Claiming Indigenous rights: The unacknowledged *amicus curiae* submission by the Chagossian Committee (Seychelles)

*Cristina Canella**

Abstract

Over the past fifty years, international human rights law has made significant advancements in recognising Indigenous People's rights to self-determination. However, the recognition of Indigenous sovereignty over their land and natural resources – especially sea rights – remains limited. A recent instance involves the amicus curiae submission by the Chagossian Committee (Seychelles) to the Special Chamber of the International Tribunal for the Law of the Sea concerning the *Delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*. The Special Chamber declined to incorporate the submission into the litigation, representing a missed opportunity to acknowledge Indigenous claims to sovereignty over the marine areas and their resources. Employing a qualitative research methodology, this contribution assesses whether acceptance of the *amicus curiae* submission would have aligned with recent developments in international law, in-

* PhD Student in Marine Sciences, Technology and Management, Department of Earth and Environmental Sciences, University of Milano-Bicocca, Milan, Italy, c.canella@campus.unimib.it.

cluding the law of the sea, and whether such recognition could stimulate future discourse on Indigenous interests and historical maritime water usage.

Keywords: Maritime boundary, UNCLOS, Indian Ocean, Chagossians, Indigenous Peoples, environmental justice.

1. Introduction

On 23 November 2021, the Chagossian Committee (Seychelles) submitted an *amicus curiae*[1] statement to the Special Chamber of the International Tribunal for the Law of the Sea (ITLOS) in connection with the dispute concerning the *Delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*.[2]

The Chagossian Committee (Seychelles) represents a group of Chagossians residing in the Republic of Seychelles. While none of them are citizens of Mauritius, several of them were born in the Chagos Archipelago and forcibly deported by the United Kingdom (UK) prior to Mauritian independence, achieved on 12 March 1968.

With the *amicus curiae* submission, the Chagossian Committee (Seychelles) claimed legal standing in the delimitation dispute between

1. The *amicus curiae* submission was not accepted and, consequently, was not included in the official case files. The advisors for the *amicus curiae* were Sebastian Schnitzenbaumer, Jamie Trinidad, Stephen Allen, and Thomas Burri. A revised version of the submission was subsequently published in the following work: Stephen Allen, Thomas Burri, and Jamie Trinidad, 'Stakeholders or bystanders? – An attempt by Seychelles Chagossians to intervene in the International Tribunal for the Law of the Sea' in Laura Jeffrey, Chris Monaghan, and Mairi O'Gorman (eds), *Challenges and Prospects for the Chagos Archipelago* (Routledge 2024).

2. Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives) Judgement [2023] 28 ITLOS.

Mauritius and the Maldives. As the Indigenous People of the Chagos Archipelago, they claimed their right to self-determination and permanent sovereignty over natural resources, including their interests in the use of marine spaces around the Chagos Archipelago, which are debated in the *Mauritius/Maldives* dispute. The Parties involved in the legal case did not object to the inclusion of the *amicus curiae* submission. They deferred to the discretion of the Special Chamber of the ITLOS regarding whether to incorporate the submission into the litigation. After reviewing the *amicus curiae* submission and the comments thereon made by the Parties, the Special Chamber of the ITLOS determined that the request should not be accepted, so it has not been included in the case file.

Admitting the submission could have provided an opportunity to amplify the voice of Indigenous Peoples, shedding light on their right to self-determination, economic interests, and historical maritime water usage. It might have prompted further questions on the concept of 'sovereignty' as interpreted by contemporary international law, which hinders the full realisation of the rights and interests of Indigenous Peoples.[3]

Sovereignty is a political concept that refers to an authority possessing supreme and independent powers within a defined territory delineated by political borders.[4] It is essential to emphasise the 'political' nature of sovereignty. The term 'politics' finds its origin in the ancient Greek word *polis*, meaning city-state, reflecting the community structure of Ancient Greece. In this light, politics and political expressions pertain to the

3. Heather N. Nicol, 'Reframing Sovereignty: Indigenous Peoples and Arctic States' (2010) 29(2) Political Geography, 78; and Williamson BC Chang, 'Indigenous Values and the Law of the Sea', in Jon M. van Dyke, *Governing Ocean Resources* (Brill | Nijhoff 2013) 427.

4. Federico Lenzerini, 'Sovereignty Revisited: International Law and Parallel Sovereignty of Indigenous Peoples' (2006) 42(1) Texas International Law Journal, 157.

affairs of the *polis*. The modern interpretation of this definition is associated exclusively with the role of the State; accordingly, the political authority is confined to the formal governance of the State. In contemporary international law, the State is the unique entity meeting the necessary conditions for sovereignty.[5]

The Convention on Rights and Duties of States adopted by the Seventh International Conference of American States (Montevideo Convention)[6] has been a foundational document in international law for determining rights and responsibilities of States. Article 1 of the Montevideo Convention outlines the criteria for statehood, providing key qualifications: a permanent population, a defined territory, a government, and the capacity to enter into relations with the other States.[7] While these criteria are widely accepted as foundational guidelines for determining statehood, the recognition of a State is ultimately shaped by political realities and diplomatic considerations. Some entities that meet the Montevideo criteria may not be widely recognised as States, while others that do not fully satisfy the criteria are nonetheless treated as States due to broad international recognition.

In recent decades, challenges such as climate change and related sea level rise have added complexity to the concept of statehood. For example, countries facing the risk of disappearing due to environmental changes may push international law toward more flexible interpretations

5. Ibid.

6. Convention on Rights and Duties of States adopted by the Seventh International Conference of American States (adopted 26 December 1933, entered into force 26 December 1934).

7. Article 1, Montevideo Convention: "The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other States".

of statehood.[8]

The United Nations Convention on the Law of the Sea (UNCLOS)[9] defines the coastal State as the only entity which has sovereign powers over the natural resources within its maritime spaces. The coastal State has territorial sovereignty within its land territory to an adjacent belt of sea extending up to 12 nautical miles from the baselines, including the seabed and subsoil, defined as territorial sea.[10] Ships of all States have the right of innocent passage through the territorial sea subject to UNCLOS and international law.[11]

In accordance with customary international law, UNCLOS affirms that sovereignty is a power held by coastal States over their territorial sea. Flag States exercise jurisdiction rather than sovereignty over their vessels,[12] while port States, as coastal States, operate within a framework

8. A particularly illustrative case is that of the Maldives, where the highest natural elevation is less than two meters above sea level. This geographic vulnerability places the Maldives among the States most severely threatened by sea level rise, and consequent coastal inundation, with significant implications for its territorial integrity and legal status (Tariq Masood Ali Khan, Dewan Abdul Quadir, T. S. Murty, Anwarul Kabir, Fahmida Aktar, and Majajul Alam Sarker, 'Relative Sea Level Changes in Maldives and Vulnerability of Land Due to Abnormal Coastal Inundation'(2002) 25(1-2) Marine Geodesy, 133). This is crucial to ensure that such countries are not rendered stateless, allowing them to continue to be recognised in the international community despite the loss of their traditional territory. The International Law Commission reported a general acceptance among States of the principle of continuity of statehood, regardless of the impact of sea-level rise on land territory, and emphasised the importance of international cooperation in addressing the consequences of this phenomenon (Nilüfer Oral, Bogdan Aurescu, Patricia Galvão Teles and Juan José Ruda Santolaria 'Rising Hopes Amid Rising Seas: Developments in International Law Addressing the Treat of Sea-Level Rise' 31 January 2024 UN Chronicle). See also International Law Association 'Final Report: International Law and Sea Level Rise' (2024).

9. United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994).

10. Ibid., Article 2.

11. Ibid., Article 17.

12. Ibid., Article 94.

of specific functional powers.[13] An inclusive approach should encompass all stakeholders involved in the conservation and exploitation of natural resources in the oceans and seas. For instance, Indigenous Peoples represent a significant group of active participants whose rights and interests are not explicitly addressed in UNCLOS.

However, international human rights law instruments and jurisprudence regulate the exercise of State sovereignty in relation to natural resources, including marine resources, framing it not only as a set of rights but also as a source of corresponding obligations. These obligations include the duty to ensure equitable access to natural resources for individuals or specific groups, such as Indigenous Peoples and marginalised communities, as well as for the general population's right to subsistence.[14] While international law upholds the principle of State sovereignty over natural resources, this sovereignty is not 'absolute'. It is subject to limitations when it conflicts with fundamental human rights, such as the right to food,[15] and water,[16] and cultural rights.[17] This contribution advocates for greater attention from the international community toward the claim of the Chagossians to the islands of the Chagos Archipelago and related maritime spaces.

Situated in the Indian Ocean, the Chagos Archipelago comprises nu-

13. Ibid., Article 218.

14. *Saramaka People v. Suriname* (Judgment) Inter-American Court of Human Rights Series C No 172 (28 November 2007) and Human Rights Committee, 'General Comment No 12: Article 1 (Right to Self-determination)' (13 March 1984) UN Doc HRI/GEN/1/Rev.1.

15. Universal Declaration of Human Rights, Article 25. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), Article 11.

16. UNGA, 'The Human Right to Water and Sanitation' (Resolution 64/292, 28 July 2010) A/RES/64/292.

17. UN Human Rights Council, 'Cultural rights and the protection of cultural heritage' (Resolution 33/20, 30 September 2016) A/HRC/RES/33/20. See also, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295 (2007), Article 3.

merous islands and atolls, with its largest island, Diego Garcia, covering an area of 27 square kilometres – half of the territory of the Chagos. The archipelago, located 2,200 kilometres northeast of the main island of Mauritius, has a long, complex history. When the Treaty of Paris was signed in 1814, Mauritius was ceded to the British Empire along with some other French colonies. During colonisation, Mauritius held control over the Chagos Archipelago. However, in 1965, the UK detached the Chagos Archipelago from Mauritius and other islands from Seychelles, establishing the British Indian Ocean Territory (BIOT).[18]

On 16 April 1971, the BIOT Commissioner enacted Immigration Ordinance 1 of 1971, rendering it unlawful for any individual to enter or remain in the territory without a permit. Between 1967 and 1973, Chagossians were forcibly removed from the Chagos and transported to Mauritius and Seychelles under inhumane conditions.[19]

Over the years, the UK's sovereignty claims over the Chagos Archipelago have been subject to numerous court cases. Legal disputes have been brought before various British courts, including the Divisional Court in 2000,[20]

18. Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion) [2019] ICJ Rep 95.

19. Mr. Olivier Bancoult, President of the Chagos Refugees Group and principal litigant in the legal actions initiated by Chagossians, detailed the inhuman conditions endured during their deportation, which led in illnesses, deaths, and suicides. Furthermore, he highlighted the lack of assistance from the UK and the difficulties Chagossians faced in integrating into a developed society, as defined by Western standards, due to the absence of essential work skills needed to secure employment in Mauritius. Olivier Bancoult, 'The Historic Legal Battle of the Chagossians to Return to Their Homeland, the Chagos Islands, and to Be Compensated for Their Deportation: A Narrative' (2004) 39 South African Yearbook of International Law, 23.

20. *R (Bancoult) v. Secretary of State for the Foreign and Commonwealth Affairs* [2000] EWHC 1 413 (Admin). See also, Chris Monaghan, 'Challenging the United Kingdom's Decision not to Support the Resettlement of the Chagos Islands: *R (on the application of Hoareau and Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs*' (2020) EWCA Civ 1010 (2021) 26(1) Judicial Review, 62.

the High Court of Justice in 2006,[21] and the House of Lords in 2008.[22] The issue was also brought to the European Court of Human Rights in 2012,[23] an Arbitral Tribunal constituted under Annex VII of UNCLOS in 2015,[24] the International Court of Justice (ICJ) in 2018,[25] and the United Nations General Assembly (UNGA) in 2019.[26]

This paper consists of three sections. Firstly, it addresses the central challenge of integrating Indigenous Peoples into the concept of sovereignty as defined by international law. By giving Indigenous Peoples political powers in the form of sovereign institutions, they can achieve their right to self-determination and realise their interests (Section 2).[27]

Secondly, it examines the current status of recognition of the rights and interests of Indigenous Peoples in the context of the law of the sea and ocean affairs by the international community (Section 3).

Lastly, the focus narrows down to the Chagos Archipelago and the Chagossians as Indigenous Peoples of this land (Section 4). This Section delves into the history of the Chagossians and discusses why the rejection of the *amicus curiae* submission in the *Mauritius/Maldives* case represents

21. *R (Bancoult) v. Secretary of State for the Foreign and Commonwealth Affairs* (Rev 1) [2006] EWHC 1038 (Admin).

22. House of Lords, Opinions of the Lords of Appeal for Judgment in the Cause *R (Bancoult) v. Secretary of State for the Foreign and Commonwealth Affairs* [2008] UKHL 61.

23. *Chagos Islanders v. the United Kingdom* Application [2012] ECHR 5622/04.

24. Chagos Marine Protected Area Arbitration (The Republic of Mauritius v. The United Kingdom of Great Britain and Northern Ireland) (Award) [2018] Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea 2011-03.

25. *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Order of 17 January 2018 ICJ Rep [2018] 7.

26. UNGA, Resolution adopted by the General Assembly on 22 May 2019 (2019) UN Doc A/RES/73/295.

27. Chang (n 3).

a missed opportunity to acknowledge the Chagossians' right to self-determination as Indigenous Peoples, their historical usage of marine resources and their economic interests.

2. Advancing Indigenous self-determination in International Human Rights Law

The right to self-determination of all peoples in the world was primarily enshrined in Article 1(2) of the United Nations Charter,[28] in conjunction with Article 55, which emphasises the establishment of conditions of stability and well-being necessary for peaceful relations between States.

On 10 December 1948, the UNGA adopted the Universal Declaration of Human Rights (UDHR).[29] While the UDHR is not legally binding *stricto sensu*, its principles and rights have been incorporated into subsequent international human rights instruments and are widely recognised as reflecting customary international law and *jus cogens* norms.[30] The UDHR stands as a foundational text in the development of the international human rights regime. Among its key provisions, the principles of equal rights, self-determination, and non-discrimination are particularly salient. It affirms that every individual is entitled to the right to freedom of movement, including the right to leave any country and to

28. Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945).

29. UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948.

30. Judge Tanaka's Dissenting Opinion in the *South West Africa* case (*Ethiopia v. South Africa; Liberia v. South Africa).* Second Phase. Judgement [1966] Rep 298.

return to their own.[31]

A step forward has been taken in the safeguarding of fundamental human rights through the adoption of the International Covenant on Economic, Social and Cultural Rights (ICESCR)[32] by UNGA resolution 2200A (XXI) of 16 December 1966. The ICESCR particularly emphasises the right of peoples to self-determination, including the right to determine their political status and economic, social, and cultural development, as well as the right to freely dispose of their natural resources and wealth.

On the same note, the International Covenant on Civil and Political Rights (ICCPR)[33] was adopted by the UNGA in the same 1966 resolution. The ICCPR safeguards fundamental human rights such as the right to life and human dignity, equality before the law, freedom of speech, assembly and association, religious freedom and privacy, and minority rights. Article 12(4) of the ICCPR reiterates the principle that no one may be arbitrarily denied entry to their own country, as already established in the UDHR. Additionally, Article 27 of the ICCPR addresses the issue of minority discrimination, ensuring that any minority group in a State may practise its own culture, profess its own religion, and speak its own language. To follow, Article 28 lays down the establishment of a Human Rights Committee. State parties are required to submit a report detailing their approach to implementing the rights described in the ICCPR, as well as their progress in ensuring the enjoyment of civil and political rights.

---

31. Ibid., Article 13. Note also after the Universal Declaration of Human Rights, the UN General Assembly Resolution 2625 (XXV) of 20 October 1970, 123-124, along with subsequent resolutions, recognised the duty of States to promote the realization of the right of peoples to self-determination, in accordance with the UN Charter.

32. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976).

33. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976).

Combined, the UDHR, the ICESCR, and the ICCPR constitute the International Bill of Human Rights.

One of the first international instruments recognising Indigenous rights is the International Labour Organisation (ILO) Convention No. 107 concerning the *Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries*.[34] Article 11 of the Convention affirms that Indigenous and Tribal populations are entitled to own the lands they have traditionally occupied and obliges States to formally recognise such ownership. However, Article 12(1) qualifies this entitlement by permitting States to remove these populations from their ancestral territories without their free, prior, and informed consent in circumstances involving considerations of national security, public health, or – more controversially – economic development. In doing so, the Convention simultaneously affirms a right to land while authorising States to derogate from this right, including for reasons as ambiguous and potentially expansive as economic interests.

In response to the assimilationist orientation of ILO Convention No. 107, the ILO adopted Convention No. 169 in 1989, titled *Convention concerning Indigenous and Tribal Peoples in Independent Countries*.[35] Article 14 of Convention No. 169 reaffirms the right of ownership and possession of Indigenous and Tribal Peoples over the lands they have traditionally occupied. Crucially, unlike its predecessor, Article 16(1) and (2) provide that Indigenous and Tribal Peoples shall not be removed from their ancestral lands, except in cases of exceptional necessity. In such circumstances, their free, prior, and informed consent must be sought. Where consent cannot be obtained, relocation must be carried out in

34. ILO, Convention (No. 107) concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries (adopted 26 June 1957, entered into force 2 June 1959) 328 UNTS 247.

35. ILO, Convention (No.169) concerning indigenous tribal peoples in independent countries (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS.

accordance with national legal procedures, including mechanisms such as public inquiries that ensure the effective participation of the affected communities. Of particular significance is Article 16(3), which provides that when the reasons justifying relocation cease to exist, Indigenous and Tribal Peoples shall have the right to return to their traditional lands.

ILO Convention No. 169 represents the first major effort by the international community to articulate a working definition of 'Indigenous Peoples'. According to the Convention, Indigenous Peoples are defined as,

> [P]eoples in independent countries who are regarded as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region, to which the country belongs, at the time of conquest or colonisation of the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.[36]

With this definition, the ILO Convention No. 169 emphasises the concept of historical continuity' between Indigenous communities and their ancestral lands, as well as their distinct social, economic, cultural, and political characteristics. This definition is rooted in the work of the United Nations Special Rapporteur Martínez Cobo, who, in his 1987 study, defined Indigenous Peoples as:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that

36. ILO Convention No. 169, Article 1. It is fair to note that in the same paragraph "tribal peoples" are defined as those "in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs of traditions or by special laws or regulations". However, with the exception of the ILO, the international community has generally addressed Indigenous People' issues without making a clear distinction between Indigenous and Tribal Peoples.

> developed on their territories, considering themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.[37]

The attempt of the international community to define Indigenous Peoples is intended to establish a basis for their recognition and protection under international law. However, the challenge behind creating a legal definition of Indigenous Peoples is that it should not result from an 'external categorization' based on Western (mis)conceptions. As Rapporteur Martínez Cobo highlighted, Indigenous identity should be determined by Indigenous Peoples themselves:

> The fundamental assertion must be that indigenous populations must be recognised according to their own perception and conception of themselves in relation to other groups; there must be no attempt to define them according to the perception of others through the values of foreign societies or of the dominant sections in such societies.[38]

Thus, any international definition should serve to support Indigenous rights rather than as a tool for external classification, control, or restrictions.

Over the last half-century, developments in international human rights law have led to greater recognition of the rights of Indigenous Peoples around the world. This shift has stemmed from a reassessment of assumptions regarding Indigenous communities, many of which were

37. Martínez Cobo, José R, Special Rapporteur on the Problem of Discrimination against Indigenous Populations 'Study of the problem of discrimination against indigenous populations. Volume V' (1987) E/CN.4/Sub.2/1986/7/Add.4. UN Subcommission on Prevention of Discrimination and Protection of Minorities

38. Ibid., para 368.

rooted in Western philosophies, and has prompted corresponding adjustment in international standards.

On 25 June 1993, the World Conference on Human Rights adopted the Vienna Declaration and Programme of Action.[39] The document contains the proclamation of an international decade for Indigenous Peoples, starting January 1994, and most importantly, the mandate to draft a Declaration of Indigenous Peoples' rights.

The UNGA resolution 61/295 was adopted on 13 September 2007, establishing the United Nations Declaration on the Rights of Indigenous People (UNDRIP).[40]

While the UNDRIP avoids providing a general definition of Indigenous Peoples, it promotes the right of self-identification as Indigenous, acknowledging that Indigenous Peoples are *equal* to all other peoples, while at the same time recognising their right to be *different* and to consider themselves different.[41] In particular, Indigenous Peoples are unique in their circumstances due to the suffering and historical injustices resulting from their colonisation and dispossession of lands, territories, and resources, among other factors.[42] As a consequence, it is highlighted that Indigenous Peoples' rights stem not only from their political, economic, and social structures, but also from their cultures, spiritual traditions, histories, and philosophical systems, particularly their rights to lands, territories, and resources.[43] As well, the UNDRIP emphasises that the respect for Indigenous knowledge, cultures, and traditional practises

39. The World Conference on Human Rights, Vienna Declaration and Programme of Action, A/CONF.157/23, UN General Assembly, 12 July 1993.

40. UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 2 October 2007.

41. Ibid., Annex.

42. Ibid.

43. Ibid.

contributes to sustainable and equitable development and proper environmental management.[44]

The differences that exist within the macro group of Indigenous Peoples, which includes communities from various parts of the world, from the Arctic to New Zealand, with significantly different historical and cultural backgrounds, must also be taken into account. However, along the years the institution of associations of Indigenous Peoples offered the potential to improve Indigenous Peoples' standing before the international community and facilitated the development of their human rights, such as the right to self-determination.

As stated in Article 3 of the UNDRIP, Indigenous Peoples have the right to self-determination, as a result of which they may "freely determine their political status and freely pursue their economic, social and cultural development". Subsequently, Article 4 of the UNDRIP declares that they should have complete autonomy in their internal and local affairs as well as means for financing their autonomous functions. The right to self-determination is further emphasised in Article 5 of the UNDRIP where it is specified that Indigenous Peoples are responsible for maintaining "distinct political, legal, economic, social, and cultural institutions". As a result of the interpretation of these three articles, Indigenous Peoples may exercise a form of self-governance and authority over their communities and resources. In this regard, it is important to note that although only States possess sovereignty under international law, such sovereignty over natural resources is not absolute and must be exercised in accordance with international obligations, including those pertaining to human rights and the rights of Indigenous Peoples.

The right to self-determination and access to natural resources have been consistently reinforced through various legal sources, emphasising the fundamental connection between the right to self-determination and

44. Ibid.

the ability to control and manage natural resources. The Inter-American Court of Human Rights ruling in *Saramaka People v. Suriname,* has affirmed that States must respect Indigenous land and resource rights, requiring States to recognise, respect, and in some cases, grant Indigenous communities' ownership, access, and consent-based rights over their traditional lands and resources.[45]

The UNGA resolution 2625 (XXV), adopted on 24 October 1970, affirms the duty of States to promote the realisation of the right of peoples to self-determination in accordance with the purposes and principles of the United Nations Charter.[46] In a similar vein, the Human Rights Committee has recognised the inherent connection between the right to self-determination and the effective protection of individual human rights. In its General Comment No. 12 on Article 1 of the ICCPR, the Committee underscores the entitlement of all peoples to freely dispose of their natural resources and outlines corresponding obligations incumbent upon States and the international community.[47]

The Committee further highlights the role of self-determination in fostering friendly relations and cooperation among States, thereby contributing to the maintenance of international peace and security.[48] Along this line, in 1995 the ICJ affirmed that the right to self-determination constitutes a fundamental principle of international law, possessing both *erga omnes* and *jus cogens* status. This recognition underscores the peremptory nature of the right to self-determination, obligating all States to respect and uphold it.[49] Recently, the ICJ reaffirmed the link between

45. *Saramaka People v. Suriname* (Judgment) Inter-American Court of Human Rights Series C No 172 (28 November 2007).

46. UNGA Res 2625 (XXV) (24 October 1970).

47. Human Rights Committee, 'General Comment No 12: Article 1 (Right to Self-determination)' (13 March 1984) UN Doc HRI/GEN/1/Rev.1, para 5.

48. Ibid., para 8.

49. *East Timor* (Portugal v. Australia) (Judgment) [1995] ICJ Rep 90, paras 16 and 29.

self-determination and access to natural resources in its 2024 *Advisory Opinion on the Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, affirming that the principle of self-determination inherently encompasses access to and control over natural resources.[50]

Continuing the analysis of the UNDRIP, Article 5 asserts that "if they so choose" Indigenous Peoples should have the right to fully participate in the political, economic, social, and cultural life of the State. This means that Indigenous Peoples can choose to be part of a State; it is not a requirement. While they are also entitled to obtain citizenship under Article 6 of the UNDRIP, it is not a mandatory procedure.

States are required to implement effective mechanisms to ensure that the rights set forth in the UNDRIP are protected. Particularly, States are expected to prevent "any action which has the aim or effect of dispossessing them of their lands, territories and resources" and any form of forced population transfer undermining their rights. Article 10 of the UNDRIP is of critical importance to the Chagossian discussion:

> Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

In Article 10, the keynotes are "free, prior and informed consent" and "agreement on just and fair compensation". Hence, Indigenous Peoples may be relocated from their land only if they have agreed to the relocation, and in such cases, they are entitled to just and fair compensation. As already recalled in the preamble of the UNDRIP, Article 30 states that

50. *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem* (Advisory Opinion) [2024] ICJ Rep 66, para 234.

military activities are prohibited in Indigenous Peoples territories unless they have been negotiated effectively with representative institutions and agreed to by the Indigenous Peoples themselves. Since Diego Garcia is a U.S. military base, it is crucial to point out that the UNDRIP explicitly encourages the demilitarisation of Indigenous Peoples' lands and territories for the sake of peace, economic development, and social progress.

As outlined in Article 32 of the UNDRIP, the State is required to consult and cooperate in good faith with Indigenous Peoples, as well as obtain their free and informed consent prior to carrying out any project affecting their territory or involving mineral or natural resource exploitation. Additionally, any such activity should be undertaken "to mitigate adverse environmental, economic, social, cultural or spiritual impact".

A fundamental right of Indigenous Peoples is expressly stated in Article 40 of the UNDRIP, which affirms that they have access to prompt decision-making through just and fair procedures when resolving conflicts or disputes with a State or another party as well as effective remedies when their individual and collective rights have been violated.

Under Article 41 of the UNDRIP, the United Nations system and other intergovernmental organisations are obligated to contribute to the full implementation of the concerned rights and duties.

The International Bill of Human Rights and the UNDRIP provide the basis for Indigenous Peoples' self-determination, their rights regarding political, social, and economic status, and their right to own their ancestral lands exploiting the natural resources. The UNDRIP outlines Indigenous Peoples as active participants in the governance of a community within their ancestral territories, as well as key stakeholders at the international level in the process of decision-making.

Commonly, Indigenous communities are represented by a self-governing population that has its own set of rules. A typical Indigenous Population is located in a geographical area which is not demarcated by 'physical borders', but rather by people belonging to the same community.

In 1975, the ICJ issued an Advisory Opinion on *Western Sahara*, addressing its legal status prior to Spanish colonisation.[51] The ICJ acknowledged the historical ties between the indigenous Sahrawi people and the occupied areas. Particularly, the ICJ found that the nomadism of the vast majority of the Indigenous Peoples of Western Sahara gave rise to "certain ties of legal character" between the tribes of the territory and those of neighbouring lands. All throughout the region, the tribes had grazing pastures, cultivated lands, and wells and water holes. The ICJ recognised that the use of land and natural resources is based on the nomads' way of life and subject to tribal rights, which are generally regulated by customs. In light of this, the ICJ has held that even though the nomadic peoples are not legal entities, they possess rights related to their land. A major point of emphasis in the Advisory Opinion is the importance of self-determination, which affirms tribes in the Western Sahara have the right to determine their status and their legal relationships with the territory. In this way, the ICJ has given greater significance to the concept of territoriality, not restricting it only to a geographical concept.

Although the Advisory Opinion did not dictate Western Sahara's sovereignty, it nevertheless emphasised the importance of respecting and empowering Indigenous Peoples in deciding the future of their territory.[52]

While the international community has made significant strides in recognising Indigenous Peoples' right to self-determination, the establishment of Indigenous Peoples as fully sovereign entities remains a distant goal. Despite efforts to acknowledge and uphold Indigenous rights, achieving territorial sovereignty for Indigenous communities has proven challenging. Within the framework of international law, this gap underscores the complexities of balancing Indigenous self-determination with State sovereignty.

51. *Western Sahara*, Advisory Opinion [1975] ICJ Rep 12.
52. Lenzerini (n 4) 163.

As described by Lenzerini, nowadays the concept of 'indigenous sovereignty' is generally recognised as a form of self-government – often equated to 'internal' self-determination – which varies in extent depending on the State, but in any case, could not override the supreme sovereign powers of the national government. As a result, any sovereign powers recognised by the State will always be subject to its control and may be limited or conditioned in accordance with relevant constitutional or legislative framework.[53]

3. Indigenous rights in the contexts of the law of the sea and ocean affairs

Many Indigenous Peoples maintain deep cultural and spiritual connections to the sea, which is revered as a nurturing 'mother' who provides for their communities. Indigenous worldviews also emphasise the responsibility to care for the sea and to respect its resources, serving as custodians of this life-sustaining entity.[54]

Beyond shaping spiritual and cultural identities, the marine environment also underpins the food security, economic growth, and social stability of Indigenous communities. A 2016 study estimated that coastal Indigenous populations consume approximately 2.1 million metric tonnes of seafood each year (ranging between 1.5 million and 2.8 million tonnes) – equivalent to nearly 2% of the global commercial fisheries catch. Per capita consumption in these communities is

53. Ibid.

54. Rodney Dillon, 'Seeing the Sea: Science, Change and Indigenous Sea Rights' (2002) 123 Maritime Studies, 12. For more details on the relationship between the Indigenous Peoples and the oceans. See also UN Economic and Social Council, 'Study on the relationship between indigenous peoples and the Pacific Ocean', 19 February 2016, E/C.19/2016/3.

estimated to be around 15 times higher than in non-Indigenous populations.[55]

Despite this profound dependence on marine ecosystems, international human rights law does not expressly protect the rights of Indigenous Peoples to access and use marine areas.[56] However, certain interpretations of international instruments suggest potential protections. Article 25 of the UNDRIP affirms that:

> Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Similarly, Article 23 of the ILO Convention No. 169 recognises that fisheries operations, as traditional subsistence activities, are integral to the socio-cultural and economic development of Indigenous Peoples. It requires States to ensure the continuation of such activities and the sustainable use of the associated marine resources.[57]

What role does UNCLOS play? With 170 contracting parties, UNCLOS serves as the principal legal framework governing the use of maritime spaces and activities. It establishes a comprehensive legal order for

55. Andrés M Cisneros-Montemayor, Daniel Pauly, Lauren V Weatherdon, Yoshitaka Ota, 'A Global Estimate of Seafood Consumption by Coastal Indigenous Peoples' (2016) 11(12) PLoS ONE, 7.

56. It is an open discussion on that specific human rights norms relating to traditional 'lands' and 'resources' could be applied to the recognition of rights of Indigenous Peoples to marine areas and its living resources. E. Endalew Lijalem, 'International Human Rights Law and the Rights of Indigenous Peoples in Relation to Marine Space and Resources' (2019), in Stephen Allen, Nigel Bankes and Øyvind Ravna (eds.), *The Rights of Indigenous Peoples in Marine Areas* (Hart Publishing 2019) 45–68.

57. For more details on fishing rights of Indigenous Peoples: UN Economic and Social Council, Report on Indigenous fishing rights in the seas with case studies from Australia and Norway, 8 January 2010, E/C.19/2010/2

the seas and oceans affirming coastal States' sovereignty within their territorial seas and archipelagic waters,[58] and delineating rights and responsibilities concerning the equitable use of marine resources,[59] environmental protection,[60] and the promotion of marine scientific research.[61] Despite its extensive scope, UNCLOS remains insufficiently inclusive of non-state stakeholders. Notably, it contains no explicit reference to the rights and responsibilities of Indigenous Peoples in any of its articles or annexes. Nonetheless, Articles 61 and 62 highlight the "needs of coastal fishing communities" and the rights of "nationals who have habitually fished" in the exclusive economic zone. These provisions impose obligations on coastal States to conserve, manage, and equitably access marine living resources. When interpreted in light of evolving international norms, they may be applied to encompass the specific interests of Indigenous and other communities, particularly where traditional fishing practices and subsistence rights are central.

Additionally, Resolution III of the Final Acts of UNCLOS further implies the need of considering the rights and interests of local populations in the application of UNCLOS – especially in cases where full decolonisation has not been achieved. The Resolution stresses that, in sovereignty disputes where the United Nations has outlined specific avenues for resolution, meaningful consultations must be conducted, with the interests of the affected population placed at the forefront.[62] This principle is especially pertinent in relation to the *amicus curiae* submission made by the Chagossian Committee (Seychelles), as discussed in the following Section.

---

58. UNCLOS., Articles 2 and 49.

59. E.g., in UNCLOS Part V.

60. E.g., in UNCLOS Part XII.

61. E.g., in UNCLOS Part XIII.

62. UNGA, Final Act of the Third United Nations Conference on the Law of the Sea, A/CONF.62/121 (27 October 1982) 139, 148.

To date, UNCLOS has been supplemented by three implementing agreements,[63] two of which may contribute to ongoing regulatory discourse concerning the rights of Indigenous Peoples and their relationship with maritime spaces and resources.

The first is the *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (UN Fish Stocks Agreement), which promotes the sustainable management of fish stocks that traverse both national jurisdictions and the high seas. Article 24 of this Agreement recognises the particular needs of developing States and underscores the necessity of avoiding adverse impacts on small-scale, subsistence, and artisanal fishers – including Indigenous Peoples.

The second is the *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction* (BBNJ Agreement), which – though not yet in force – seeks to address existing governance gaps concerning marine biodiversity in areas beyond national jurisdiction. Significantly, the BBNJ Agreement reflects progressive developments in international law by explicitly referencing the UNDRIP in its preamble and affirming that its provisions shall not undermine existing Indigenous rights.[64]

63. Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (adopted 28 July 1994, entered into force 16 November 1994) 1836 UNTS 3; Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (adopted 4 August 1995, entered into force 11 December 2001) 2167 UNTS 3; and Agreement Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (adopted on 19 June 2023).

64. It is important to note that the BBNJ Agreement has been adopted before the final judgment of *Mauritius/Maldives*. By the way, as a significant step forward for the law of the sea and the rights of Indigenous Peoples, it is crucial to report it.

The BBNJ Agreement further incorporates Indigenous perspectives through key provisions. Article 7 identifies Indigenous traditional knowledge as a guiding principle and calls for its meaningful inclusion. Articles 47 and 48 ensure Indigenous participation as observers in the Conference of the Parties, while Article 49 encourages their input into the Scientific and Technical Body – reinforcing their role in shaping marine biodiversity governance.

Beyond UNCLOS and its implementing agreements, the UNGA plays a significant role in shaping marine governance through the adoption of two annual thematic resolutions: one on the law of the sea and ocean affairs,[65] and another on sustainable fisheries.[66]

UNGA Resolution 77/248 of 30 December 2022 advances legal and institutional developments in ocean governance, with particular emphasis on partnerships with Indigenous Peoples. Similarly, UNGA Resolution 77/118 of 9 December 2022 on sustainable fisheries recognises the contributions of women and the vulnerability of Indigenous, local, and minority communities involved in small-scale fisheries. It reaffirms the

65. For the purpose of this article, the UNGA resolutions on the law of the sea and ocean affairs, and on sustainable fisheries which will be taken into consideration, will refer to the year 2022. Hence, this study aims to present an overview of developments in the law of the sea in the period when the judges of the *Mauritius/Maldives* decided not to include the Chagossian *amicus curiae* submission in the arbitration. The most recent UNGA resolutions – Resolution 78/69 on the law of the sea and ocean affairs (5 December 2023) and Resolution 79/144 (12 December 2024), as well as Resolution 78/68 (5 December 2023) and 79/145 (12 December 2024) on sustainable fisheries – are not addressed in this article, as they were adopted after the tribunal issued its final judgement. It is worth noting, however, that these later resolutions introduced limited additions: the law of the sea and ocean affairs resolutions included provisions recognizing the relevance of traditional knowledge of Indigenous Peoples and local communities in the conservation and sustainable use of the ocean and its resources; the sustainable fisheries resolutions highlighted the lack of social protection and unequal employment opportunities faced by vulnerable groups, including Indigenous Peoples.

66. The annual resolution on sustainable fisheries, concerned the latest developments and implementation of the regulations provided in the UN Fish Stocks Agreement.

commitments made in *The Future We Want*,[67] underscoring the importance of access to fisheries and market participation for subsistence and artisanal fishers, including Indigenous Peoples – especially in developing countries and Small Island Developing States[68].

4. Indigenous Chagossian People: the rejection of the *amicus curiae* submission

As part of the maritime delimitation proceedings between Mauritius and the Maldives, the Chagossian Committee (Seychelles) submitted an *amicus curiae* brief to the Special Chamber of the ITLOS on 23 November 2021. This submission sought to assert the legal rights of the Indigenous Peoples of the Chagos Archipelago in relation to the use of maritime spaces surrounding their ancestral lands, including any economic and other benefits derived from such use.

Geographically, the Chagos Archipelago, located in the Indian Ocean, comprises five atolls, including the Great Chagos Bank – the largest atoll in the world. Encircled by coral reefs, the archipelago hosts a rich array of biodiversity and serves as a critical refuge for many threatened species. However, this biodiversity has been subject to significant decline, primarily due to coral bleaching linked to global warming.[69]

Historically, the archipelago remained uninhabited until the late 18th century, when it was colonised by the French, who established a slave-based

67. A/RES/66/288 (UNGA), 27 July 2012.

68. This emphasis on Indigenous People has been reiterated in the UN General Assembly resolutions after the *Maldives/Mauritius* of 2022.

69. Nicholas AJ Graham, Morgan S. Pratchett, Tim R. McClanahan, Shaun K. Wilson, 'The Status of Coral Reef Assemblages in the Chagos Archipelago, with Implications for Protected Area Management and Climate Change' (2013) Coral Reefs of the World, 253.

coconut plantation economy between 1721 and 1814. Sovereignty over the archipelago was transferred to the British Empire under the Treaty of Paris (1814).[70] During the decolonisation process in the 1960s, Mauritius negotiated its independence from the UK, achieved on 12 March 1968. However, prior to independence, the UK unilaterally detached the Chagos Archipelago from Mauritius, along with some islands from Seychelles, to form the BIOT on 8 November 1965. This detachment occurred with the consent of the Mauritian Prime Minister, though no formal consultation process was conducted with the Indigenous Chagossian population.[71]

In 1971, the largest island, Diego Garcia, was leased to the U.S. for the establishment of a strategic military base during the Cold War, resulting in the forced displacement of the Chagossian population between 1968 and 1971.[72] This displacement has since been the subject of ongoing legal and human rights disputes, particularly concerning the right of return.[73]

In 2010, the UK government established the Chagos Marine Protected Area (ChMPA) – then one of the world's largest marine reserves – to preserve the ecological integrity of the archipelago by prohibiting commercial fishing and other extractive activities.[74] However, leaked diplomatic cables later revealed that the ChMPA may have also served

70. Ayşe Y. Demir, 'The Process of Decolonization of Mauritius and the Right to External Self-Determination of Colonial Peoples' (2021) Public and Private International Law Bulletin, 885.

71. Richard Gifford, 'Submission from Richard Gifford, Legal Representative, Chagos Refugees Group' UK Parliament Foreign Affairs Written Evidence, 31 January 2008, available at <<https://publications.parliament.uk/pa/cm200708/cmselect/cmfaff/147/147we94.htm>>.

72. Ibid.

73. Bancoult (n 19) 21.

74. Richard Norton-Taylor and Rob Evans 'WikiLeaks cables: Mauritius sues UK for control of Chagos island' *The Guardian* (London, 21 December 2010), available at <<https://www.theguardian.com/world/2010/dec/21/mauritius-uk-chagos-islands>>.

a political function by preventing the resettlement claims of displaced Chagossians.

Mauritius initiated arbitral proceedings under Annex VII of UNCLOS on 20 December 2010, challenging the establishment of the ChMPA. The Arbitral Tribunal, in its 2015 award, took no position on the substantive environmental merits of the ChMPA but found that the manner of its establishment was procedurally flawed, as it lacked prior consultation and negotiation with Mauritius. This outcome prompted renewed calls for cooperative arrangements under a "sovereignty umbrella" to protect the marine environment.[75]

In a landmark advisory opinion delivered in 2019, the ICJ held that the UK had acted unlawfully in detaching the Chagos Archipelago from Mauritius in 1965.[76] The ICJ concluded that the separation was not based on "the free and genuine expression of the will of the people concerned" and that the UK had failed to respect Mauritius's territorial integrity during decolonisation. The Court highlighted that the Chagos Archipelago remained part of Mauritius, and that the UK was under an obligation to end its administration of the territory "as rapidly as possible".[77] In response, the UNGA adopted resolution 73/295 on 22 May 2019, calling for the UK's withdrawal and the facilitation of the resettlement of Mauritian nationals, including those of Chagossian origin.

Specifically, the UNGA reiterated that the Chagos Archipelago forms

75. Award in the Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland, *Reports of International Arbitral Awards* Volume XXXI 359 (18 March 2015).

76. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion [2019] ICJ Rep 95.

77. Ibid., para 178.

an integral part of the territory of Mauritius.[78] In light of this, it called upon the UK to withdraw its administration from the archipelago within six months of the resolution's adoption.[79] Additionally, it urged the facilitation of "the resettlement of Mauritian nationals, including those of Chagossian origin, in the Chagos Archipelago". The reference to "Chagossian origin" in the resolution is significant, as not all Chagossians hold Mauritian citizenship. The Chagossians are Indigenous to the Chagos Archipelago, and their rights to the land and surrounding maritime zones arise from this deep-rooted connection, independent of any formal nationality

This distinction is useful to understand why a committee of Chagossians from the Seychelles wanted to submit an *amicus curiae* brief, claiming their right to self-determination and permanent sovereignty over the natural resources of the Chagos Archipelago, which they assert were breached in 1965.[80] They strongly claimed their legal interest in the *Mauritius/Maldives* case, arguing that their legal rights could not be adequately represented by Mauritius alone. The conclusion of the litigation establishes the extent of the maritime entitlements generated by the Chagos Archipelago. The marine areas and the resources therein should be entitled exclusively to Indigenous Chagossians, "not merely as a subset of the population of Mauritius".[81]

In this respect, the Chagossian Committee (Seychelles) recalled the UNDRIP and the ILO Convention No. 169 as the legal basis for the

78. UN General Assembly, Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965, A/RES/73/295, para. 2(b). Noteworthy, the UN General Assembly voted 1116 to 6 (Australia, Hungary, Israel, Maldives, United Kingdom, United States against; 56 abstained) for the adoption.

79. Ibid., para 3.

80. Chagossian Committee (Seychelles) *amicus curiae* Submission in Allen (n 3) para 13.

81. Ibid., para 23.

recognition of the rights of Indigenous Peoples, including Chagossians' right to self-determination, though not to independent statehood.

ILO Convention No. 169, Article 15(1) safeguards Indigenous rights to natural resources on their lands, including participation in their use, management and conservation. The broad concept of 'lands' includes "the total environment of the areas which the peoples concerned occupy or otherwise use", as per Article 13(2), consequently the surrounding marine areas are included. Article 25 of the UNDRIP encompasses terrestrial and marine spaces and resources. While Article 26 asserts that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired." States are required to legally recognise and protect these lands, respecting the Indigenous traditions involved.

The Chagossian Committee (Seychelles) noted that the "Final report of the study on indigenous peoples and the right to participate in decision-making" of the UN Human Rights Council emphasises the importance of Indigenous Peoples' participation in decision-making progress, and the respect of their rights in multilateral environmental processes.[82] The final report outlines the significance of obtaining free, prior and informed consent from Indigenous Peoples in decisions about, among other things, the exploration and exploitation of natural resources of Indigenous lands and marine territories.

Finally, the *amicus curiae* submission recalled Article 28(1) of the UNDRIP, which affirms Indigenous Peoples' right to redress, including restitution for lands and resources taken without their free, prior and informed consent.

Despite the strong legal foundation presented by the Chagossian Committee (Seychelles), particularly concerning the importance of In-

82. UN Human Rights Council 'Final report of the study on indigenous peoples and the right to participate in decision-making' (2011) A/HRC/18/42.

digenous Peoples' participation in decision-making processes and considering the recognition of their interests in disputes between States, as enshrined in Resolution III of the Final Acts of UNCLOS, there are significant complexities in this case.

Specifically, the Chagossians are not solely Mauritian citizens; a portion of the Chagossian population remains without Mauritian citizenship. This distinction undermines the assumption that Mauritius, as a State, can adequately represent the interests of all Chagossians in the maritime delimitation dispute between Mauritius and the Maldives. Since not all Chagossians are citizens of Mauritius, it follows that the State may not be able to fully account for the interests of this distinct group.

In light of this unique circumstance, it would have been appropriate for ITLOS to consider the peculiarity of the Chagossian situation when evaluating the inclusion of the *amicus curiae* submission. However, the Special Chamber of ITLOS ultimately decided not to include the *amicus curiae* submission in the maritime delimitation case between Mauritius and Maldives. This decision raises important questions regarding ITLOS' approach to ensuring that the interests of non-state actors, such as Indigenous Peoples with historical ties to the disputed territory, are adequately considered in the resolution of international disputes.

ITLOS did not provide an explanation for its decision to exclude the *amicus curiae* submission. However, as noted by Churchill, the refusal may have stemmed from the absence of any provisions for *amici curiae* in the ITLOS Statute and Rules of Procedure. Moreover, in a prior contentious case a request from Greenpeace, a non-governmental organisation, to participate as an *amicus curiae* was likewise denied without detailed justification.[83]

83. The 'Arctic Sunrise' Case (Kingdom of the Netherlands v. Russian Federation) [2013] ITLOS 22.

Despite ongoing progress by the international community in recognising the rights of Indigenous Peoples within human rights and the law of the sea, Indigenous voices continue to be marginalised. The outcome of maritime delimitations between Mauritius and the Maldives may or may not have been different had Indigenous perspectives been fully considered. Noteworthy, legal history has shown that international law can lead to significant changes through pivotal judgments.

The *Fisheries Case (UK v. Norway)*, adjudicated by the ICJ on 18 December 1951, is a landmark case concerning maritime boundaries and historical claims.[84] This case arose from a dispute between the UK and Norway over the extent of Norwegian territorial waters and the method used to determine them, impacting national and local fishing rights. The UK challenges the method of Norway in delineating its territorial waters, which involved drawing straight baselines along its indented coast. Norway justified its approach by citing historical usage and geographic considerations for its coastal configuration. The ICJ ruled in favour of Norway, recognising the legitimacy of historical claims and the specific geographical context. In particular, the ICJ concluded: "such rights, founded on the vital needs of the population and attested by very ancient and peaceful usage, may legitimately be taken into account in drawing a line".[85]

The *Fisheries Case (UK v. Norway)* influenced the drafting of UNCLOS, in which Article 7(5) states:

> Where the method of straight baselines is applicable under paragraph 1, account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by long usage.

84. Fisheries Case (United Kingdom v. Norway), Judgement [1951] ICJ Rep 116.
85. Ibid., 142.

As discussed by Enyew and Bankes, Article 7(5) of UNCLOS could potentially allow a coastal State to rely on Indigenous traditional usage to support a more extensive claim of internal waters.[86] According to Article 7(5), when geographical conditions allow the coastal State to establish straight baselines, it may take into account the economic interests specific to the region in question, provided that these interests are clearly demonstrated through long-standing usage and are of significant importance.[87] Based on this, Mauritius might have extended its internal waters around the Chagos Archipelago by designating baselines that account for the historical access and use of marine resources by the Chagossians prior to their deportation. This consideration could have influenced the maritime delimitation between Mauritius and the Maldives, given that the Chagos Archipelago is the closest Mauritian territory to the Maldives.

In addition, the ICJ's ruling in the *Jan Mayen* case *(Norway v. Denmark)* provides a pertinent precedent for incorporating socio-economic interests and traditional rights into maritime delimitation. The Court recognised that maritime boundaries could not be drawn in a vacuum but must account for historical and traditional fishing rights, particularly where vulnerable communities are concerned.[88]

In the *Jan Mayen* case, the Court considered the economic interests of the parties, particularly regarding the exploitation of the capelin stock, which was the principal fishery resource in the disputed area. The Court considered the importance of fishing activities for the economies of both parties and the traditional nature of fishing practises carried out by the population concerned. This set a meaningful precedent.

---

86. Endalew Lijalem Enyew and Nigel Bankes, 'Interaction between the Law of the Sea and the Rights of Indigenous Peoples' (2022) in *Routledge Handbook of the Law of the Sea* (Routledge 2022) 151-174.

87. Ibid.

88. *Jan Mayen* (Norway v Denmark) [1993] ICJ Rep 38, paras 72 et seq.

> It appears however to the Court that the median line is too far to the west for Denmark to be assured of an equitable access to the capelin stock, since it would attribute to Norway the whole of the area of overlapping claims. For this reason also the median line thus requires to be adjusted or shifted eastwards.[89]

If economic interests may weigh in delimitation decisions between sovereign States, a broader interpretation of such interests could, or should, encompass Indigenous interests that are directly linked to subsistence, cultural practises, and environmental conservation and use of marine resources.

Finally, as Rocha observed in the context of climate change disputes, legal decisions often have significant impacts on individuals and communities who are not formal parties to the proceedings.[90] A similar dynamic is evident in cases involving Indigenous Peoples, whose rights, culture, and territories may be directly affected by international legal rulings despite the missed opportunity of procedural standing. The State-centric framework of international adjudication is set against the broader consequences of legal proceedings, calling for a reconsideration of the rules to allow the inclusion of *amicus curiae* submissions.

This would also represent a step forward in alignment with the well-known Principle 10 of the Rio Declaration, which, among other things, establishes access to justice as a key pillar of sound environmental governance.[91]

89. Ibid., para 76.

90. Armando Rocha, '*Amicus Curiae* before the International Tribunal for the Law of the Sea: The Prospect of an Advisory Opinion on Climate Change and the Law of the Sea' (2022) 6(1) Católica Law Review, 87.

91. Rio Declaration on Environment and Development A/CONF.151/26 (1992).

5. Conclusions

The rights of Indigenous Peoples, including those related to access to maritime spaces and resources, remain a critically important yet quite underexplored area within international law. Although there has been growing recognition of these rights under human rights law, as well as within the frameworks governing the law of the sea, Indigenous perspectives continue to be marginalised in global legal processes. For instance, in its 2024 Advisory Opinion, the ICJ reaffirmed that the right to self-determination inherently includes access to and control over natural resources.[92]

This marginalisation is further illustrated by the rejection of the *amicus curiae* submission filed by the Chagossian Committee (Seychelles) before ITLOS in the maritime boundary dispute between Mauritius and the Maldives concerning the area north of the Chagos Archipelago.

The Chagossians' legal struggle, rooted in their displacement from the Chagos Archipelago and their ongoing fight for self-determination and access to their ancestral natural resources, illuminates the legal and procedural gaps that continue to impede their rights. Despite the legal foundation presented by the Chagossian Committee (Seychelles), which referenced key international instruments within the human rights and law of the sea frameworks, ITLOS decision not to include their *amicus curiae* submission left their interests unaddressed in the *Mauritius/Maldives* maritime delimitation case.

This rejection raises a fundamental question: Could the inclusion of Indigenous perspectives have altered the outcome of the case? Drawing from the argumentation in the *Jan Mayen* case, the economic and so-

92. Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem (Advisory Opinion) [2024] ICJ Rep 66, para 234.

cio-cultural interests of local communities, especially those historically dependent on marine resources, should be taken into consideration in maritime delimitation decisions. The ICJ in the *Jan Mayen* acknowledged the importance of considering these interests when determining equitable maritime boundaries. It recognised that communities reliant on fishing and other marine resources must have their specific needs and historical rights considered to achieve a fair judgement.

By extension, if the Chagossian community had been allowed to formally participate in the proceedings, their claim to the marine resources of the Chagos Archipelago, the closest Mauritian territory to the Maldives, might have impacted the delimitation of maritime boundaries between the two island States. Furthermore, considering that not all Chagossians are nationals of Mauritius, their interests cannot be represented by Mauritius alone. The exclusion of their *amicus curiae* submission potentially disregarded – once again – Chagossians' longstanding ties to the region, as well as their right to participate in decisions affecting their territory, as enshrined in international law. This omission echoes the broader issue that while economic interests are increasingly considered in maritime delimitations, the traditional and historical rights of Indigenous peoples are not sufficiently incorporated into such processes.

The case also highlights how the procedural rules of international courts, in this relevant case of ITLOS, can inadvertently exclude those most affected by the legal outcomes, in this case the Indigenous People whose lives, and cultural heritage are directly tied to the disputed territories. This exclusion is compounded by the absence of provisions for *amici curiae* in the ITLOS Statute and Rules of Procedure, which further limits the ability of affected parties to participate in the legal process. The reluctance to include non-state actors in decision-making processes can undermine the fairness of the proceedings. This is evident in the *Maldives/Mauritius* case, where the exclusion of the Chagossian *amicus curiae* submission denied the tribunal crucial insights into the

socio-cultural and ecological significance of the Archipelago for its Indigenous inhabitants.

The evolving nature of international law and maritime governance suggests a path forward where the voices of Indigenous Peoples are not only recognised but actively integrated into legal decisions. The recent adoption of the BBNJ Agreement and increased acknowledgment of Indigenous traditional knowledge in environmental governance signal a positive shift. However, these advancements remain insufficient without a more consistent approach that ensures meaningful participation for Indigenous Peoples in disputes over resources they have historically occupied.

In conclusion, the decision to exclude the Chagossian *amicus curiae* submission potentially deprived the court of critical perspectives that could have influenced the outcome of the *Mauritius/Maldives* case. As seen in the *Jan Mayen* case, the consideration of historical and socio-economic interests is essential in ensuring equitable solutions. To promote justice, sustainability, and the fair recognition of Indigenous rights, future international legal proceedings must adopt more inclusive practises, integrating non-state actors' contributions into decisions that directly affect their territories. This inclusive approach not only ensures a more comprehensive and fair legal process but also strengthens the legitimacy and sustainability of international legal rulings in matters of environmental and human rights governance.