; enhancing cooperation in the sustainable management and conservation of World Heritage properties; and adopting an integrated and holistic approach to cultural heritage preservation. They also include strengthening technical capacities to safeguard and transmit intangible cultural heritage and traditional knowledge, as well as fostering the exchange of best practices in heritage management.[120] Additional actions involve promoting responsible public access, facilitating policy advice, and bolstering SIDS' capacities in the preservation, management and promotion of moveable heritage, museum collections, and associated knowledge systems. In practical terms, UNESCO has sought to give effect to these commitments through the dispatch of technical missions to SIDS, the establishment of targeted assistance projects, and the organization of meetings between the SIDS and the governing bodies of its cultural heritage conventions.[121]

However, while the principle of international cooperation provides a critical framework for supporting SIDS in safeguarding their cultural heritage, it is not without limits. When states cooperate to achieve "equitable" solutions, Judge Aurescu clarified that the principle of cooperation cannot be interpreted as imposing a burden on states to create new rights nor affecting their own. Thus, the principle of cooperation is limited to preserving the existing rights of the states affected by sea-level rise.[122] This means that SIDS may invoke the principle of cooperation to ensure the maintenance, respect, and

---

119 *Ibid.*, paras. 364-365.

120 Regarding the SAMOA Pathway, para. 81 calls for efforts to develop domestic mechanisms to preserve natural, tangible and intangible cultural heritage. Likewise, the Antigua and Barbuda Agenda for SIDS (2024-2034) recognizes culture as a driver of resilient economies and resilience building.

121 See UNESCO, *SIDS – Culture*, 27 April 2023, accessed 22 December 2025. See also the priority given to requests from SIDS to International Assistance under the Operational Guidelines to the World Heritage Convention (para. 239(b)). Although the Operational Directives for the 2003 UNESCO Convention do not explicitly give priority to SIDS, the Committee must take into account the "special needs of developing countries" and "equitable geographical distribution" in examining international assistance requests, at §10.

122 *Obligations of States in respect of Climate Change*, Separate Opinion of Judge Aurescu, para. 23.

promotion of previously acquired or developed cultural heritage in host states. In the same vein, the ILC emphasized that the principle of cooperation between states needs to be calibrated according to the "capacities and resources of both the affected and the assisting states, particularly in the case of developing states", in the protection of persons affected by sea-level rise.[123] Importantly, this does not entail a generalized duty for assisting states to attend to every potential request from SIDS. Rather, cooperation must be pursued in a manner that respects the assisting state's own rights and obligations under international law.

Underscoring the principle of cooperation does not preclude an examination of the responsibility of certain states, particularly former colonial powers, for their historical and ongoing contributions to climate change. These contributions have exacerbated the vulnerability of the cultural heritage management systems of SIDS.[124] Some authors argue that the multicausal and protracted nature of climate change, scientific uncertainties, the contribution of private actors and the relatively weak obligations contained in environmental treaties complicates the attribution of legal responsibility for the impacts of sea-level rise in SIDS.[125] Yet, setting aside the issue of intertemporality of international law, the principle of cooperation does not invalidate the application of other established principles in international environmental law, such as the polluter-pays principle.[126] According to this principle, it is arguable that states with the highest levels of greenhouse gas emissions such as China and the US bear a proportionately greater responsibility to provide compensation for the adverse effects of climate change-related sea-level rise on the cultural heritage of SIDS. In fact, the World Heritage Committee has witnessed various attempts by the state parties to the World Heritage Convention to establish the responsibility of states in the Global North for the impacts of their high greenhouse emissions on World Heritage sites.[127] SIDS made individual claims invoking moral obligations to stabilize and reduce such emissions.[128] Importantly, *polluter states* may compensate affected SIDS populations in various ways, including financial compensation and material measures, which may include granting citizenship to those individuals who wish to be relocated in their territory.[129] However, such a proposal still remains largely a theoretical construct within the most utopian legal scholarship.

---

123 GA Supplement No. 10 (A/80/10), Chapter IV, para. 69.

124 S. Loen, 'Thirsty Islands and Water Inequality: The Impact of Colonial Practices on Freshwater Challenges in the Dutch Caribbean', 2 *Blue Papers* (2023), 124-131, at 126-127 [doi: 10.58981/bluepapers.2023.1.12].

125 See G. Sciaccaluga, *International Law and the Protection of "Climate Refugees"* (Palgrave Macmillan, London, 2020), at 89.

126 *Obligations of States in respect of Climate Change*, paras. 145-146. The Court adopted a narrow approach that ignored the broader normative and jurisprudential grounding of these principles in international environmental law. See, Separate Opinion of Judge Bhandari, para. 2.

127 This was the case, *inter alia*, of Belize's Barrier Reserve. In its petition to the World Heritage Committee, the petitioners contended that Belize needed to enhance resilience of coral reef ecosystems through corrective measures, given that climate change was the primary threat to the integrity of this World Heritage site. See W. Burns, 'Belt and Suspenders: The World Heritage Convention's Role in Confronting Climate Change', 18 *Review of European, Comparative and International Environmental Law* (2009), 148-163, at 151-153 [doi: 10.1111/j.1467-9388.2009.00637.x].

128 Malé Declaration on the Human Dimension of Global Climate Change (adopted 14 November 2007).

129 C. Hayward, J. Ödalen, 'A Free Movement Passport for the Territorially Dispossessed', in C. Hayward and D. Roser (eds), *Climate Justice in a Non-Ideal World* (Oxford University Press, Oxford, 2016), 208-226. For

(2) What to safeguard: selecting the cultural heritage of significance to SIDS' displaced communities

When addressing the question of what to safeguard, matters of time and space arise, especially given potential divergences between *émigré* generations and subsequent culturally assimilated descendants. Article 7 of UNESCO Charter of Preservation on Digital Heritage provides that "selection principles may vary between countries, although the main criteria for deciding what digital materials to keep would be their significance and lasting cultural, scientific, evidential or other value". It also recognizes that such selections may evolve over time. Still, any subsequent review should be "carried out in an accountable manner, and be based on defined principles, policies, procedures and standards". This framework thus advocates for a participatory, bottom-up approach where all communities, including minorities and Indigenous peoples, regardless of their current location, shall be consulted in a meaningful way when determining which cultural heritage to preserve.

Moving beyond the expressed preferences of relocated communities, the practical question of what cultural heritage can reasonably and feasibly be safeguarded arises. Historically, intangible cultural heritage has received less institutional and legal attention than tangible heritage.[130] This is particularly true for oral traditions and minority languages, many of which are under threat of disappearing under conditions of climate-induced displacement. During periods of transitional statehood, the territorial state must bear the responsibility of implementing advanced registration tools to safeguard cultural heritage and, when necessary, may seek the cooperation of other states under the auspices of UNESCO. However, such cooperation must respect the cultural autonomy of affected communities. Third states cannot unilaterally impose any categorization of what constitutes cultural heritage but must instead meaningfully engage with SIDS populations. This latter requirement may give rise to a paradoxical situation in which states that fail to engage with local communities domestically are nevertheless obliged to do so in an international context. Viewed in this light, international cooperation obligations have the potential to foster more participatory models of cultural heritage governance worldwide. In this context as well, the principle of free, prior and informed consent must be applied to the creation of lists and registries that are still missing in many SIDS, so communities can maintain their agency over what elements of their heritage are preserved and transmitted.[131] Importantly, such processes need not exclude the involvement of other relevant actors, such as experts, states, and international organizations, their role being one of partnership on equal footing rather than one of hierarchical authority.

Crucially, the processes of identification, registration and preservation should occur pre-emptively, that is, prior to the submersion of the territory and the first wave of

---

a human rights version of this proposal see S. Jolly, N. Ahmad, *Climate Refugees in South Asia – Protection Under International Legal Standards and State Practices in South Asia* (Springer, Singapore, 2019), at 75.

130 Hee Eun, *supra* n. 55, at 260.

131 This mechanism is already used in the context of access and benefit-sharing of traditional knowledge and genetic resources both of which constitute forms of intangible cultural heritage under the 2010 Nagoya Protocol to the Convention on Biological Diversity. See also Lixinski, *A Third Way…*, *supra* n. 3, at 599.

displacement, at the domestic level. Where this is no longer possible, they should be undertaken through international cooperation mechanisms. In either case, the guiding framework must be a combination of the principle of free, prior and informed consent and the principle of permanent sovereignty over natural resources, which, although traditionally tied to natural resources, can be extended by analogy to the ongoing control of mixed and cultural resources.[132] At the same time, it is important not to fall into a strategic essentialism, whereby communities are reduced to monolithic cultural identities for political convenience. Instead, both SIDS, host states and the international community must embrace pluralism and intersectionality within relocated communities, even if it complicates or lengthens decision-making processes. Ultimately, the central role of communities in cultural heritage governance is justified by the incapacity of submerged states to preserve immovable cultural and natural heritage *in situ* and by the deep historical, cultural and spiritual ties that render cultural heritage inseparable from its originating communities. Moreover, since the effective protection of cultural rights requires not only state action but also the empowerment of communities as right-holders and custodians of their own cultural identity, it follows that safeguarding the cultural heritage of SIDS cannot be reduced to state-centric mechanisms. Consequently, communities must be able to exercise control over their cultural heritage, even when physically located within the jurisdiction of host states.[133] Recognizing such authority for relocated SIDS communities is not merely a matter of protecting their own cultural heritage, but also their contribution to the cultural diversity of humankind.

(3) How to safeguard: methods to preserve and guarantee access to cultural heritage

Just as the loss of territory caused by sea-level rise unfolds progressively, so too does the erosion of cultural heritage. This gradual process makes timely preventive measures vital for safeguarding cultural heritage.[134] In this regard, some lessons can be drawn from pre-emptive heritage protection measures in times of natural disasters. Within the Sendai Framework for Disaster Risk Reduction 2015-2030, and after suffering from tropical cyclones, Fiji and Vanuatu integrated cultural heritage considerations into their Post-Disaster Needs Assessments, which led to the inventory of built environments, traditional meeting spaces and intangible cultural heritage; the strengthened coordination between cultural institutions and national disaster management agencies; and the creation of networks like Blue Shield Pasifika to enhance capacity-building and integrate cultural dimensions into disaster resilience strategies.[135] Moreover, during emergencies, UNESCO has already developed significant expertise in safeguarding cultural heritage through

[132] GA Res. 1803 (XVII), 14 December 1962.
[133] Lixinski, *A Third Way…*, *supra* n. 3, at 605.
[134] These measures will prevent taking the decision between human lives and cultural heritage if the crisis escalates. See P. Oruç, *Digitising Cultural Heritage. Clashes with Copyright Law* (Hart Publishing, Oxford, 2025), at 38.
[135] See The Pacific Platform for Disaster Risk Management, 'Build Back Better (BBB) and Heritage Safeguarding Strategy for the wellbeing of community in the Pacific', 26 October 2016; and the example of Training of Trainers (ToT) workshop carried out by Blue Shield Pasifika with the collaboration of Blue Shield International.

its tripartite framework of preventive, corrective and knowledge-sharing measures.[136] While cultural heritage should ideally be protected in an integrated manner, practical distinctions between tangible and intangible cultural heritage are necessary due to their distinct modalities of protection.

One proposal for the protection of immovable cultural heritage is the relocation to a new territory acquired by purchase or treaty of cession. Yet, as argued before, these transfers of territory and sovereignty are not only unlikely but also somewhat burdensome for 'developing states' such as SIDS. When confronted with flooding — for instance, as a consequence of the construction of a dam — some major monuments have been relocated to a nearby land within the territory of the state.[137] Extraterritorial relocation is usually temporary, lasting until conditions allow the cultural properties to be returned. Permanent relocation to another state has resulted in a gift from the state of origin to the state of relocation, meaning that the former lost sovereignty over such cultural resources.[138] Relocation brings two main issues: first, if relocated to a remote place, access to cultural heritage by the former local communities can be very difficult. Second, different atmospheric conditions may damage the reallocated cultural properties, thereby undermining their physical integrity.

Regarding movable cultural heritage, the International Council of Museums and Sites (ICOMOS) noted that it should be preserved through existing methods of conservation and restoration, thereby discarding the need for radically new techniques.[139] When cultural objects are in endangered territories — mostly as a result of armed conflicts — they have been relocated to museums in states deemed reasonably safe and historically appropriate.[140] Yet, when it comes to intangible cultural heritage, this mechanism raises conceptual and practical concerns. By definition, intangible cultural heritage is dynamic, performative and rooted in the social practices of communities. As such, attempts to *museumize* living heritage, by dislocating it from the communities and context in which it originates, risk stripping it of its spiritual meaning and vitality.[141] Therefore, intangible cultural heritage is better protected either through people's cultural rights or digitalisation processes.

Precisely, the potential disappearance of cultural heritage due to, *inter alia*, environmental degradation, led UNESCO to adopt the Charter on the Preservation of

---

136 UNESCO, *Managing Disaster Risks for World Heritage* (2010), at 32 *et seq*; Hee Eun, *supra* n. 55, at 268-269.

137 For instance, as part of the Ilisu dam campaign, some cultural and religious buildings in Hasankeyf had to be relocated to nearby municipalities. See B. Aykan, 'Saving Hasankeyf: Limits and Possibilities of International Human Rights Law' 25 *International Journal of Cultural Property* (2018), 11-34 [doi: 10.1017/S0940739118000036]; B. Drazewska, "Hasankeyf, the Ilisu Dam, and the Existence of "Common European Standards' on Cultural Heritage Protection', 2 *Santander Art and Culture Law Review* (2018), 89-120 [doi: 10.4467/2450050XSNR.18.020.10374].

138 This was the case, for instance, of the Temple of Debod, donated by the government of Egypt to the Kingdom of Spain in 1968 in gratitude for Spain's collaboration in the International Campaign to Save the Monuments of Nubia. The Temple of Debod was originally built in the 2nd century B.C. and it was threatened by the construction of the Aswan Dam in the 1960s. In 1972, it was dismantled, reconstructed, and publicly displayed in Madrid's Parque del Oeste.

139 Hee Eun, *supra* n. 55, at 269.

140 See N. Borrelli *et al* (eds), *Ecomuseums and climate change* (Ledizioni, Milan, 2022). This is the case, for instance, of Ukraine, whose many artworks have been temporarily stored in several European museums.

141 J. Blake, *International Cultural Heritage Law* (Oxford University Press, Oxford, 2015), at 205-210.

Digital Heritage. As previously mentioned, the Charter is a non-binding instrument, but it constitutes an important normative framework that can support proposals to create a virtual repository of the tangible and intangible cultural heritage of SIDS populations, as exemplified by Tuvalu's *Te Ataeao Nei* (Future Now) *Project: Preparing Today to Secure Tomorrow*.[142] First, Article 1 of the 2003 Charter defines digital heritage broadly to include not only "digitally born" cultural expressions, but also "cultural resources […] converted into digital forms from existing analogue resources". This formulation allows digitization efforts in SIDS to encompass the reproduction of tangible heritage through 3D scans and VAR models, among others and the preservation of intangible cultural heritage through living online archives nurtured with audio-visual media. Second, the Charter emphasizes not only the preservation but also the accessibility of digital heritage to the public, something of utmost importance for the relocated communities that constitute a new diaspora.[143] Still, the Charter places the primary responsibility for establishing the legal, institutional, and technical infrastructure for preserving digital heritage on the territorial state, with UNESCO playing a coordinating role.[144] This raises some challenges for SIDS, which often face financial and technological limitations. In 2020, a UNESCO study on the state of digital heritage showed that SIDS exhibit uneven capacities in terms of digitization means, training, and archival systems, thereby creating a risk of cultural loss due to a lack of sufficient resources.[145] This situation leads to the issue of available funds for the protection of the cultural heritage of SIDS populations.

Deterritorialized SIDS are meant to continue managing their maritime zones and exploiting their maritime resources. While this can be a good source of income, it might not be enough to protect, maintain, and promote cultural heritage. Once again, the principle of cooperation, binding upon all states of the international community, can take many forms. For the sake of protecting cultural heritage, and following the example of previous international campaigns, states have usually provided technical, financial, and material support.[146] Within the framework of the World Heritage Convention and the 2003 UNESCO Convention, treaty-based funding is already available to safeguard listed properties and items in danger.[147] Additionally, other cultural expressions may benefit from the UNESCO Heritage Emergency Fund, established in 2015 to protect cultural heritage during emergencies. Although the Fund may not be tailored to the specific vulnerabilities of SIDS facing sea-level rise, it is noteworthy that 17 out of the 98 states that have benefited from it to date are SIDS.

---

142 See Initiative No. 3 of State of Tuvalu, *Future Now Project: Preparing Today to Secure Tomorrow*, accessed 22 December 2025.

143 Article 8 of the Charter on the Preservation of Digital Heritage (adopted 15 October 2003).

144 *Ibid.*, Articles 2 and 12, respectively.

145 UNESCO, *Museums around the world in the face of Covid-19* (2020), at 4-5, accessed 22 December 2025.

146 This was the case of the Aswan High Dam project in Egypt, in which UNESCO coordinated an international campaign to relocate and conserve the temples of Abu Simbel and other endangered monuments. See UNESCO Office Cairo and Regional Bureau for Science in the Arab States, *International Campaign to Save the Monuments of Nubia* (2020). See also UNESCO, *International Safeguarding Campaign of the City of Venice* (1966), accessed 22 December 2025.

147 See Article 13 of the World Heritage Convention and Article 6 of the 2003 UNESCO Convention, respectively.

A detailed discussion on how the costs of these and other potential funds for supporting SIDS in cultural heritage protection should be allocated goes beyond the scope of this paper. Yet, it can be argued that such an allocation should adhere to established principles of environmental law. As noted earlier, various principles of environmental law support the view that the international community collectively bears responsibility for the consequences of climate change. According to the principle of common but differentiated responsibility, states with the greatest contributions to climate change and better economic and technical capacities should bear the largest share of costs.[148] This principle can be complemented by the polluter-pays principle[149] and preventive norms such as the precautionary principle,[150] the rule of prevention,[151] and the no-harm principle.[152] Despite all these legal paths, compliance remains uncertain due to states' ongoing reluctance to fulfil their *soft law* commitments in the field of cultural heritage and climate change law. Finally, from a decolonial approach, it can be argued that former colonial states bear a higher moral responsibility to redress past climate injustices and support the protection and management of SIDS cultural heritage, ensuring that the communities least responsible for climate change are not disproportionately victimized.

(D) CONCLUSION

This paper has focused on the normative gaps within the current international cultural heritage law regime when confronted with the unprecedented challenges posed by sea-level rise in SIDS. To effectively tackle the adverse consequences of this phenomenon on cultural heritage, several avenues remain underexplored. One option is the adoption of a new international treaty specifically aimed at safeguarding cultural heritage endangered by sea-level rise.[153] However, from a realist perspective, the prospects of achieving a broad consensus on such an instrument seem limited, particularly in the current geopolitical *momentum*. The negotiation of a specialized convention would not only require overcoming divergent state interests but would also exacerbate the existing fragmentation that characterizes the international cultural heritage law regime. An alternative and more desirable pathway lies in the advancement of an evolutive interpretation of existing UNESCO conventions. This second option has been briefly explored in this article.

Either way, proving a clear and legally cognizable causal link between sea-level rise and the destruction of cultural heritage in SIDS remains a Homeric endeavour. Precisely, this challenge underscores the need for a mutually supportive interpretation

148 This principle, stated in the Principle 7 of the Rio Declaration on Environment and Development (A/CONF.151/26 (Vol. I), 12 August 1992), was further discussed in Yamamoto, Esteban, *supra* n. 55, at 264.

149 Principle 16 of the Rio Declaration on Environment and Development. See also Yamamoto, Esteban, *supra* n. 55, at 267.

150 O. De Schutter *et al*, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of states in the area of Economic, Social and Cultural Rights', 34 *Human Rights Quarterly* (2012), 1084-1169, at 1112-1118 [doi: 10.2307/23352240].

151 UN Doc. A/CONF.48/14/Rev.1, 5-16 June 1972.

152 *Corfu Channel*, ICJ Reports (1949) 4, at 22; *Legality of the Threat or Use of Nuclear Weapons,* Advisory Opinion, ICJ Reports (1996) 226, at 242.

153 Carducci, *supra* n. 71, at 138.

of UNESCO's cultural heritage conventions, read in harmony with international human rights law and international environmental law. Concerning the relevant *corpus* of human rights law, the range of applicable instruments — from international covenants to regional agreements and Indigenous peoples' treaties and declarations — is indeed extensive. In light of the normative *lacunae* within UNESCO's treaty framework, the most compelling view is that safeguarding cultural heritage under the threat of sea-level rise in SIDS should be pursued through a human rights-based approach, one that ensures continuity of protection from the deterritorialized state to the host state, and reciprocally back to the affected communities.

Finally, the proposals advanced in this paper are subject to temporal limitations. As communities of SIDS face mass displacement and potential assimilation into host societies, the cultural ties to their cultural heritage located in the recently submerged territories may weaken. Still, it would be overly pessimistic to assume that the loss of territorial attachment automatically leads to the erosion of cultural heritage, as culture is inherently dynamic and adaptive, and displaced communities have consistently shown extraordinary resilience in preserving their cultural heritage. For this reason, it is essential to keep the discussion alive as to what cultural heritage must be given continuity in light of the diasporic communities' wishes and needs. The human right to take part in cultural life, together with the Indigenous peoples' and minorities' autonomy over their cultural expressions, combined with international migration law, provides a complementary legal basis for protecting cultural heritage beyond the territorial nexus, enabling diasporic communities to maintain cultural continuity even amid SIDS' existential threats. Consequently, rather than reducing cultural heritage to a mere testimony of a vanished state — in the classical Westphalian sense —, we should embrace its dynamic and evolving nature. Accordingly, international law must adapt to this fluidity, ensuring that both tangible and intangible cultural heritage continue to be safeguarded not only as vestiges of a glorious past, but as living elements of identity, dignity and resilience for those communities navigating the turbulent tides of sea-level rise.