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"Sinking Islands" and the United Nations Security Council

Dissertation

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Table of Content:

Abbreviations used in the dissertation:

AOSIS - Alliance of Small Island States
CLG – Critical Legal Geography
FCCC – Framework Convention on Climate Change
GA – General Assembly of the United Nations
ICJ – International Court of Justice
ICTY – International Criminal Tribunal for former Yugoslavia
ILA – International Law Association
SIDS – Small Island Developing States
UN – United Nations
UNCLOS – United Nations Convention on the Law of the Sea
UNFCCC – United Nations Framework Convention on Climate Change
UNSC (also "the Council") – United Nations Security Council

1. Introduction

Small islandic developing states like Tuvalu, Kiribati, the Maldives or Marshall Islands have been nicknamed "sinking islands." The highest points of their territory are located just a few meters above sea level. Therefore, their territory slowly disappears due to sea level rise. This process results in worsening of environmental living conditions. The atoll countries suffer from water intrusions into lowlands during high tides and storms (Barnett and Adger, 2003). Salt seawater hinders agriculture, destroys wells with drinking water (Wyett 2013, p. 171). As a result, the territory of those countries could become uninhabitable long before it will get entirely flooded by the sea. Although displacement represents an extremely unfavourable option for the inhabitants of those islands (McNamara and Gibson 2009), it could be the only option left, creating waves of migration in the region. Cases of environmental migration have already been reported.

After various negotiations on other fora, the representatives of those islandic states asked the UN Security Council to deal with their perilous situation in 2007. In the past, the UNSC prevalently solved the issues strictly linked to military security and peace maintenance or restoration. Therefore, the representatives of the islandic nations attempted to persuade other countries that this role of the UNSC should expand and the UNSC should deal also with their situation, even though it was not a matter directly related to armed conflict.

On the one hand, some prominent members of the UNSC and guest countries consisting of Western developed states agreed that the UNSC should address the issue. Nonetheless they advocated cooperation with other organizations and UN bodies and requested expert inputs to be able to tackle the issue. On the other hand, certain rapidly developing mainland states claimed that this case cannot be decided by the UN Security Council, because the UNSC lacks the mandate to solve similar issues. In their eyes, "sinking islands" required expert involvement and scientific or developmental solution rather than security maintenance. As a result, the UNSC did not issue any decision concerning the "sinking islands" or "environmental security" in general. The same situation repeated in 2011, 2015, 2018, and 2019 when the "sinking islands" turned to the UNSC again.

First highly interesting aspect of this case is how individual actors attempted to shape the role of the UNSC in the way that would suit their interests. Without changing a single letter in the UN Charter as the basic legal document, the actors drew significant conclusions about how the issues dealt with by the UNSC had to look like in the future and whether the UNSC had to stay focused on the matters of armed security or widen its perspective also on environmental matters.

Second important aspect of this case is that it is a non-case. The UNSC did not issue any resolution or conduct any action. The non-cases bear special importance. So little is said, so much is meant. We may explain this further on an example. During the 2007 UNSC negotiations, Russian representative asserted that "the United Nations Security Council, for its part, should only deal with the consideration of questions that directly relate to its mandate."[1] Thus Russian represention signalled that Russia would not support any decision of the UNSC in this regard. Moreover, this statement implied that any potential decision would not follow the rules laid down in the UN Charter, because it would contravene the UNSC mandate. Therefore, it was only natural not to support it. Just a small statement with reference to the lacking mandate made the position of Russia justified and ostensibly expectable. So little was said, so much was meant. Whole the orchestra of the power-relations sounded massively within those few tunes.

Similar non-cases usually signify that there have been important power struggles in the past, which created a structure (usually legal) that keeps preventing the actors from taking any decision. To state some examples, in 1823 the US Supreme Court dealt with the case of Johnson v. Macintosh and solved whether the US has the title to occupy the soil of Indians.[2] The court concluded that "It is not for the Courts of this country to question the validity of this title." The court provided an explanation of the non-case that we usually lack: "Conquest gives a title which the Courts of the Conqueror cannot deny. The British government, (…) whose rights have passed to the United States, asserted a title to all the lands occupied by Indians. These claims have been maintained

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[1] UNSC (2007). 5663rd Meeting. S/PV.5663. Tuesday 17th April 2007, 10 a.m., p. 17 morning session.
[2] As the summary of the case explains: "Plaintiff claimed title to land in Illinois on the basis of purchase from the Indians; the defendant, on the basis of a grant from the US. The Supreme Court decided in the favor of the defendant." Johnson v. M'Intosh, 21 U.S. 543, 5 L.Ed. 681, 8 Wheat. 543 (1823).

and established...by the sword."[3] The court therefore explained that there was certain legal structure created by a power struggle, which prevented the court from challenging the title of landowner in that case.

Unlike in Johnson v. Macintosh, in most of the non-cases, we are not provided by such explanation. To the contrary, it is usually strictly denied that power played or could play any eventual role. Moreover, the references to "insufficient mandate, lacking jurisdiction" etc. are intended to present the outcome as normal, usual, widely acceptable and legitimate, which demonstrates also the statement of Russia above. As Kedar summarized, those are power struggles that create the background rules, establish mandates and jurisdictions. And this "production of allegedly technical formal rules (…) omnipresence of background rules and assumptions that are never discussed, serve as fundamental pillars of the spatial-legal legitimation of inequalities and hierarchies. As a result, 'contingency is portrayed as necessity, the created is portrayed as the found, the constructed as the natural or the political as the nonpolitical'…" (Kedar 2003, 412).

Similar non-cases are quite frequent, yet under-researched in international relations. To state some of them, African Court on Human and Peoples rights did not solve any case for first 15 years of its existence, because it "manifestly lacked jurisdiction" to do so. By a "manifest lack of jurisdiction" a background rule was hidden that the country which should appear in front of the court as the defendant must file in a special application that would allow the court to hear the case. This background rule was the result of power struggle, i.e. of a safeguard of African states that the court shall not limit their sovereignty and entertain a case against their will (Bruner 2017A). For another example, we do not have to go far from the "sinking islands".

New Zealand courts refused to grant a refugee status and related protection to Mr. Ioane Teitiota, who migrated to the country together with his spouse from Kiribati in 2007. After the expiration of visas in 2010, Mr. Teitiota asked for a refugee protection and permission to stay on the soil of the New Zealand. He claimed that in his home country Kiribati consisting of many small low land atoll islands, ecological degradation significantly worsened the living conditions. Sea level rise caused saltwater intrusions into land during high tides. This affected the quality of water in wells and damaged agriculture based on growing crops and coconut palms. The degradation was catalysed

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[3] ibid.

also by storms gaining on intensity and frequency (cf. Wyett 2013, p. 171). Consequently, population concentrated near Tawara, the capital of Kiribati. Nearby villages got overcrowded; this resulted in social tensions, violent frictions, diseases, and sanitation issues.[4]

The case went through several court instances and the courts demonstrated an approach maximally empathic to Mr. Teitiota. Nonetheless they did not grand him the refugee protection. The courts agreed that there was no basis in applicable national or international law that would protect environmental migrants; it would be up to state(s) not up to the courts to discuss and adopt adequate national or international protection.[5]

The strange similarity of all those non-cases lies in the fact that the non-case is always to be justified by a short statement, a reference to "a background rule", "mandate" or "jurisdiction", which could not be discussed and remained simply given. Such a statement presents the outcome as normal, natural, legitimate and apolitical. In spite of that, the background rule, mandate or jurisdiction is a result of power struggle, the manifestation of hidden power structure or hierarchy that deserve to be examined.

Therefore, this dissertation focuses on the case of the "sinking islands" in front of the UNSC. It aims at unfolding this non-case and analysing how power struggles and spatial disposition determined the position of individual actors. More specifically speaking, the dissertation uses the case to observe the approach of individual actors. It intends to analyse and generalize how they framed the role of the UNSC to suit their interests and attempted to shape the UNSC mandate most suitable for their interests.

To conduct this task, the dissertation uses critical legal geography as underlying theoretical concept. Critical legal geography, described in chapter 2, deals with four interconnected processes: how space influences law, how law influences space; how power influences law and how law influences power. Critical legal geography offers adequate tools to examine, how space, power and law interacted in case of "sinking

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[4] New Zealand Immigration and Protection Tribunal. AF (Kiribati) [2013] NZIPT 800413 (25 June 2013); para 23 – 33.

[5] Similar results have been reached by certain previous and consequent decisions, when migrants from Tonga, Bangladesh, Fiji or Sudan were not granted a refugee protection. Cf. Buchanan (2015) or McAdam (2015), further cf. *Applicant A v Minister of Immigration and Multiethnic Affairs* ([1998] INLR 1) and *AH (Sudan) v Secretary of State* ([2007] UKHL 49; [2007] 3 WLR 832). CF. New Zealand Immigration and Protection Tribunal. AF (Kiribati) [2013] NZIPT 800413 (25 June 2013); para 56.

islands" in front of the UNSC and how their mutual dynamics determined the outcome of negotiations.

The dissertation asks two interconnected research questions:

- How can spatially determined interpretations of law and perceptions of justice influence the functioning of United Nations Security Council in relation to "sinking islands"?

- How do different states define the role of the UNSC in relation to "sinking islands"?

On the theoretical level, the dissertation brings the following contributions. Firstly, it wants to demonstrate nuanced means how actors shape the role of international institutions to suit their interests. And how they do this without changing its founding legal document. Secondly, the dissertation intends to introduce critical legal geography to the IR discipline. The dissertation combines legal analysis with analysis of international relations. It situates critical legal geography among other IR approaches. It demonstrates on the case of "sinking islands" why it is plausible approach often preferable to other theories and concepts.

Critical legal geography takes inspiration from various disciplines. This interdisciplinary theoretical approach allows us to combine various concepts and thus might allow us to understand, how is it possible that there were so different positions within the UNSC in regard to SIDS and that the UNSC did not address the situation of SIDS with resolution or any other tangible action. This wide transdisciplinary approach is also a reaction to the examined phenomenon – inactivity of the UNSC in reaction to the security implications of climate change.

On the empirical level, the dissertation contributes to the literature on "sinking islands" and to literature concerning interplay between environment and security in general. The UNSC dealt with environmental matters repeatedly, but with rather limited outcomes. Despite that it is very likely that the environmental issues shall appear on the UNSC agenda again in the future. In 2011 meeting of the UNSC regarding climate change and security, Mr. Marcus Stephen, the president of Nauru summarized the situation in the following way: "Last month, the International Energy Agency announced that in 2010

carbon dioxide emissions reached their highest level in history. Last year also tied as the hottest year on record, and the volume of Arctic sea ice dropped to its lowest level since measurements began, while catastrophic droughts, forest fires and floods wreaked havoc on countries around the world. Scientists now project that seas will rise by a metre or more by the end of the century — a level that could wipe out many small islands in the Pacific and elsewhere. All this happened despite 20 years of negotiations to reduce greenhouse gas emissions to a safe level."[6]

Since 2011, the conditions even worsened. Amount of carbon dioxide emissions increased. Recent worldwide series of various weathers anomalies such as cyclones, droughts and heats proved that the pace of climate change might be unexpectedly fast.[7] It is more than likely that the link between climate change and security will be re-examined and re-evaluated several times by the UNSC in the future. The analysis conducted by this dissertation may help to understand the dynamics in the UNSC negotiations and the root-causes that determine their outcome. For "sinking islands", the international cooperation depending on similar negotiations remains crucial.

The structure of this dissertation is as follows. The second chapter performs a conceptual analysis. It introduces the theoretical approach utilized by this dissertation: critical legal geography. It elaborates on the interactions of key concepts of this approach: space, law and power. Furthermore, it operationalizes the theoretical conclusions and provides an explanation why critical legal geography offers better theoretical underpinning than other IR theories and concepts, namely realism, rational institutionalism, securitization theory and Green theory.

The third chapter conducts a literature review. Its first part reviews the literature on "sinking islands", while the second part summarizes relevant academic works on the UNSC. Fourth chapter introduces the methodology employed by this dissertation. It accounts how this dissertation analyzed the records from the meetings of the UNSC in 2007, 2011, 2015, 2018, and partly 2019. The fifth part of the dissertation summarizes empirical research results. It outlines how the individual countries in their pleadings constructed the role of the UNSC to suit their interests and what the interaction of

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[6] UNSC 6587th Meeting Record. S/PV.6587. 20th July 2011, New York, p. 22.
[7] To paraphrase a popular HBO series, where states quarrel with each other while ignoring the threat of approaching winter, one could say: "Summer is coming."

space, law and power was behind their statements. For the purpose of this analysis, the countries are divided into three main groups: (1) the "sinking islands", or more correctly the small island developing states ("SIDS") endangered by sea level rise, (2) rapidly developing states and (3) developed states. Finally, the conclusion summarizes the findings and draws implication for current situation as well as for future research.

2. Conceptual analysis

This dissertation uses critical legal geography as a basic theoretical concept to understand the negotiations in front of the United Nations Security Council ("the UNSC") concerning "sinking islands"[8]. In order to introduce critical legal geography ("CLG") to the reader, the next chapter follows four broad objectives.

Firstly, it provides the overview of key tenets of this theory. Secondly, it operationalizes CLG and describes how it can be utilized to understand the case of SIDS in front of the UNSC. Thirdly, it situates CLG and other conceptual considerations of this dissertation within the general theoretical debates in the international relations discipline. For that purpose, it employs the classification of IR theories based on the quartet of key action determinants derived from the work of Lawrence Lessig (1999). Fourthly, it justifies CLG as a suitable conceptual framework for this dissertation, preferable to other theories that could be used to approach the issue of SIDS in front of the UNSC. The key points from the third part, which positions CLG towards other IR theories according to the classification derived from Lessig's analysis, are used as a basis for rebuttal of other conceptual alternatives, the most relevant of which are: realism, rational choice international institutionalism, securitization theory or Green theory.

2.1 Critical Legal Geography

CLG focuses on the interactions of space and law and it analyses how those interactions reflect or produce power. It claims that space and law directly influence how power is projected and social life constructed, in other words, how law can reflect and construct (oppressive) legal geographies (Blomley 1994, p. XII) or how "legal decisions shape, demarcate, and mould human geographies and social space" (Kedar 2003, 407). CLG is broadly inspired by human geography, which investigates the relationship between "the social" and "the spatial" (cf. Massey 1984), and by critical studies that uncover hidden power structures and hierarchies and provide emancipatory alternatives (cf. Booth 2005).

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[8] Or more accurately small island developing states ("SIDS") that face the adverse impacts of sea level rise.

CLG was developed as an alternative to approaches that treat law, space and power as entirely separate, independent domains. Blomley (1994) emphasized that law has been established and presented as a unitary, monolith and enclosed system, while jurisprudence mirrored this fact by its closure to other disciplines.[9] As a result, jurisprudence relied significantly on detached abstractions and might have ignored findings of geography as well as political science.

Space has been perceived as an inert theatre[10] for the application of legal norms[11] and power has been understood as an element that must be banned from all the ways of legal interpretation and law application. Scholars from other disciplines have been allowed to enter jurisprudence only as "expert advisors and witnesses", in a limited number of areas such as country and development planning, environmental protection and regime of common spaces (Economides, Blacksell, Watkins 1986a, 162 – 163). Space has been "downplayed" in legal theory, while law and geography have been divided by a strictly respected and carefully delineated division of labour (Blomley and Bakan 1992, 662 – 664).[12] As Elden stated, "the standard approach, in political science as much as geography and international relations, is to take [territory] as an unproblematic given, which is then fought over, redistributed and redrawn, without any conceptual problematisation. In other words, there are disputes over territory, but none over 'territory'" (Elden 2005, 10).

However, space is neither death, fixed, undialectical and immobile (cf. Foucault 1970, 709) nor a "neutral container" in which the events occur (Ford 2005). There are two

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[9] This presupposition is strongly grounded in legal positivism. It may be best illustrated e.g. by one of five core meanings of positivism articulated by H. L. A. Hart: "*a legal system is a closed, logical system in which correct decisions can be deduced from predetermined legal rules without reference to social considerations*" (Hart 1958, p. 601 – 602).

[10] Blomley and Bakan (basing also on Lefebvre who will be mentioned below) connect this perception of inert and passive space with Immanuel Kant. Kant distinguished a category of space that is passive, and *a priory* given from active category of happening history and presence that may be shaped (Blomley and Bakan 1992, 664 – 665).

[11] Philippopoulos-Mihalopoulos (2007) even asserts that law with its appeal to universality is afraid of space and its specificity.

[12] Blomley (1994) claimed that by this artificial division, the law incorrectly allocates the power exclusively between the centre and an individual. Central state authority produces single set of rules for whole the territory. On the other hand, individual is equipped with individual rights recognized and respected by the centre. This dichotomy ignores the communities that represent an inter-stage between the state and the individual. The communities are necessarily geographically based and the geographically determined dynamics within the community influences communitarian normative characteristic, which is nonetheless ignored by the legal dichotomy of the central vs. the individual.

basic ways of interaction between law and space. Firstly, various sorts of legal regulation emerge from specific geographic conditions. Secondly, specific legal regulation may divide or structure the physical space. Law is controlling and constructing the space. It can protect certain space and restrict other (Economides, Blacksell, Watkins 1986a, 167). Both processes are not neutral and free from power-related influences. To the contrary, they are often a result of power struggles and power-projection of actors. As Blomley and Bakan concluded:

> "Legal discourse, as a form of social discourse, represents space in various ways and, in so doing, helps construct the social significance of space. This has a bearing on social and political life given that, in advanced industrial states, law is a crucial site of social and political action. And, once lawyers accept that law both constitutes and reflects social and power relations, it becomes crucial to ask questions about the various ways such relations are constituted and expressed. The social and political nature of space thus becomes a central concern for critical analysts of law." (Blomley and Bakan 1992, 687)

Often cited example justifying this statement is that state borders are created by power clashes, legal documents and geographic considerations altogether. When the line is drawn on soil, a specific normative regime automatically emerges by appropriation of that space (Wishman 1997, 46 – 47).[13] Despite that fact, cartographers used to separately study, where the borders[14] were, while lawyers structured and legitimized the regulatory content behind them (Blomley 1994).

Critical legal geography is supposed to provide an alternative to this separating approach. It problematizes the supposedly objective and independent character of both law and space (Blomley and Bakan 1992, 666). It represents a merger of two streams of though: legal geography and critical legal studies, both of which have been informed by various partial approaches.[15]

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[13] Cf. Also Johnson and Post (1996, 1367 – 1368) who talked about "law space" as a specific concept of legal regulation bound by territorial jurisdiction or by physical spatial constraints such as state borders etc.

[14] For the detailed account on the relationship between law and borders in the widest sense cf. Symposium Surveying Law and borders. *Stanford Law Review*, 1996, Vol. 48, No. 5.

[15] CLG has been often described as an "interdisciplinary project" rather than a unitary discipline with strictly delineated content. It is more of a forum where law, geography and critical theories in all their forms may meet and jointly bring scientific contributions (cf. Delaney 2015, Braveman et al 2014). Therefore, also this chapter reflects this character of CLG and

This subchapter firstly introduces both legal geography and critical legal studies. It focuses on the two key reciprocal processes that are analysed by each of the approaches. For the legal geography, those two processes are: (1) how space determines law and (2) how law determines space. For the critical legal studies, the processes are: (1) how power determines law and how law determines power.[16] The overview of the theories, processes, and key approaches is provided in the table 2.I below. The table is meant as a summary showing graphically, how the individual approaches informed each other. It does represent neither a neat classification nor an exact grouping.

The table does intentionally omit the pure relationship of power and space. Obviously, both the two concepts of power and space are intimately interlinked as well: "Foucault has observed that any history of spaces 'would at the same time be the history of powers (…) from the great strategies of government to the little tactics of the habitat'. Any spatial configuration is suffused with power, meaning that the legal classification of spaces produced by boundaries, at every scale, sets up the possibility of transgression (Cooper,)" (Blandy and Sibley 2010, 280; quoting Foucault 1980, 146; and Cooper 1998). However, this relationship has been persuasively described by geopolitics (space determining power, power changing space) and critical geopolitics (power determining / constructing space) or critical geography (cf. Bauder and Engel-Di Mauro 2008 for a

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acknowledges CLG as a specific approach rather than a discipline or a field of study. Therefore, the dissertation focuses on the processes key for CLG, which represents greater value for the topic of this dissertation than attempting to specifically define and delineate CLG as a discipline.

[16] A note concerning the definitions of law, space and power: I do not see the need to neatly conceptually define the notions law, space and power in the terms exceeding common disciplinary knowledge. The focus on the interaction of those elements described below is conceptually crucial and elucidates much more about the content of the notions. Moreover, any attempt to neatly define the terms could be misleading, omit important aspects and eventually strengthen the binary perceptions positioning law into isolation from space and power. For the readers who would still appreciate the definitions, for the purpose of this dissertation a working definition of space could be a set of physical characteristics of an environment as perceived and produced by humans. Similarly, law might be defined as a set of rules that were adopted in a specific prescribed and accepted way and that may be directly enforced. Finally, power could be defined as the ability to compel others to follow one's will and ability to pursue owns' aims in spite of eventual resistance and obstacles (cf. Dahl 1957). Barnett and Duvall (2005) warned that this definition captures only compulsory concept of power, while there are also other concepts: institutional, structural and productive. They analysed how power works through social relations. This is one of the reasons why I inserted the definition of power only in the footnote. As will be demonstrated in the sections 2.1.2, 2.1.3, and 2.3.3, analysing the (social) relationship between power, law and space can tell us much more about each of the phenomena than an attempt to imprison each of the notions within its own axiomatic definition.

collection of crucial readings on critical geography). Therefore, this relationship is not studied in detail by this dissertation.

After the initial delineation of the relationship of law and space (legal geography) and law and power (critical legal studies) above, the rest of this subchapter elaborates more closely on CLG and provides an overview of current relevant research in the CLG field.

Table 2.I Critical legal geography – an overview:

Bottom line approach:	Process:	Original discipline:	
Comparative law			
Legal Spatiality			
Geojurisprudence	Space determining law		
Law "mapping"		Legal Geography	
Human legal geography (sociology of law)			
Critical human geography	Law determining space		**Critical legal geography**
Production of space			
Law as a "frozen power"	Power determining law		
Law as a tool of oppression		Critical Legal Studies	
Law as naturalizing and empowering phenomenon	Law determining (legitimizing and fixing) power		
Law as legitimizing phenomenon			

2.1.1 Legal geography: Law and space

Legal geography as a comprehensive theory gradually emerged in 1980.[17] It gained vivid attention in 1990s' thanks to its key argument that law is preoccupied by abstractions, while it ignores spatial specifics and is therefore predominantly "anti-geographic" (Pue 1990).

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[17] Kedar (2003, 405) traces predecessors of legal geography to Montesquieu's Spirit of the Laws. Montesquieu indeed claimed that the geography, especially the climate influences the local community and the regulatory system established by this community (cf. Montesquieu, 1777, book XIV and the following). Kedar (ibid.) adds German scholars who operated with the terms of "Rechtsgeographie" and "geojurisprudence".

Two interconnected processes represent the locus of legal geography. On the one hand, geography and (social) space impact on law and influence legal development, regulation and local legal interpretation. On the other hand, there is also a reverse process. Law produces, shapes, organizes and restricts space. I.e. the characteristics of space determine the law, while the law can in turn redefine physical and social space (cf. Soja 1996, 1421 – 1426; Holder and Harrison 2003, 4 – 5). For the sake of this conceptual analysis, following lines will describe both processes separately despite their "co-constitutive" character (Benett and Layard 2015, 408) and mutual production between space and legal rules (Blandy and Sibley 2010, 278).

Space determining law

The first process being studied by legal geography is how "differences in geography help account for different legal rules" (Grossfeld 1984, 1512). Law is seen as dependent on space, which should be recognized by those who study it (Bartel et al. 2013, 349). In other words, one must ask *where* the law happens when studying it (Braveman et al 2014, 1).

Examination of the impact of space on law encompasses several sub-approaches such as comparative legal science, legal spatiality, "geojurisprudence" or human (legal) geography. Following part briefly tackles each of them. **Comparative legal scholars** recognized the importance of space in creation of different legal systems.[18] Grossfeld (1984, 1514 – 1518) described how geographic character of the land, its climate and density of population cause differences in regulation of water use,[19] strict liability or other agricultural obligations. As a result, comparative law is interested exactly in those differences in local geographic conditions that determine the distinctions in legal regulation (cf. also Sand 1971).

Like comparative legal scholars, lawyers studying "legal spatiality" have been interested in how space determines applicable law. Phenomena such as finding the

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[18] Grossfeld (ibid. 1511 – 1512) refers also to antecedents like Montesquieu (cf. previous footnote), Pascal, or the father of sociology of law Eugen Ehrlich.
[19] For later CLG research on regulation of this type of resources cf. Jepson (2012, 614 – 631).

decisive legal regulation, settling competing jurisdictions or "forum shopping"[20] received vivid attention due to legal impacts of globalization. From the social point of view, the matter was theorized by Raustiala (2005, 2560) who defined the notion "legal spatiality" as "the scope of the law (…) determined by territorial location":

> *"The physical location of an individual determines the legal rules applicable and the legal rights that individual possesses. (…) The concept of legal spatiality can readily be generalized: The scope and reach of the law is connected to territory, and therefore, spatial location determines the operative legal regime. More plainly, where you sit determines what rules you sit under."* (ibid. 2506)

To state historical examples, medieval roots of spatiality of law can be seen in territorial protection and privileges of embassies, jurisdiction over pirates on high seas or religious sanctuaries. Nevertheless, the absolute spatiality was embedded in the Westphalian regime (ibid. 2508). Current spatiality of law is being changed, when the states may use sophisticated mechanism to establish their extra-territorial jurisdiction (purportedly apply their rules outside their territory) or to deny their jurisdiction (ibid.) in order to avoid responsibility.[21]

Another bottom-line approach of legal geography is represented by scholars such as Easterly who attempted to revive an earlier term "**geojurisprudence**" in describing the dislocation of different legal systems according to conditions of the land (Easterly 1977, 209). Wigmore (1928, 114 – 115) distinguished the direct impact of natural spatial phenomena on law and indirect impact through creation of specific socio-geographic conditions such as race.

David (1950) refused the primacy of the direct impact as too primitive and deterministic and emphasized the importance of the indirect impact. This indirect impact has been further analysed by **human (legal) geography**. Human (legal) geography presupposes that "people are historical, geographical and social beings" (Thrift 1985, 397). Therefore, geography together with other economic and social conditions establish a

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[20] "Forum shopping" refers to a choice of most suitable court for a claimant enabled by colliding jurisdictions of various courts.
[21] To this extent, Raustiala's analysis might become closer to critical legal studies, because it suggests how states project power through the legal rules outside their territory, or through the denial of legal protection because of special spatial status (for account on Guantanamo and other related discussions see below).

special form of (social) space, which can be characterised also by a specific set of legal rules. The discipline enquires how and why those rules emerge in relation to the geographic, social and economic character of the space (Economides, Blacksell, Watkins 1986a, 167).[22] Different settings result in different legal practices and varying "spatiality of law" (Bennett and Layard 2015, 411). Space significantly influences the situation and the context. Therefore, it determines adoption, interpretation and consequences of legal rules as well as the decisions taken in compliance with those rules (Benforado[23] 2010).

The above-mentioned approaches frequently overlap. They also use similar methodologies; Pue (1991) advocated the use of geographic methods in jurisprudence in order to enrich this discipline. An example of such a method enriching jurisprudence could be "**mapping**" employed in order to reveal the relationship between space and law. Mapping can be used to visualize legal geographies, i.e. to demonstrate what regulatory characteristic certain space displays. It has been effectively employed to examine postcolonial economic relations and respective regulation (cf. Tayyab 2007), an access to justice or workers' rights (cf. Bakan and Blomley 1992; Economides and Blacksell 1987, Economides, Blacksell, Watkins, 1986a). Mapping and cartographic methods and approaches may describe landscapes of law, e.g. landscape of international law or legal landscape of global city (Pearson 2008). Similarly, Graham described how law relates to land and how natural resources and the physical characteristic of the environment influence the character of law by creating specific "lawscape" (Graham 2010, cf. also Philippopoulos-Mihalopoulos 2007). All those partial bottom-line approaches illustrate how space can influence the law.

Law determining space

The second process crucial for legal geography is how law creates or "colours" certain space. To analyse this process, space must not be seen as "a backdrop to political and social action but [as] a product of such action [instead]" (Blomley and Bakan 1992, 687), because the law represents "a powerful cultural technology of spatial production"

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[22] Cf. Also Economides, Blacksell, Watkins (1986b) or Benda-Beckmann et al. (2009).

[23] The same author claims that the space may affect "(1) the proximate decision to commit a crime, (2) the likelihood a given person will become a criminal, (3) the experience of victimization, (4) the way in which policing is conducted, (5) what a crime is and how it is prosecuted, and (6) the consequences of being convicted" (Benforado 2010, 824).

(Collis 2017, 289). As Butler (2009, 322) claims: "Law needs to be understood as a set of techniques of spatial organisation and governance – a body of spatial representations – and as a framework for an ensemble of everyday spatial practices." To put it bluntly, while the previous process illustrated how spatial conditions influence law, this process describes the opposite development: how law affects space.

Already Bourdieu (1987, 839) saw law as especially powerful discourse, because it can create reality just by pronouncing it. Thus "[l]aw (and legality) can constitute places and spaces;" e.g. streets, squares or tombstones (Bennett and Layard 2015, 411), but more generally also public and private spaces or eventually semi-public or semi-private spheres (cf. Blomley 2005, Blomley 2014) or spaces co-owned or excluded from ownership (Collis 2017). Law causes the erection of barriers on state borders or around localities with tensions (cf. Bosworth 2008). Law also authorizes extraordinary measures to be used on certain place and thus naturally distinguishes this space from its surroundings (Valverde 1996: 368).

Thus, law facilitates the emergence of a specific space, normatively unified and enclosed within both imaginative and physical boundaries (Blomley et al. 2001; Holder and Harrison 2003; Manderson 2005, Taylor, 2006). The analysis of this process was inspired by the theory concerning "production of space" (Lefebvre 1991). Lefebvre distinguished his understanding of space from three previous perceptions of space.[24] He claimed that each of the perceptions is inadequate.

The first perception had delineated space during Enlightenment in Cartesian terms, as a category that could be measured and described purely by its physical characteristics such as length, width, depth, etc. The second perception had described space in Kantian terms as an abstract, *a priori* category existing in human mind independently and previously to actual experience. The third perception had been coined by post-modern authors defining space as a discursive construct (ibid. 1 – 2).

Lefebvre (ibid. 38 – 39) offered his own alternative by focusing on space relations and describing them in terms of a triad inspired by writing of G. W. Leibniz. Lefebvrian spatial triad analysed spatial relations through (1.) *spatial practices* as a physical conduct of daily routines and regular human actions creating trails and networks; (2.)

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[24] The writing of Lefebvre displays certain eclecticism as he elsewhere (Lefebvre 2003, 43-4) argued that the ideas of Marx, Hegel and Nietzsche should be read together.

representations of space as an abstract product of scientific disciplines, experts, official authorities and institutions providing space control and management; and (3.) *representational spaces* as the everyday experience with space of those who occupy it, establishing bottom up driven symbolic and imaginary centres. All the elements of the spatial triad develop at the same time and constitute both physically and ideationally what we perceive as space.

Lefebvre (1991, 349) therefore described space as consisting of six elements:

> "a) A part of the *forces of production* which progressively displaces and supplants the role of (first) nature.
> b) A *product* that is consumed as a commodity and as a productive resource in the social reproduction of labour power.
> c) A *political instrument* that facilitates forms of social control.
> d) The basis for the *reproduction* of property relations through legal and planning regimes which order space hierarchically.
> e) A set of *ideological and symbolic superstructures*.
> f) A means of human *reappropriation* through the development of *counter-spaces* forged through artistic expression and social resistance." (Butler 2009, 327)

The points A) and B) reflect Marxian perception that space enters the production processes. Space is the field where the reproduction of (human) body takes place. It is also the basic commodity for this reproduction. Consumption of space enables the process of (re-)production.

Points E) and F) emphasize the role of space in everyday life and social conflicts. But most importantly, the points C) and D) focus on the way how the space becomes a theatre for political struggle and an instrument of regulation, both of which happens through legal regulation and normative division of physical space.

The production and reproduction practices are regulated not only by the space itself but also by the laws of that particular space as well (Butler 2009, 327 – 328). "Space forms part of the state's productive machinery of social regulation" (ibid.). Governments or another controlling entities can either regulate the behaviour (ways towards bodily reproduction) indirectly just through laws, or directly through physical changes of the space such as rising walls or building highways, which is again done under specific

legal regulation. Law is thus a tool how to divide and regulate the space,[25] or how to create an abstract space which is the physical space filled with the lived experience and regulated by the law.

Lefebvre (1991, 285 – 289) also described the typical aspects of abstract space produced by capitalism; this space is normatively prepared to facilitate capital accumulation,[26] circulation and consumption, it fosters capitalist social relations and actively dismisses alternatives in using the space. Property rights and civil laws are supposed to represents a harmonic and peaceful system of non-aggressive and consensual dispute settlement.[27] In fact, they are efficient repressive judicial mechanism based on spatial prohibitions and prescriptions (Lefebvre 1991, 56 – 57).[28]

Furthermore Lefebvre (1991) described three processes how the law creates an abstract space: fragmentation, homogeneity and hierarchy. Fragmentation means that the space is divided into small parts that can be sorted, owned and exploited within the process of production. This division mirrors in separation of various scientific disciplines: each discipline (or its specific subsidiary) is supposed to appropriate a part of certain object. The homogenisation represents the opposite process, which tends to create similar fragments on a global scale. The fragmented units are forcibly moved by the forces of production into one or another category on the global scale. Finally, as a result of those two processes, the global hierarchy emerges, which creates the "cores" and the "peripheries" (Butler 2009, 332).

Co-constitution of the two processes

The lines above described how space determines the character of law and how law creates space. For the sake of this conceptual analysis, the processes have been described and introduced separately, but legal geography perceives them as interconnected; they may occur independently of each other, but also jointly. As Butler

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[25] "The production of space and the ordering of its dominant uses require the prohibitions and sanctions imposed by the state through the legal order" (Butler 2009, 333).
[26] As Tayyab claims "accumulation by dispossession" (2010, 66).
[27] For further account on the ability of law to provide legitimacy see below.
[28] For further reference cf. Blomley (1998) or Blomley (2003b). Here, Lefebvre's ideas already fall into the category of Critical theories, as he discovers how power enters the process of legal spatial ordering and creates hierarchies and structures, which are presented as natural, legitimate and universally acceptable.

summarized (2009, 14): "Law is simultaneously a body of ideological representations of space and a collection of material practices which maintain social order and govern social space. Such an account of law's role in the production of space avoids the traps of geographical determinism and legal instrumentalism (…), but it also eschews theoretical tendencies to reduce space to a linguistic model and conceive of it as a metaphorical source of indeterminacy and social contingency." Law and space are therefore mutually constitutive (Manderson 1996, 1061). Several examples of this mutual constitution are described in the following three paragraphs.

Already Lefebvre (1991) emphasized that systems of ideas such as Christianity might become influential just because they established spaces, where they can efficiently reproduce. The better spatial infrastructure and spatial organization a state (or an institution or another entity) has, the more powerful it will become thanks to efficient reproduction.

Blomley (2003a) added other examples of mutual constitution of space and law. He called them "splices" and defined them as situations, when spatial and legal division merge together. He mentioned an example of a prison (ibid., Delaney 2003) or a police cordon (Blomley 1994), both of which constitute specific legally-spatial regime; constructed by a specific law and typical by the division of space, either by prison walls or by police shields. Similarly, the term "refugee" is also a "splice", because it combines the meanings of spatial dislocation and legal status (Blady and Sibley 2010, 278). Butler (2005, 21 – 22) developed similar notion of "zoning". Zoning means spatial division into parts ("zones") that are homogenous and hierarchically ordered through technical planning and legal codification of their existence.

Finally, Delaney (2004, 852) defined a concept of "nomosphere" used for an environment with a specific material and cultural character. This environment combines both material expression of the legal regulations (e.g. walls in prisons) as well as discursive delineation of socio-spatial relationships (e.g. restrictions of movement in prison).

In conclusion, this section demonstrated the core interconnected and mutually constitutive processes for legal geography: how space influences the law and how law influences the space. Those processes will be crucially important later for the analysis,

how the negotiations in front of the UNSC were influenced by the spatial determinants, and what spatial impacts various states intended to achieve by argumentation defining and re-defining the UNSC role. The following section will examine similar interaction between law and power, analysed by critical legal studies.

2.1.2 Critical legal studies: Law and power

Critical legal studies emerged in 1970's and applied the findings of Critical social theory to legal science. Critical legal scholars, nicknamed "crits" (cf. Unger 1983, Hunt 1986 or Kennedy 1981), refused that law could be entirely abstracted and non-contextual phenomenon. They disagreed with the claim that law is based on objective reason and widespread liberal consensus. Instead, they emphasized that law is political. As Koskenniemi (1996, 475) explained: ""[l]aw" and "discretion" did not exist in separate pigeon-holes in our minds. The legal debate did not "stop" at any point to leave room for a separate political choice; political choices were posed the moment the legal debate started."

Thoughts interconnecting law and power could be found also outside the discipline of critical legal studies. E. H. Carr famously claimed that law can neither be perceived as an abstraction nor can it be understood independently of its political foundation and political interests that it serves (Carr 2001, 179). Also, Čepelka and Šturma in their general course of international law agreed that socio-political and power-related circumstances represent material sources of (international) law. Those circumstances are generalized and abstracted in a hypothesis of a legal norm.[29] Only as long as those circumstances endure, the rights and duties can be enforced (Čepelka and Šturma 2008, 97). Once the circumstances change, the applicability of law changes as well.

Critical legal studies developed those presuppositions and claimed that law results from social struggles and clashes rather than from universal agreements and consensus. Formalistic legal reasoning is supposed to be a disguise for individual interests, a "reification" of status quo and a tool of domination rather than independent scientific exercise (Williams Jr. 1987, 114 - 116).

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[29] Every legal norm consists of a trichotomy of hypothesis (A), prescription/disposition (B) and eventually sanction (C): If A happens, then B must follow. If B does not follow, then C must be enforced.

Therefore, critical legal studies deal with the relationships between law and power. The discipline describes law as an arena of political clashes manifesting not only in suspensions of law, but also in its formulation, manifestation and application (Gregory 2007, 205). Critical legal studies focus primarily on two processes: how power determines the character of law and how law impacts on power flows and power distribution. During the first process, power is projected through law in order to create (sometimes oppressive) regulatory structure. During the second process, this structure, seen by liberals and legal positivists as objective, independent, and universally accepted valid law (*ius positivum*), fixes relationships of inequality and builds an entire social hierarchy (Kennedy 1997). Although both of the processes often occur simultaneously, they will be described separately in the following paragraphs.

Within the first process, the "constellations of social relational power" manifests itself through the law and as a result, specific relationship gets a legal meaning (Delaney et al., 2001). A legal statute is an outcome of bargaining, power projection and social tensions; it is a frozen power structure; "frozen politics" mirroring the power distribution within the society at the time of its adoption (Blomley and Bakan 1992, 688). As Benjamin (1978) described, law is established and constantly build on violence. This violence keeps denying, limiting and compromising itself, because it reproduces, presents, and constraints itself as a law-preserving violence (Benjamin 1978, 294 – 300). To paraphrase famous military theorist, one may claim that "law is a continuation of politics by other means" (Dunlap 2009, Crump 2017).

The second opposite process is similarly important. Law also influences power. Law may limit the power or autonomy by legal restrictions or prohibitions, or it may empower by legal authorizations and approbations. Critical legal studies presuppose that law is a legitimating tool. Through valid law, status quo and current power distribution is presented as desirable and normal (Schlag 1991, 201 – 203), natural and apolitical (Blomley and Bakan 1992, 688). Restrictions provided by valid law are perceived as justified and enforcements as necessary (Kennedy 1997). The reality created by the law is supposed to represent the best available alternative (Davies and Holcroft 1991, 471) and universally accepted, most desirable compromise.[30]

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[30] Radical wing of Critical legal studies emphasizes Gramscian approach claiming that law is used by a hegemonic social group(s) to impose its regulation on the rest of the society and thus becomes the part of class struggle.

Moreover, the law is presented as absolutely depoliticized and therefore abstracted from any eventual power influences. Legal prescriptions introduce a system supposedly neutral, independent of human agency and its power struggles, objective and *simply given* (Kairys 1998). Critical legal studies therefore argue that law both justifies domination but claims neutrality at the same time. As Kedar (2003, 6) summarizes:

> "…elites attempting to legitimize their dominant power positions construct complex 'legal belief structures' that rationalize hierarchies and privileges. Legalism seeks 'to justify and explain race, class, and gender disadvantage and privilege' through 'an abstract professional discourse which claims "neutrality in process and outcome..."' As a result, legal decisions that promote or perpetuate social inequalities are conceived as being just part of the natural order of things." (Kedar, p. 6)

In conclusion, for critical legal scholars, law and power are closely and inseparably connected.[31] This connection is often disguised; law can be even used as a legitimizing tool due to its supposedly neutral, independent and decisive character.

2.1.3 Critical Legal Geography: Law, Space and Power

The fusion of critical legal studies with legal geography caused so called spatial turn in critical legal studies (Butler 2009, 4). The approach newly born of this union got the name critical legal geography. As Blomley and Bakan (1992, 687) remarked, the two theories did not "simply collapse into one. They differ in their emphases. For this reason, they inform and add to one another rather than simply becoming the same."[32] From this perspective, the dissertation is more on the side of critical legal studies, primarily investigating interaction between law and power, while it just draws inspiration from legal geography to accommodate spatial issues that critical legal studies on their own would not be able to address.

Therefore, CLG cannot be strictly separated from legal geography or critical legal studies. It focuses on the four processes mentioned above together, enquiring how law contributes to the production and re-production of spatial inequalities and reflects those

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[31] Cf. Also Gerloch (2017) who talks about the law as multidimensional phenomenon and "power" as one of its dimensions.
[32] As suggested earlier, the nascent CLG is not an entire theory or comprehensive discipline, but rather a specific approach.

inequalities. At the same time, CLG reveals how the legitimizing character of law together with various rhetorical tactics draws the attention away from the inequalities and how it consequently facilitates their legitimization and perpetuation. CLG therefore analyses how "explicit legal rules and background legal regimes shape a landscape of 'social apartheid, inequitable distribution of public resources and political disenfranchisement'" (Blomley, Delaney and Ford 2001, 52 – 53). Kedar described this in the following way:

> "…the production of allegedly technical formal rules, of strategic acts of categorization, of meticulous legal distinctions, the selective screening of 'facts' accepted in courts, the omnipresence of background rules and assumptions that are never discussed, serve as fundamental pillars of the spatial-legal legitimation of inequalities and hierarchies. As a result, 'contingency is portrayed as necessity, the created is portrayed as the found, the constructed as the natural or the political as the nonpolitical'…" (Kedar 2003, 417)

Thoughts that resonate within critical legal geography and examples of its key four processes have been further developed by a number of scholars. For the sake of this conceptual analysis, the rest of this sub-chapter groups their writings into four main tropes. First one describes how *law establishes, enables and justifies global spatial inequalities*. The second one focuses on *lawfare* as a specific strategy or tactics how to (mis)use law in order to gain military or other (eventually spatial) advantage. The third one deals with the phenomenon that I call *juridical or normative engineering*. The fourth trope tackles *spatial-legal aspects of justice*. Although all the tropes are closely interconnected and often overlapping, for the sake of their neat characterization, they shall be described separately on the following lines.

Law establishing, enabling and justifying (global) spatial inequality

The academic literature described situations when specific legal conditions create spatial divisions characterized by uneven power distribution. Tayyab (2007) emphasized how the international law may create and support the division on the global North and the South and thus establish a legal geography of inequality. Raustiala analysed extraterritorial exclusion from legal protection on Guantanamo: lack of presence of those captured aliens inside the sovereign territory of the US has been

presented as a reason to deprive those detainees from habeas corpus (Raustiala 2005, 2506; cf. also Luban 2008; Gregory 2006, 405 – 427, Kaplan 2005)[33].

Similarly, Jones and Smith (2015) focused on "war/law-space nexus" and investigated how law authorized use of armed force and extraterritorial power projection. They recalled well known example of war on terror[34] to illustrate how the joint resolution of the US Congress signed by the President George W. Bush[35] started a "Forever War" and "Everywhere war" and bypassed standard temporal and spatial limits of the use of force (Jones and Smith 2015, 582 – 583). Those authors did not take the global war on terror merely as yet another stage of liberal order building (ibid. 584), but they characterized it as specific geo-legal regime.

This new regime displays blurred borders between the military and the civilian, the national and the international, the police and the army, the war and the peace and the real and the virtual. Those normative and spatial divisions were well known and widely recognized in the past in case of normal conflicts. Nonetheless now they are replaced by new spatial formations born out of the new types of interaction between the actors. As a result, rather than the classical distinctions mentioned above, we can newly recognize new forms of spaces: the space of the target, the space of the enemy and the space of the exemption (ibid. 584). Simultaneously, liberal war becomes increasingly more legalized, i.e. saturated with plethora of rules, legal hierarchies, discussions on compliance and proportionality and the nascent regimes and semi-regimes result in further spatial divisions and distinctions (ibid. 586).

Lawfare

As described in the previous section, legalization of war creates new legal spaces and distinctions on the one hand. On the other hand, the same legalization may lead to the situation, when law itself becomes a tool of power projection. Using law in such an instrumental, power-based way has been examined by the scholars focusing on so called "lawfare". Lawfare refers to the strategy or a tactics of employing law as a weapon, in words of Dunlap (2008, 146): "*the strategy of using—or misusing—law as a substitute*

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[33] Further authors writing generally on legal aspects of war on terror in critical way include Richter-Montpetit (2014, 43 – 59), Horton (2010, 163 – 179) or Stampnitzky (2015, 170 – 193).
[34] For other writings concerning this phenomenon from similar perspective cf. Weizman (2010) or Mergét (2011).
[35] The Authorization for Use of Military Force (AUMF).

for traditional military means to achieve a warfighting objective." While standard application of legal rules should be regulating and restricting, lawfare is an enabling factor: "*lawfare aims at exploiting law (...). The primary goal of lawfare is not to achieve originally agreed purpose of particular norm and to protect the values that the norm was intended to protect, but rather to gain military or political advantage and weaken the opponent. In simple terms, lawfare might be understood as a type of legal bullying or (administrative/courtroom) chicane.*" (Bruner and Faix 2018A)

The term lawfare itself has been criticized. Critical legal scholars emphasized that it was supposed to delegitimize the practices of those, who used the international law to challenge the actions of the USA or Israel, and to deprive those challengers of the legal protection (Sadat and Geng, 153 – 161; Noone 2010, 73 – 85; Horton 2010, 163 – 179). While the lawfare of the East was criticized as delegitimate misuse of international law to bully the law obedient West, the lawfare of the West was supposed to be prudent and inventive way how to avoid kinetic force by using legal means instead (Scheffer 2010, 221; Craig, 2016). Thus, the sole use of the term lawfare was supposed to divide spaces (ibid.). Despite this bias, lawfare can be a useful concept, if taken as neutral term. The quality of individual lawfare depends on context and subjective assessment (Bruner and Faix 2018A).

There are various types of lawfare (ibid.). Firstly, *lawfare of litigation* means using arbitrages, civil law claims, and litigations during (armed) conflict in support of one of its parties, including self-referral to the ICC and civil/administrative law pressure on entities that are supposed to support the enemy.

Secondly, *lawfare of obedience exploitation* means benefitting from the fact that the enemy is law-obedient and therefore predictable, restricted and harmful: "By this logic, lawfare disproportionately harms technologically advanced militaries that purportedly go to great pains to abide by the laws and norms of international law; meanwhile, it empowers those who deliberately break the law" (Craig 2016, 226). In the metaphor of Luban (2008, 2020), lawfare of obedience exploitation can be understood as "an effort by the Lilliputians to bind Gulliver in a network of rules". This lawfare includes for example using human shields, artificial increase of civilian causalities aimed to restrict the adversary's use of vast airpower or a "Manchester Manual" of Al Qaeda instructing

terrorist to claim torture whenever captured, which will drain manpower and slow down their judicial process (Lebowitz 2010).

Thirdly and finally, *lawfare of ambiguity* exploits differences in existing interpretations[36] and varying understandings of law or even loopholes and gaps in applicable law: "Lawfare in this context thrives on legal ambiguity and exploits legal thresholds and fault lines" (Mosquera and Bachmann 2016, 75).[37]

In conclusion, lawfare in all of its forms demonstrates that power can determine or even mutilate the interpretation of law and thus it manifests itself through the valid law.[38] Later on, the recognition of lawfare logic will allow us to understand how SIDS tried to gain advantage by using a legal possibility to engage the UNSC.

Juridical (or regulatory) engineering

By the notion *juridical or regulatory engineering,* I mean the process of creating substantive or procedural rules that suit one's power interests. Similarly, to lawfare, this is an example how power can determine the character of law. Yet, lawfare needs certain already prepared legal regulation to be exploited for one's advantage. Lawfare capitalizes on (mis)using established legal possibilities, overlegalization of certain environment or ambiguities and gaps in legal regulation. It is an *ex post* process that grasps existing legal regulation and twists it "to make the most of it" for the benefit of an individual actor.

Unlike lawfare, juridical or regulatory engineering is an *ex ante* process.[39] A process where an actor secures own power interests by adopting specific legal regulation that suits his power interests or that allows him to project power without any adversary

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[36] E.g. Bisharat (2013, 68 – 84) provided an account on Israeli systematic attempts to redefine international law and introduce dominating interpretation favourable for Israel.
[37] Lawfare might also capitalize on the fact that applicable laws prescribe a threshold for activation of certain right (e.g. countermeasures, self-defence etc.). Low scale lawfare operations might be intentionally considered to fall exactly below this threshold. As a result, they deprive the adversary of his rights (cf. Sari 2018).
[38] Obviously, the resulting status should be one of inequality; successful lawfare reifies a status where the law or its interpretation fixes inequality.
[39] Although Snukal and Gilbert (2015, 662) see it as an "an exemplary tactic of lawfare" I still believe that lawfare uses existing law (or its absence and inadequacy), while the juridical engineering purportedly creates the new law. Lawfare is an ex post process, juridical engineering is ex ante process. However, I recognize that they may get extremely close together and both represent a situation when power influences and determines law.

consequences. In one or other of its forms, this process has been described under different names by various scholars. Following lines list some of them, firstly stating empirical examples and then elaborating more broadly on their theorization.

Snukal and Gilbert (2015, 661) described how law and legal systems were "wielded, articulated, and interpreted to secure the impunity of private military security contractors in Iraq." The authors used the example of 2007 Nisour Square massacre in Baghdad, during which private contractors from Blackwater Company killed 17 people and injured more than 20 others. The private contractors were able to avoid accountability for their deeds for a remarkably long time due to the disputes about applicable legal regulation and ambiguous relationship of private contractors to the state. At the time of the massacre, the Coalition Provisional Authority, US led body governing Iraq, had a regulation in place called Order 17. This regulation subjected the private contractors to the sole jurisdiction of the sending state, and thus exempted them from the jurisdiction of Iraqi authorities, establishing their impunity from the government of Iraq (Snukal and Gilbert 2015, 663).

Blackwater's status of private company further effectively contributed to impunity of the perpetrators from martial law perspective for remarkably long time. This status had an effect of "juridical othering" – it allowed the US government to present the activities of Blackwater as the activities of "the others" and thus avoid direct responsibility. It was unclear which federal statue would apply on the perpetrators. Lack of willingness to cooperate of the perpetrators caused further problems during the investigation (ibid. 666). The special legal-territorial setting enabled the "juridical othering" of the perpetrators but also of the victims that were silenced by payments of compensations, but in fact deprived both from material and procedural legal protection (ibid. 667 – 669).

Reiz and O'Lear (2016) described similar effects during UN peacekeeping missions. The countries contributing forces to the UN peacekeeping retain the jurisdiction over the members of those forces. Neither the domestic hosting state nor the UN can proceed with criminal motion against a soldier who committed certain crime against domestic population, including raping. Only the sending state may exercise its exclusive jurisdiction over its units. Through the Status of Forces Agreements (SOFAs) between the UN and the sending states, the forces retain immunity from domestic criminal

proceedings, which often leads to marginalization of the victim and "spatial dissonance of justice", i.e. "uneven landscape of jurisdictional spaces and authority and a complex assemblage of spaces of violence, sovereignty, and justice" (Reiz and O'Lear 2016, 453 – 455).

Smith (2014) analysed almost the same situation in Afghanistan. He focused on a case of sergeant Robert Bales who murdered 16 Afghani civilians on March 11, 2012. Despite the request for a public trial held in Afghanistan, the soldier was promptly removed from the country to Kuwait and consequently to the US (Smith 2014, 142 – 166). The legal regulation of the USA as the more powerful actor took precedence over the local rules of Afghanistan.

The juridical (or regulatory) engineering is neither geographically limited to warzones nor materially restricted on influencing states. Increasing assertion of US extraterritorial jurisdiction and subsequent complaints from US allies were described already by Picciotto (1984). Juridical engineering can impact also on the design of organizations functioning in peacetime. For example, African Court on Human and People's Rights did not issue any meritorious judgement for more than first 15 years of its initial existence. The founding states within the Organization of African Unity (latter African Union) engineered its statute in the way that effectively prevented it from resolving any case whenever the state involved in the case did not wish so. The existence of the court provided the founding countries with a legitimizing status of human rights protectors,[40] while the court still could not restrict their sovereignty by an unfavourable decision. The founding states used their powers through juridical engineering to define the role of the court in a way that suited their interests (Bruner 2017A).

Finally, the attempt to safeguard more appropriate legal regulation may be bottom-up driven and orchestrated by local interest-groups. Akinwumi (2013) described how South

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[40] The sole phenomenon of human rights has been criticized by a vast amount of literature for being a disguise for geopolitical interests and a tool for power projection rather than for prevention of oppression (cf. Douzinas 2007). The authors such as Ruti Teitel or Cançado Trindade wrote about international law, especially human rights law and humanitarian law as universal system of protection, the latter author comparing it to *ius gentium*. The argument can however have a *critical* aspect. If ius gentium was imposed by the ancient Romans on other nations to facilitate the governance of mutual proprietary and other relations, international law (especially human rights law) may be also imposed by the West on the others to facilitate coexistence of the West with the rest. Further account of how human rights can serve as a tool of empire in denial was provided by Chandler (2006), more on the aspect of empire in denial will be provided in the Chapter 5 (5.3).

African social movement Khulumani Support Group used foreign US legislation and managed to exploit it during its struggle against South African Government.

All those examples illustrate the strategy of juridical or regulatory engineering, when actors seek to establish a jurisdiction that is appropriate and suits their interests. By a regulatory engineering, the actors create a regulation or intervene in the creation of legal norm appropriate for them. Morrisey asserted that those practices are widespread; they even become regular in time of war or occupation, when the countries carefully designate legal norms that protect their soldier abroad. The same author labelled those practices as "preemptive juridical securitization" or "proactive juridical warfare" (Morrisey 2011, 280 – 283, 296) and claimed they are conducted to reach the maximum capacity of securitization and enable the utmost power projection of actors, unrestricted by and unaccountable to local authorities (ibid.). This dissertation opted for a term juridical or regulatory engineering that is wider and distinguishes this tactic from lawfare.

Raustiala (2005) noted that this phenomenon results in unbundling of law and location and bypassing traditional modes of sovereignty. Traditional spatial nexus of national law is coercively interrupted (Raustiala 2005, 2511) and power manifests itself through enactment of a locally applicable regulation that was prepared elsewhere and supposed to support other than national interests.

Thus, jurisdiction[41] becomes a legal instrument for power projection. As Ford summarized, "it is tempting to examine jurisdiction solely in terms of its material/spatial attributes, as if it were simply an object or a built structure. But jurisdiction is also a discourse, a way of speaking and understanding the social world" (Ford, 1999, 855). By imposing the jurisdiction on another actor, one forces him to accept different perceptions and legal axioms. In this regard, Valverde (2009) introduced the notion of "black-boxing of jurisdiction". It is the situation when the authority and its favourite applicable regulation ("*who of governance*") gets forcibly determined. As a result, eventual opponents or victims are deprived of any legal arguments, silenced and subjugated. They simply have to accept the imposed jurisdiction and related worldview;

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[41] For the definition and detailed account on various aspects of this notion cf. Dorsett and McVeigh (2012) or Ford (2001).

the jurisdiction is consequently black-boxed and can serve as a tool of power projection by juridical engineering.

Spatial-legal aspects of justice

This section will introduce the fourth trope of academic work within critical legal geography, which focuses on spatial and legal aspects of justice. Pirie (1983) suggested that individual locations can be characterized by access to justice and type of justice, and thus they can serve as an alternative to classical terms of region and territory. If we conceptualize space as a social product that goes through ongoing process, we can accept that it might be characterized by a specific sort of justice and specific access to this justice. Thus Pirie (ibid.) introduced the notion of "spatial justice" to draw the attention of scholars to the link between the two concepts (ibid.). In that regard, Dikeç (2009, 1) observed:

> "Spatiality of injustice is based on the premise that justice has a spatial dimension to it, and that one can observe and analyse various forms of injustice manifest in space. Injustice of spatiality shifts focus from spatial manifestations of injustice to structural dynamics that produce and reproduce injustice through space. The attempt, therefore, is not merely on the spatial manifestations of injustice, but equally importantly, on the processes that produce spatial injustices."

Critical legal geographers pay attention to how mainstream spatial representations and legal constructions tend to obscure, legitimize and make invisible the spatial injustice, when the uneven access to services and disproportionate sharing of environmental and economic burdens gets presented as legal and natural (Delaney 2016, 267).

Philippopoulos-Mihalopoulos (2010; 2011) remarked that in this way spatial justice has been theoretically assimilated with the concept of Rawlsian distributive justice,[42] i.e. rather normative claim for more equal access to services, distribution of resources, as well as fair sharing of burdens and benefits. Much of the work on spatial justice departs from this Rawlsian distributive justice position and aspires to provide suggestions for improvements of status quo in terms of sustainable development. Starting with Harvey (1973), this concerns urban studies (cf. also Mitchell 2003), where the equal access to

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[42] Rawlsian distinction between distributive justice (equal sharing of costs and benefits) and commutative justice (deciding according to strictly given rules) will be very significant also later on in this section.

services, resources and benefits get equated even to basic human right (Soja 2010). This tackles also the writings on environmental justice, either as a movement attempting to remove environmental discrimination and fill gaps in environmental politics (Beretta 2012; Godard 2017) or as a scholarly and scientific appraisal of this movement (cf. Pellow and Brulle 2005).[43]

In-depth theoretical analysis of spatial justice was provided by Dikeç (2001) and Butler (2017) who objected that justice as a concept is rather politically than morally determined. Butler (2017) disagreed that spatial justice could be reduced only to *distributive justice* and to equal sharing of burdens and benefits. Right to the city is not "yet one more addition to a long list of orthodox liberal human rights claims" (Butler 2017, 11) and spatial justice within the urban space should not be continuously transformed into "weakly defined, policy-oriented, liberal version of municipal rights" (ibid.).

Butler basing on Lefebvre (1996) described spatial justice as a moment where the right to occupy the space is materialized and individual possibilities how to materialize it clash. Butler (ibid. 13) used the theoretical lenses of analysing moment as a "modality of presence" or a possibility of presence that fulfils itself at exact point in time. Time is thus not a linear continuum, but a process of moment-ruptures, when different possibilities appear and materialize. Moment of justice is the moment of interruption. Justice is an absolute, an "impossible possibility" (ibid. 14 – 15) which we adhere to. "Accordingly, spatial justice must be understood, not as some pure and harmonious smoothing of difference and disquiet, not as a 'negation of the everyday', but as a moment that is both already here within the materiality of everyday life, while simultaneously opening towards transformative possibilities" (Butler 2017, 17).

To simplify those statements, we may conclude that spatial justice is a moment when possibilities of eventual spatial organization emerge, clash and one of them takes precedence over the others; the moment of rupture and new prevalence, which disturbs the linearity of time and redraws the actual and the possible. Spatial justice is not merely academic normative claim, but its *moments* allow us to understand the context of

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[43] For further example explicitly basing on Rawlsian notion of distributive justice cf. also Koch and Denike (2003) who dealt with organ transplantation. They utilized geographical methods such as cartography or time-distance analysis in order to suggest how to achieve more equality and distributive justice when allocating such scarce resource as bodily parts.

protests, uprisings, riots or wars. Within the *moment* of spatial justice, various forms and ideas of justice clash.

Two types of justice can be juxtaposed within such *moment* of justice and have very specific consequences for spatial organization. Those are distributive and commutative justice. As has been already mentioned above, *distributive justice* refers to equal division of resources, fair sharing of costs and benefits. It is the justice between the advantaged and the disadvantaged, supposed to redress inequalities. It is based rather on vague, loose rules that must be always customized to specific situation. A system based on distributive justice "consists in proper beneficence, in the becoming use of what is our own" (Smith 1790, 12). The actors are prone to accept the rules of distributive justice if their position in the future may change from the advantaged to the disadvantaged. The bigger is the likelihood of future change, the higher willingness an actor expresses to accept rules of distributive justice (Rawls, 1971).

On the other hand, *commutative justice* means decision making in specific situations under specific strictly given rules. It is the justice between the victim and the perpetrator, supposed to redress specific violation, a wrongdoing, under precise and accurate rules. While the distributive justice is rather vague, allows discretion, weighting and scaling, commutative justice is exact and allows limited space for considerations.

The distinction between commutative and distributive justice is ascribed to antique or medieval philosophers such as Aristotle ("corrective justice" concerning equal redistribution of public stocks and posts), Thomas Aquinas and other scholastic authors. Hugo Grotius developed this concept by employing the terms of *justitia expletrix* and *justitia attributrix*; the former meaning fulfilment of specific individual right already prescribed, the latter meaning less exact rule of convenience and doing what is good (Heimburger 2018, 183 – 184).

Both types of justice, commutative and distributive, may clash and compete. Like Collis (2017, 289 - 290),[44] we may claim that those two types of justice when linked to space

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[44] Collis (ibid. 296 – 297) worked with the legal geographies of *res nullius* (non-owned property / land) and *res commune* (everyone's property / land), while dividing the *rei communaire* on "un-owned space available to anyone's use for their own benefit" and "space collectively owned by humanity, for the equal benefit of all humanity".

may create two specific legal geographies: geography of commutative justice and geography of distributive justice. Within the geography (area) of commutative justice, the *just* decisions are made under strictly given and specific rules with little possibility of aberration or discretion. Within geography (area) of distributive justice, the rules are opened to constant negotiation and re-negotiation conducted to achieve more equal sharing of burdens such as environmental risks, adaptation costs, adverse climate change impacts, and more equal distribution of benefits such as access to territory, resources etc.

The understanding of the clash between distributive and commutative justice principles will be very important for the analysis of the UNSC meetings. As will be demonstrated, some countries in front of the Council implicitly referred to commutative justice principles to support their position, while others suggested that the UNSC should embrace distributive justice decision making principles in its decision-making. Thus, the UNSC meetings were the moments of justice, when the two conceptions clashed.

2.1.4 Conclusion

This part of the chapter summarized key tenets of critical legal geography. It detailed how CLG deals with the four interconnected, mutually constitutive processes: (1) law determining space; (2) space determining law; (3) law determining power; (4) power determining law. Furthermore, this part of the chapter identified four groups of CLG authors whose writings are conceptually valuable for this dissertation. First group of authors tackles how law establishes, enables and justifies global spatial inequalities. The second group delineates *lawfare* as an *ex post* strategy or tactics how to (mis)use already existing law in order to gain military or other advantage. The third group focused on juridical or normative engineering as an *ex ante* attempts to create a legal regulation preferring interests of one actor/group over the others and presenting such unequal regulation as a result of widespread consensus. Finally, the fourth group described spatial-legal aspects of justice, with the key contribution of seeing spatial justice as a specific moment-rupture when possible eventualities of justice such as commutative justice and distributive justice collide and attempt to take precedence one over another.

The following part of the chapter operationalizes the described processes and interlinks them with the key aspects of the UNSC negotiations about the "sinking islands". It wants to provide the reader with the information how the ideas described so far relate to the case of UNSC negotiations on the SIDS endangered by the sea level rise. A comprehensive overview for better understanding is provided in the table 2.II. The table lists key processes and concepts of CLG, summarizes their meaning and interlinks them with parts of the case studied by this dissertation. The table adds references to the empirical sections of this dissertation, in 5th chapter, where the processes are demonstrated on the empirical case of the UNSC and "sinking islands" in greater detail.

Table 2.II: Operationalizing the conceptual processes of CLG

Key process:	Explanation of the process:	How this is likely to manifest in given case:
Space determines law	"The concept of legal spatiality can readily be generalized: The scope and reach of the law is connected to territory, and therefore, spatial location determines the operative legal regime." (Raustiala 2005, 2506)	Legal interpretation pursued by states is determined by their spatial conditions and characteristic.
	Moment between commutative and distributive justice: Butler (2017) described spatial justice as a moment where the right to occupy the space is materialized and individual possibilities how to materialize it clash. Within the moment of spatial justice, various forms of spatial justice may clash. Two types of justice that can be juxtaposed within such moment of justice and have very specific consequences for spatial organization are distributive and commutative justice.	Actors (countries) may have different expectations how a justice should be pursued by the UNSC, i.e. how (whether) the UNSC should contribute by its decisions to just spatial ordering (equal sharing of burdens and benefits). Those expectations may clash at certain moment, moment of (colliding perceptions of) justice. Moreover, the actors shall be trying to underpin their expectations by arguments from applicable law or from "background" rules formed behind applicable law.
Law produces space	"[Abstract space in capitalism era] not only nurtures and facilitates the reproduction of capitalist social relations; it actively excludes alternative spatial uses." (Butler 2009, 329)	(Capitalistic) legal regulation is formed in a way to facilitate spatial use that allows capital accumulation and reproduction. The attempts to limit this reproduction, e.g. by cutting of CO_2 emissions, are likely to be labelled as "countering the law".
	Fragmentation is perhaps the most obvious characteristic of the spatial organisation of the contemporary world. It is manifested in the [legal] breaking down of space into discrete units which can be privatised and traded as commodities and is enhanced by the fragmentation of the sciences into separate domains which carve up space according to disciplinary interests (Butler 2009, 331). Fragmentation creates global homogenous units that can be organized in a hierarchy (ibid.).	The actors may fragment the world on "scientific" issues, "developmental" issues, "political" issues or "security issues". Thus, the world gets broken into small pieces. All the issues in respective category are grouped and ascribed to specific authority. E.g. "Security" issues must be addressed by the Security Council, "developmental" issues by ECOSOC. Thus, global homogeneity is created. Finally, the borders of the "scientific", the "developmental" and the "security-" cannot be crossed. Once the issue is "scientific" or "developmental" it cannot be examined by a security forum. Thus, hierarchy emerges.

Power determines law	To reiterate, law can be referred to as "frozen politics," the implication being that it represents contingent social constructions as natural and apolitical. The social representations of space can similarly become reified. (Blomley and Bakan 1992, 688)	Countries may adjust legal interpretation to their needs and present their own political opinions as the universal and natural prescriptions stemming from applicable law.
	"The production of allegedly technical formal rules (…) omnipresence of background rules and assumptions that are never discussed, serve as fundamental pillars of the spatial-legal legitimation of inequalities and hierarchies. As a result, 'contingency is portrayed as necessity, the created is portrayed as the found, the constructed as the natural or the political as the nonpolitical'…" (Kedar 2003, 412)	Countries in the UNSC discussion shall rely on "background rules" to support their position in an attempt to close off the debate and make their position seem "simply given", natural, apolitical and the only possible.
	Juridical / regulatory engineering – "Jurisdiction is also a discourse, a way of speaking and understanding the social world." (Ford, 1999, p. 855). By a juridical engineering, the actors seek to establish a jurisdiction that is appropriate and suits their interests. By a regulatory engineering, the actors create the regulation or intervene in the creation of legal norm appropriate for them.	The actors are likely to interpret or try to establish the jurisdiction of the UNSC to suit their interests. This represents much more convenient and durable solution than e.g. repeated vetoing of certain unfavourable decisions.
Law determines power	"Explicit legal rules and background legal regimes shape a landscape of 'social apartheid, inequitable distribution of public resources and political disenfranchisement' While law is implicated in the production and endurance of spatial inequalities, various rhetorical devices divert attention from it and therefore contribute to their legitimization and perpetuation." (Blomley, Delaney and Ford 2001, 52 – 53).	Legal assertions shall support power-position of the countries and allow them either to retain their existing power or to gain more power.
	Lawfare of ambiguity "Lawfare of ambiguity capitalizes on different existing interpretations and various understandings of law or on gaps in applicable law." (Bruner and Faix 2018A)	The countries may use the uncertainties and ambiguities around UNSC mandate to reinterpret the mandate in a way suiting their interests.

2.2 Operationalizing CLG to serve the aims of this dissertation

The following section connects the key tenets of CLG with the case of SIDS, as suggested in the table 2.II above. Each of the four processes above is interlinked with certain part of the case.

The analysis of the first process, *space determining law*, allows us to understand how SIDS decided to address the UNSC with their case. Spatial conditions of SIDS kept deteriorating rapidly and the decision making and problem solving of other international institutions[45] was too slow and inefficient for them. Therefore, their representatives decided to refer their case to the UNSC. The worsening spatial constrains forced them to securitize the adversary impacts of climate change on their territory and introduce an interpretation of the UN Charter which would allow the UNSC to favourably solve this issue. Thus, CLG helps us to understand what purpose guided the securitization.

Moreover, the spatial situation triggered the claim of SIDS that the UNSC should decide on the basis of distributive justice. This opened the "moment of justice" in front of the UNSC, when the two principles, commutative and distributive justice, clashed. While SIDS advocated decision based on distributive justice principles, the rapidly developing larger states strictly adhered to decision-making principles based on commutative justice. The position of rapidly developing states was similarly influenced by the spatial characteristic of their territory, when they were not significantly influenced by the sea level rise, but they needed the space for carbon dioxide production and feared eventual forcible steps of the UNSC towards its reduction. Those are the examples how geographic conditions determined the interpretation of law or provided an impetus for re-interpretation of law and of decision-making principles.

The second process, *law determining the space*, is closely linked to the position of the rapidly developing states that was just described. Those states needed to secure the space, where their growing economies could freely produce CO_2 without significant restrictions. Therefore, they recalled the "mandate of the UNSC" referring to the legal interpretation of the UN Charter which disables any decision of the Council that could eventually exceed the strict limits of military security. Thus, they wanted to avoid the situation, when the UNSC could impose a ban on CO_2 emissions and they would have

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[45] E.g. UNFCCC and Intergovernmental Panel on Climate Change.

to veto this decision, which would expose them to reputational risks. As would Butler (2009, 329) put it, global capitalism facilitated and nurtured the reproduction of capitalist social relations, as a result forces of production can consequently grow. This interpretation reproduced the desirable space where carbon dioxide may be omitted without restriction. And it excluded alternative spatial uses that could be safeguarded by more receptive attitude of the UNSC towards SIDS

In addition, the rapidly developing states claimed that the UNSC does not have the scientific expertise to tackle the issue. This is another example how law produces the space. As Butler (2009, 331) described, contemporary world is typical because of fragmentation, homogeneity and hierarchy. Law has broken space into "discrete units" which can be owned or examined and studied by different scientific disciplines. The rapidly developing states therefore implicitly claimed that the world is fragmented, broken into various phenomena; the UNSC cannot address the climate change, because this phenomenon is examined and studied by different institutions and dedicated scientific experts, while the UNSC should focus rather on armed conflicts. The UNSC should consequently be homogenous in its decision making and respect the hierarchy established by the UN Charter. This way of interpretation is an example, how law and its dividing nature constituted the space of the UNSC and determined the future of SIDS territory.

The analysis of the third process, *power determining law*, allows us to see current legal regulation as "frozen politics" (Blomley and Bakan 1992) and individual legal interpretations of the countries as power-based and power-driven statements. Thanks to this process, we can pierce the veil of supposed objectivity and non-attachment that disguises the statements and makes them look normal, unbiased and apolitical. When rapidly developing states recalled the mandate of the UNSC, they awoke the background rule that should not be discussed but should rather serve as a spatial-legal legitimation of inequality and hierarchy. The outcome that the UNSC could not deal with the situation of SIDS at all consequently seemed natural, legitimate and apolitical (cf. Kedar 2003, 412). Similarly, the developed states attempted to support their claim with references to UNSC mandate and required expertize to make their claim seem natural and legitimized, although it was driven by different motivation. Each of the actors tried to "engineer" the jurisdiction of the UNSC in the way that it would suit his interests.

Fourthly and finally, the analysis of the process *how law determines power* allows us to understand how the interpretations of the actors fixed the spatial inequalities and perpetuation of those inequalities. It also demonstrates how the countries used the legal regulation and referred to the UNSC mandate to get a specific advantage.

The four processes are mutually constitutive; therefore they may overlap in revealing positions and moves of actors in SIDS' case. Nonetheless, they are a valuable tool how to decode the negotiations in front of the UNSC, strategies and standpoints of actors and to approach the issue in general. For those reasons this dissertation uses CLG as its underlying approach. The next section compares CLG with other IR theories, classifies it and justifies why CLG is more suitable for the purpose of this dissertation than other theories.

2.3 Situating CLG within the IR discipline

In order to introduce CLG as a preferable approach in analysing the case of "sinking islands", this section situates it within general IR discussions.[46] If we understand the position of CLG in relation to other theories within the discipline, we will be able to better distinguish its key contributions as well as its eventual weak spots.

This position of CLG can be best defined only if we consider and depart from adequate categorization of IR theories. Therefore, the following lines firstly briefly discuss available categorization of IR theories. Each classification is followed by a succinct description of CLG from that typological perspective. Overview of possible classifications is provided in the Table 2.III. Furthermore, this subchapter opts for a classification based on a quartet of action determinants. It introduces this classification which is derived from the analysis of L. Lessig (1999). On the basis of this classification, the subchapter justifies why CLG remains preferable theoretical framework to other theories. The subchapter concludes by acknowledging certain critique of CLG and providing a rebuttal to this critique or accepting criticized limitations of CLG.

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[46] This is plausible also because CLG has not been systematically used as an approach within IR discipline.

Table 2.III: Overview of available classification of IR theories and CLG characteristics

Classification of theories:	CLG:
Material x ideal	Combines both material (space) and ideational (law) factors with emphasis on their interactions.
Structure x agent	Focuses on the interaction between agent and structure.
Problem solving x critical	Critical
Linear x timeless x backward looking	Embraces the parts of all of the approaches.

2.3.1 Classifications of IR theories and positioning of CLG

Different authors offered various ways how to group theories and concepts in international relations. Probably the oldest taxonomy emerged with the debate between **realists (materialists)** and **idealists**. While the realist[47] traditionally argued that power is a decisive element in international relations, idealists[48] opposed that by claiming that ideas, rules and shared values determine the interaction on international scene. Basing on this distinction, some of the theories could be deemed to implicitly emphasize the role of ideas, while others to prefer the role of (material) power.

Distinguishing CLG from other theories of IR on the basis of this typology would tell us little about CLG specifics, benefits, and caveats, because this simple distinction does not fully recognize that there is an interaction between ideas and power. Already E. H. Carr emphasized that the international actors (in his perception states) are influenced by both the power flows and the "stock of common ideas", which he called "international morality" (Carr 2001, 130). He saw morality and power as two contradictory principles that collide within the international politics (ibid. 88). On the example of propaganda, Carr explained this collision and contradiction in more detailed way stating that the ideas have little chance to cause change, unless they are underpinned by a manifestation of power. Ideas may serve power-interests, but not *vice versa*; power is rather unlikely to serve ideas (ibid. 130).

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[47] There are notoriously known historical realists such as Thucydides or Machiavelli.

[48] Traditional opposition to the authors in the previous footnote is formed by the classics such as John Locke (Two treaties of Government)*;* Charles Montesquieu (The Spirit of the Laws); Emmerich de Vattel (The Law of Nations); J. J. Rosseau (Project of Everlasting Peace inspired by Abbé de Saint Pierre).

However, some commentators even from the same epistemological camp as Carr admitted that he might have overstated the conflict between power and ideas; the two may often act in a complementary, not contradictory way (cf. Mearsheimer 2005, 142). Moreover, Carr might have seen morality and ideas as too instrumental to serve the power interests (Morgenthau 1948, 134). Those remarks illustrate that perceiving power and ideas in a purely contradictory way may result in a dangerous simplification. Mutual interaction between power and ideas is often crucial, more valuable and rewarding than comparing their importance.[49] Therefore dividing the theories and concepts on "rather realistic" and "rather idealistic" would not be suitable, because it could ignore the dynamics between power and ideas, preferring one of the two in a binary manner.

By using this classification, CLG would simply fall among the approaches[50] that prefer analysing various interactions between power and ideas to stating that the former or the latter is more important. CLG refuses to take purely ideational approach and rejects to perceive law as a separated and abstracted set of ideas; on the other hand, it also refuses definite spatial determinism (Holder and Harrison 2003). The interactions between "the material" (space, material aspects of power) and "the ideational" stand at the core of CLG interests (ibid.). Therefore, the taxonomy based purely on "power-ideas" distinction would allow us neither to sufficiently position CLG within other IR theories nor to underline its differences in relation to other theories that focus on the interactions as well.

Another available distinction emerged with the discussions on **agent-structure problem**. Already Headley Bull criticized E.H. Carr that his dichotomy of ideas and power tends to jettison the idea of international society (Bull 1969, 638). This implicitly suggested that a structure (in this case in form of an international society) can represent a decisive element instead of or at least similarly to the character and actions of the agents. Structural realists (Waltz 1979, 2008) prioritized the role of the structure

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[49] We may mention several examples from many different accounts on that dynamics between power and ideas. Nye (2005) describes how ideas can *substitute* classical power and create soft power. Rowell remarks that ideas can *define* what power is (2011). Finally, Foucault (1970) describes how power manifests through ideas, creating structures hidden in language, norms, practices and societies. For a detailed account of current research how can ideas influence the IR through worldviews, principal and causal beliefs, affection of strategies where there is no equilibrium or through institutions see also Goldstein and Keohane (1993).

[50] Cf. previous footnote.

claiming that it is exactly the anarchical structure of international relations that creates the same units (agents). Wendt (1987) reflected on the tension between agent-emphasizing and structure-emphasizing theories and reconciled it by asserting that agent(s) and structure may be rather mutually constitutive.

Wendt (2001) further combined the two classifications of IR theories, the first dividing theories on material and ideal, the second dividing them on agent-emphasizing ("individualism") and structure-emphasizing ("holism"). Thus, he derived four eventual types of theories. First type is materially holistic (structural) and it contains examples such as world-system theory or Neo-Gramscian Marxism. Second type is ideationally holistic (structural) and contains mainly postmodern IR theories or English School. The third type is materially individualistic with classical realism being its example. The fourth type is ideationally individualistic and encompasses e.g. classical realism (Wendt 2001, 28 – 33).

From the perspective of this typology, CLG could be regarded as an approach that is rather agent-based, as it presupposes that individual agents try to construct and reconstruct both the legal order as an ideational structure and the physical space as a material structure in order to suit their power-interests. Nevertheless, the structure (field of rules and physical constraints bound to certain space) shall afterwards restrict the actions of agents, sometimes entirely independently on the will of the original agent who intended to establish that structure. Moreover, sometimes the physical world as a material structure can determine the attitudes and behaviour of actors entirely independently. Therefore, CLG is in the similar category as other approaches that consider agent and structure mutually constitutive. To underline the specificity of CLG in comparison to those other approaches, we need different classification of CLG theories.

Another available typology of (IR) theories was provided by Cox (1981) who separated the theories on **critical** and **problem solving.** Problem solving theories attempt to find a conceptual fix on eventual problems; those theories see themselves as independent of the outer world. On the other hand, Critical (or holistic) theories rather question the entire status quo. They search for alternatives to this status quo and admit their own subjectivity.

As implied by its very name, critical legal geography falls within the category of critical theories. Still, by employing this typology, we are not able to distinguish CLG from other critical or postmodern IR theories.

Further classification of IR theories was offered by Chandler and Hynek (mimeo) who sorted the theories – or in their words epistemes – according to their **relation to temporality**. They distinguished three different epistemes each basing on different perception of time dynamics (temporality).

The first category is based on timeless equilibrium, theories in this category presuppose everlasting preservation of the status quo or its key features. Realism as a typical representative of this category vests on a few crucial assumptions about constant rules that define the actions happening on international scene. Those assumptions are supposed to be unchangeable in time. Therefore, realism or other theories in this category do not anticipate change and believe that the core principles always remain the same.

The second category of theories entails a typical feature of *telos*. Mainly liberal theories in this category believe in learning, improvements and skill enhancement of actors in interaction over time. Therefore, they necessarily presuppose that temporality results in changes and the history is therefore heading reach towards certain (hopefully positive) aim, so called *telos*.

Thirdly, last group of theories is coupled around resilience and complexity considerations. Resilience approaches emphasize the "bouncing-back" and capacity to recover, therefore they engage in a backward looking, process tracing exercises.

Hom et al. (2016) developed the idea of temporality further, using it as a basic lens to re-evaluate key concepts of world politics. Temporal classification has been offered also by Berenskoetter (2017) who to certain extent similarly to Hynek and Chandler (mimeo) distinguished on the basis of temporality and social space, thus similarly categorizing realism, liberalism and postcolonialism.

It would be hard to classify CLG according to this matrix, because the element of *space* could not be sufficiently reflected by this classification. Moreover, from this perspective, CLG displays features from all the three temporalities. Both space and time

are "ordering systems inherent within social practices and activities", which are influenced and co-constituted by social perceptions and constructions (Harvey 1996, 253), including the perceptions and constructions in the sphere of law. The task of CLG is therefore to explore the production of different spatio-temporalities reflected and fixed by law (ibid.). By doing so, CLG embraces parts of all the three logics of temporality.

Firstly and most importantly, there is a backward process tracing of *resilience temporality* present in CLG within its attempt to identify roots of current legal order or the ways to spatial recoveries and remedies: "legal geographer, studying how law makes space may often need to work backwards in time in order to make sense of a currently persisting spatio-legal regime, because of this 'dead-hand' effect that law can have in space across time" (Benett and Layard 2015, 67).

Secondly, there is a *temporality of liberal telos* within CLG represented by the fact that the law is supposed to reflect, bring upon change and develop. Future brings changes both to law and space. Both "happen" in time as a result of negotiations, clashes of powers and symbols at certain time; space is a dynamic coexistence of social relations that constantly develop (Massey 1992, 81):

> "There can be fixity and flow, with studies recognising that the spatio-legal reaches across time, its effects ebbing and flowing – or sometimes carrying effects through time in a way that becomes detached from the spatio-material context for which it once came about (…) sites are also socio-legally and spatially co-constructed moment by moment and task by task. Thus, the legal geographer's task is to work out how all of the elements – the spatial, the social and the legal – fit together…" (Benett and Layard 2015, 67)

However, the presence of liberal telos as an ultimate aim of the development in time might be unclear for or even disputed by CLG. As a critical theory, CLG claims that law may legalize or legitimize the domination of one over another or it may re-introduce and reproduce domination. Thus, instead of discovering way to liberal telos, CLG might prefer revealing who and how attempts to dominate the space through law. This everlasting struggle is much closer to the logic of the (realists') timeless equilibrium.

In conclusion, we may assume that the above discussed classifications of IR theories (material vs ideal; structural vs agent-driven; problem-solving vs critical; and timeless vs linear vs backward looking) allow us to situate CLG among IR theories, but its positioning and distinguishing from other theories is not exactly neat. Therefore, this dissertation presents a new classification derived from a scheme provided by Lawrence Lessig (1999) and introduced in the next section 2.3.2.

2.3.2 Classification based on Lessig's four determinants (constraints) of behaviour

The following lines describe Lessig's typology, which is consequently used to categorize IR theories according to four key determinants of action. The typology is used to sort the IR theories and justify CLG as the most suitable conceptual framework for the purpose of this dissertation.

Although Lessig did not intend to use his original analysis as a tool to sort theories in IR into different categories, he implicitly invented a matrix suitable for such exercise.[51] Lessig inquired how human conduct was regulated, and what factors could regulate or constrain human behaviour. He assumed that there are four key determinants of behaviour. He called those determinants of behaviour "constraints". One of them was valid law, which is supposed to regulate human conduct and constrain behaviour. Lessig emphasized that law is not the only constraining (determining) element that influences human behaviour, but identified three other elements: norms, market and architecture. This complex perception helps to avoid a misleading presupposition that "the behaviour is shaped primarily by disposition rather than by situation" (Benforado 2010, 826). All the four determinants of behaviour are described below.[52]

Firstly, human behaviour is regulated by valid **law**. By the system of prescriptions and prohibitions, law sets the acceptable limits of human behaviour. Secondly, human behaviour is regulated by **norms**. "Norms too, like law, regulate by threatening

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[51] Indeed Lessig (1999, 501) admitted that his classification might be suitable in other disciplines: "My aim is to show that there is something general about how we might think of regulation." Although focusing on legal regulation of cyberspace, he aspired to provide more universal classification and ask "questions about regulation that should trouble us as much about real space regulation as they trouble us about law in cyberspace" (ibid. 503).

[52] The order in which the determinants are described does not imply that some of them are more important. All the factors have the same significance.

punishment ex post. But unlike law, the punishment of norms is not centralized. It is enforced (if at all) by a community, not a government. In this way, norms constrain" (Lessig 1999, 507). Thirdly, human behaviour is regulated by an element that Lessig called "**market**". Market is supposed to regulated by price (ibid. 508), constraining who can afford what, what are the offerings and demands. Fourthly and finally, the behaviour is regulated by a real physical space, by so called **architecture** (ibid. 508). For example, architecture of our body constrains us in staying underwater, but enables us to conduct detailed manual work. Architecture of plastic bullets caused them to be non-detectable by X-ray and as such lead to their prohibition etc. In this way, physical space regulates and constrains behaviour.

Chart 2.IV: Four determinants of behaviour by L. Lessig (1999, p. 509)

Although Lessig described the features that influence human behaviour (cf. chart 2.IV), the same matrix may be used to sort the theories of international relations into different categories. The decisive question is which feature determining or constraining the behaviour is being emphasized by which theory. To demonstrate this, we may shortly examine and categorize several examples of theories, namely geopolitics, constructivism, rationalism and legal positivism.

Geopolitics emphasizes architecture as it focuses on the role of space as determining factor of international politics. For geopolitical scholars, spatial disposition remains decisive for actor's success in international politics. Some of the classics such as A. T. Mahan and his followers may ascribe more importance to the space of World seas, while others such as H. Mackinder may prefer the space of mainland. Others such as N. J. Spykman assess the importance of both. In all cases, it is always the space that primarily empowers, constraints or forms the behaviour of actors. Therefore, the

primary attention should be dedicated to "spatial dimension and the geographical differentiation of problem issues" (House 1984, 4). Other factors, such as "norms", "law" or "market" are of a secondary importance for geopolitics, because they are determined by the space.

On the other hand, **constructivism** is extremely keen on importance of norms, their establishment and functioning: "constructivists have argued convincingly for the need to understand state interests and identities – and consequently, security practices – as 'socially constructed'" (Varadarajan 2004, 320). The construction is not simple reflection of external material reality, but it is burdened with added meanings that include normative imperatives (McDonald 2008, 66). As Reus-Smit argued, "the institutionalized norms that shape actors' identities help define not only their interests but also their strategic rationality" (Reus-Smit 2005, 203).

Constructivists therefore claim that the artificially built standardized opinions and ideationally prescribed attitudes predestine the actors to behave in some way, i.e. to align their behaviour with certain norms that are embedded in constructed reality. "Constructivism has generally eschewed a focus on the power politics of security and focused instead on the development of benign norms for managing interstate competition and institutionalizing broader forms of political community" (McDonald 2008, 60). Norms in constructivist perspective do not only regulate mutual interaction, but also influence self-perception and aspirations. Moreover, they significantly contribute to the formation of other determinants, such as "law" or "space". Similarly, norms establish one's perception about what is valuable on the "market" and what costs are worth expending for what benefits.

Thirdly, economic ("commercial") **liberalism,** eventually game theory or rationalism in general, emphasize "market" as a decisive determinant of behaviour, because actors always weight costs and benefits of certain behaviour by seeking to generate own surplus. Economic liberals presuppose that actors opt for the course of action that will bring most benefits at the expense of the least costs. Typical example of this deduction is that intensive international trade makes war less likely, because such trade must necessarily make conflict, sanctions and other coercive means too costly with too few benefits (Moravcsik 2001, 50).

From "fathers of liberalism" such as Adam Smith, David Hume and David Ricardo to sophisticated analysis of Stephen Van Evera, Thomas Friedman or Erik Glatzke (cf. Navari 2008, 33 – 35), the economic liberals always regarded the market as a decisive element for behaviour. Likewise, game theorists (e.g. Nash 1951; Bueno de Mesquita and Lalman 1992; Zakaria 2001) expect that the market is most decisive, because it is the place where the actors engage in their games and choose various strategies according to their expectations and estimated benefits. Although realistic and liberalistic game theorists disagree on the fact whether the actors prefer absolute or relative gains (cf. Powell 1991) and which situation constitute zero sum or non-zero sum game, they embrace the axiom of "market" as decisive factor determining the behaviour of *rational* actors[53]. Other elements such as norms, law and architecture can just increase or decrease the costs and benefits.

Fourthly and finally, **legal positivism** focuses on valid law (*ius positivum*) as the key action determinant. Already Jeremy Bentham in his *Plan for a Universal and Perpetual peace* (1843) regarded international law as the key tool that should restrict unfavourable war-prone behaviour of states and provide better ways of dispute settlement such as international arbitration. Although he departed from utilitarian foundation, striving for greatest happiness for greatest number, which brings him close to some liberal thinkers, he still saw international law as the most important tool to achieve this aim and influence the behaviour of actors. Similar assumptions that law may play a decisive role in shaping the behaviour of actors significantly resonated in the period between two world wars, in regard to League of Nations (cf. Zimmern 1936) or later in considerations about most desirable design of other international institutions. This belief also re-emerged with legalisation and legalism after the Cold War. Legalisation means intensive production of rules that establish institutions, legalism means the trust in progress that can be achieved by law (Keohane 2012).
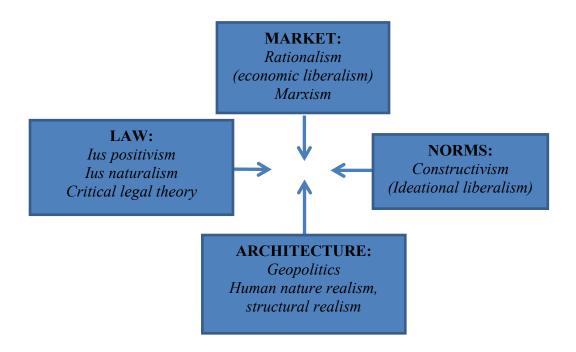
In conclusion, each of the four above mentioned theories: geopolitics, constructivism, liberalism and legal positivism, prefer one of the action determinants over the three others. Some of them additionally presuppose that the key determinant influences or embraces also the others, but they are rather reluctant to fully recognize that all the determinants may influence and mutually constitute each other. Finally, the theories

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[53] Therefore, the middle ground between the two is sometimes denoted as rationalism (cf. Fearon 1995).

given as examples often tend to compete rather than complement each other. This is valid also for other IR theories[54] that could be classified according to four behaviour determinants. Such classification for other theories is visualized in the Chart 2.V.

Chart 2.V: Categorization of some of the IR theories inspired by Lessig's (1999) four action determinants:

2.3.3 Benefits of CLG according to classification based on Lessig

After discussing Lessig's classification, we may focus on the reasons why this dissertation uses critical legal geography. Firstly, CLG comprises all the important determinants to tackle the case: law[55], architecture (space)[56] and market (power)[57],

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[54] Of course, there are exceptions combining several determinants, e.g. market and architecture, as Mearsheimer (2001) did when he combined offensive realism assumptions with assessment of geographical conditions and location of particular nation-state.

[55] But also norms to the extent they are intended to become the law or shape the law.

[56] Space can be undoubtedly identified with the category of "architecture", because space represents the architecture of our surroundings, our physical environment that sets tangible constraints to our actions.

[57] Power is identified with the "market" category, because it is deemed the ultimate benefit that the actors seek on the international "market". Countries treat power both as a basic tool and an ultimate goal in international relations. Similarly to welfare, power is what the countries want to gain and towards what they consider costs and benefits of. Power and welfare are usually mutually constitutive. In human nature realism or structural realism, power could be also put in the category of architecture. Human nature realism believes that the desire for power is inherent part of our brain's architecture. Structural realism believes that power pressures are the result of anarchical structure of international relations that creates the same units and exposes them to

without prior bias about the overwhelming importance of one of the determinants. Secondly CLG focuses on the interaction of those elements; it examines their mutual constitution and interactions. Thirdly, CLG emphasizes the importance of law, but not only as a regulation of international relations but also as an instrument of actors. Fourthly and finally, it favours more eclectic approach, rather combining valuable inputs from various disciplines than engaging in competitive comparisons.

Such eclectic and combinatory approach denoted as "integrative pluralism" was e.g. supported and proposed by Dunne et al. (2013, 405–425) because it can greatly contribute to understanding of specific complex cases. Case of SIDS in front of the UNSC could be in author's opinion one of them. The wide grasp that the CLG offers assesses spatial, legal and power-related aspects of the case, which is necessary here. It is the answer required by the complex situation of the UNSC discussing the situation of "sinking islands" five times and never reaching any tangible outcome.

CLG helps to reveal complex causes of the UNSC stalemate, because it draws inputs from various disciplines, as explained in the section 2.1 of this chapter. The multidisciplinary combinatory approach should be perceived as an advantage or even a necessity to tackle the case, rather than a shortcoming of theoretical impurity. After all, Jackson and Nexon (2009) claimed that different IR theories do not represent mutually exclusive paradigms but rather Max Weber's ideal types, therefore their elements can be combined. Additionally, Baylis, Smith and Owens (2011, 7) argued that different "worlds" or parts of the World can function according to different theories; the theories can coexist together, as each of them focuses on different essentials of IR. The possibility to examine all those worlds is necessary in case where those worlds clash during the negotiations of the UNSC.

Apart from those benefits of combinatory approach, also the CLG's focus on the interactions between individual determinants gains special importance, as no other theory except CLG offers adequate conceptual views to examine those interactions. For this reason, the following lines deal with the interactions in more detailed way.

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security dilemma. Thus, struggle for power is inevitable result of IR anarchic architecture. Nonetheless, from rationalists' perspective, power is part of countries' calculus. It is put on scales with various costs and benefits. As long as we accept those presuppositions, the "market-power" analogy works, although it has certain limitations.

Lessig described that the four individual determinants (in Lessig's words "constraints") coexist and influence human behaviour in congruent or concurrent manner:

> "These four constraints (…) operate together. For any particular issue, they may complement each other, or they may compete. (…) Though of course the way they regulate differs. Law regulates (in this narrow sense) through the threat of punishments ex post; norms regulate (if they regulate effectively) through ex post punishment, as well as ex ante internalization; markets and architecture regulate by a simultaneous constraint — one doesn't walk through a brick wall only to be punished later on." (Lessig 1999, 511).

Moreover, the four determinants influence also each other.[58] Norms might be gradually accepted by the government and approved as a valid law. Or the norms might deny valid law (classical example would be driving faster than prescribed on long straight roads which is in fact tolerated by the police).[59] Law and legal regulation may change the architecture (space) by altering specific spatial ordering, which also results in change of the norms; prisons and panopticon-like structures being typical example.[60] The space may also cause the law to be hardly applicable, by decreasing the possibility of its enforcement. Last but not least, law may increase the costs of certain behaviour or decrease the benefits of this behaviour to make it less tempting on the market. Similarly, low costs of by-passing the law without being revealed and punished may render the law irrelevant and ignored.[61]

It is exactly CLG that allows us to examine how the important determinants interact altogether: (1) how law orders space (architecture), (2) how space determines the law or the way how the space forces actors to shape or instrumentalize the law, how (3) power influences the adoption and interpretation of law and how (4) law fixes the distribution

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[58] By focusing on the way how those four determinants influence and co-constitute each other, eventually how the actors try to use them for their own benefit, the scheme based on Lessig differs from pure behaviourism. Staying just with behaviourism would be too shallow and superficial for this categorization and justification of the use of CLG.

[59] For a brilliant account on a precedence of *local* norms over the valid *national* law see Ellickson (1991) or reaction on his book by Friedman (1992).

[60] Zimbardo's experiment illustrated how the empowerment through law and space impacts on norms and relates to routines or practices.

[61] For further examples how law, space, market and norms interact see Lessing (1999).

of power.[62] In other words, CLG unlike any other available theory examines how law can interact with the space in order to (re-)produce power and how does power project through law and space, as was described in the section 2.1.1 – 2.1.3 of this chapter and applied on the case of SIDS in the table 2.II. The details of those processes are also visualized in the table 2.VI below.
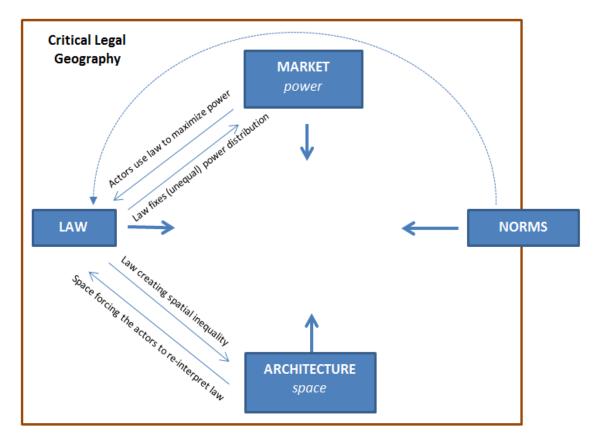
Table 2.VI: processes analysed by the Critical Legal Geography:

By using CLG we may focus on how specific space can represent a regulatory field of frozen power structures of hierarchy and subordination.[63] CLG is also an approach benevolent enough to allow the employment of various sub-concepts such as lawfare, or commutative and distributive justice, which enables an assessment of all the aspects of spatio-legal and power-related elements.

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[62] And eventually how those determinants interact with the norms, or how the norms are intended to influence the behaviour indirectly through interacting with the law. In international law, norms that are long time adhered to can transform into international legal custom, actors may try to claim that a norm already gained the legal enforceability and thus became (customary) law, or that emergence of particular norm (e.g. through securitization process) influenced interpretation of particular law.

[63] Lessig (1999, p. 504) talked about "zoning", i.e. creating certain space that can or cannot be regulated, i.e. space that is distinctive because it is specifically interconnected with certain rules or their absence.

Practical example, how CLG can facilitate our understanding of the case, will be described in the section 5.1 of this dissertation focusing on the behaviour of SIDS that face sea level rise. The sea level rise caused changes in spatial architecture of SIDS' territory. SIDS were therefore forced to a lawfare-like attempt to re-interpret the law, the UN Charter, and try to persuade the UN Security Council that their case could be admissible in front of the Council. If they succeeded, the new interpretation of the law accepted by the UNSC could help them to change the power distribution within the system by making the UNSC to take measures mitigating the impacts of the climate change on SIDS. Thus, the *architecture* (space) determined the way how SIDS interpreted the *law* (the UN Charter establishing the UNSC role) in order to alter the distribution of *power* (market) by eventual UNSC decision on measures to assist SIDS, ideally CO_2 restrictions.

On the other hand, rapidly developing states needed a space without severer restrictions of CO_2 emissions in order to grow their economies and accelerate their accumulation of capital through the production. Therefore, they opted for the interpretation of the law which would not allow the UNSC to hear the case of SIDS and thus help them in preserving their power. In this way, their interpretation of law strengthened the spatial inequality between the rapidly developing states and SIDS.

Finally, the developed states wanted to retain power over the decision, which influenced their interpretation of law to the extent that they considered the case acceptable before the UNSC, but they called for more expert inputs and trans-organizational cooperation. Thus, they wanted to retain power, while avoiding the responsibility for the final decision resulting in spatial inequality.

In all those situations, we can observe how law, architecture (space) and power interacted together, how they drove the behaviour of actors and/or were used by the actors to influence the behaviour of others. Through CLG, we can closely examine all those processes; this is done in chapter **5** (section 5.1 for SIDS, section 5.2 for the rapidly developing states and section 5.3 for the developed states). This chapter continues with an assessment of several theoretical alternatives to CLG that could be potentially used to understand the case of SIDS in front of the UNSC, but without such persuasive conclusions as CLG.

2.3.4 Rebuttal of other theoretical alternatives and of CLG critique

The following lines describe why CLG is better in understanding the case of SIDS than other selected theories, namely realism, securitization theory, rational choice perspective on international institutions and Green theory. Although those four approaches[64] could eventually also bring theoretical insights for the dissertation, they would not allow us to understand the case in its entirety. Additionally, some expectations of those theories would not fit empirical details of the case as suggested in the table 2.VII. In order to demonstrate that CLG represent more helpful approach in this case, this section utilizes the conclusions from previous section 2.3.3 concerning the four determinants of behaviour. The section also briefly acknowledges and reacts to certain criticism concerning CLG.

Table 2.VII: Expectations of other theories and benefits of CLG

According to theory of:	Rapidly developing states…	SIDS…	Developed states…
Realism:	…would veto any discussion.	…would "suffer what they must" and would not engage with the UNSC.	… either would not engage in the debate or would use the debated issues against the rapidly developing states to limit their growth and keep the advantage.
Green theory:	…should cooperate accordingly to achieve sustainable development (Green theory is normatively based).		
Securitization theory:	…would de-securitize the issue.	…would securitize the issue.	?
Rational institutionalism:	…would veto any discussion (similar "rationalist" basis as realism).	…would address a different forum, where they could exploit their advantages.	…would bargain with SIDS or rapidly developed states for support.

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[64] I considered those four approaches as best available alternatives to CLG, which was confirmed during my various consultations and presentations of the topic, where those approaches were frequently suggested to me as conceptually competitive with CLG. Also for the sake of brevity, I chose to provide written short rebuttals for those four approaches. Although I acknowledge that other approaches (e.g. liberalism, political economy) could be also partly relevant, I do not believe their relevance would exceed the four alternatives, I decided to discuss. Moreover, provided rebuttals could be partly relevant also for them. And finally, basic justification of the use of CLG is based on Lessig's scheme. CLG catches relevant action determinants, unlike most of other theories.

CLG:	CLG allows to understand how it is possible that those states did not resort to the veto but relied on disputing sufficiency of the UNSC mandate.	CLG elucidates how SIDS tried to re-define the mandate and adhered to distributive-justice basis of this mandate.	CLG allows to grasp behaviour of those states through the concept of the empire in denial (will be described in section 5.3).

Realism

First of the theoretical alternatives which might explain the case of SIDS in front of the UNSC could be realism. Realism in most of its forms (cf. Elman 2008, 16) relies on self-interest and self-help. Thus, it would be particularly strong at explaining why the rapidly developing states objected to the UNSC issuing any decision concerning SIDS or environmental threats in general. Realism also could potentially explain why SIDS addressed the UNSC with their plea; they were just trying to use an international organization for their benefit. However, realism could not explain why the SIDS addressed the UNSC repeatedly, when they had not succeeded during the first meeting; yet in realistic paradigm, "the week suffer what they must". Additionally, there are three important weak spots of eventual explanation of the case provided by realism.

Firstly, realism in most of its forms could not provide convincing explanation why the UNSC would deal with SIDS at all. Realists seldom exceed narrow analysis of "manipulation, accumulation, and balancing of power" (Legro and Moravcsik 1999, 6) in its hard, perhaps crudest, mainly material or military form. According to their assumptions, certain rapidly developing states that were permanent UNSC members would use their right of veto, which they were awarded in the past thanks to their vast military power. By this veto, rapidly developing states would stop any negotiations about SIDS on the UNSC floor at its very beginning.[65] However, the rapidly developing states did neither resort to veto nor talk about the veto directly. Realism is not able to convincingly answer why.

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[65] The rapidly developing states as the strong would simply do what they could, while SIDS as the weak would have to suffer what they had to (cf. Wohlforth 1995, 108 paraphrasing Thucydides).

Even if we accepted realistic argument that international institutions serve as a legitimization of power projection by the strong over the week (cf. Mearsheimer 1994/1995), it would still be very unusual for realistic paradigms that SIDS were given so much space to present their arguments in front of the UNSC.

Secondly, realism is unable to explain nuances in the behaviour of countries, such as implicit references to commutative or distributive justice, or the rhetoric style of the developed states that wanted to retain power but also to avoid responsibility.

Thirdly, realism generally pays a severely limited attention to law and norms. Although realists could agree with the statement that law serves as an instrument of power-related interests, CLG is much better at critical analysis of the way how power interacts with the law and how law contributes to presentation of things as normal and natural and thus fixes status quo.

Rational-Choice Institutionalism

Second viable theoretical alternative for analysing the case of SIDS in front of the UNSC would be rational choice perspective on international institutions. Scholars (e.g. North 1990, Riker 1980, Weingast 1996) taking this perspective develop originally economic assumptions of Coase (1937) or Williamson (1975, 1985) by using game theory and rational choice models to analyse international institutions and organizations.[66] They presuppose rationality of actors and depart from two basic approaches. The first conceives international institutions as external constrains or as a given set of rules that restricts the options of actors. The second sees institutions as endogenous and created by actors: "they are simply the ways in which the players want to play" (Shepsle 2006: 25). Shepsle describes an institution as an equilibrium or a situation when majority of actors agrees to play according to agreed rules. Institutions "do not compel observance, but rather reflect the willingness of (nearly) everyone to engage with one another according to particular patterns and procedures (nearly all the time)" (ibid., 25). Strong actor may define or alter the institutional rules as long as the others are still willing to follow (ibid.).

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[66] I am aware that sometimes there is a distinction drawn between "international institution" and "international organization". Nonetheless, for the purposes of this section, I do not consider it necessary to discuss it and distinguish those two terms. Even if we understood "international institution" in the wider sense as specific set of respected rules, then international organization would be just a specific institution.

The basic motivation for weaker actors to follow is that institutions help to avoid deflecting opportunistic behaviour. Moreover, institutions decrease transaction costs, facilitate information flows and make the situation more predictable for the actors, reducing uncertainty and helping actors to choose between alternatives (Weingast 2002, 669 – 670). Thus, thanks to institutions actors dispose of barriers for Pareto efficiency and increase total gain (cf. Vaubel 1991, 27; or Dillon and Ilgen, and Willett 1991). Institutions help states to avoid pitfalls of decentralizations (Abbott and Snidal 1998, 3 – 32).

In ideal case, institutions should also protect the actors from being massively taken advantage of (Weingast 2002: 683). On the other hand, actors *"use international institutions to further their own goals, and they design institutions accordingly"* (Koremenos, Lipson and Snidal 2001: 762) in order to maximize their benefit, sometimes at the expense of others. Institutions are thus formed to serve interest of states (Krasner 1991). The success in using international institutions depends on the power of the states that use them and incentives for other members of this institution to accept or oppose such use.

This distinguishes rational choice approach to international institutions from realism and constructivism. While realism claims that institutions are just a disguise for the interests of the powerful, constructivism would advocate them as rather independent entities which might proliferate regardless of the interest of their original founders (Koremenos, Lipson and Snidal 2001: 762)[67]. As already mentioned, rational choice institutionalism conceives institutions as an equilibrium of actor's interests, which may however face attempts of actors to redefine it.

Rational choice institutionalism could represent very valuable theory to approach the role of the UNSC in "sinking islands'" case. It contains tools how to analyse actors' positions within such institution and their bargaining strategies. Nonetheless, this dissertation still preferrs CLG for several reasons. Firstly, rational choice institutionalism is sometimes criticized that it embraces to much simplification for

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[67] Abbott and Snidal (1998: 27 – 29) argue that realistic, constructivist and rational-choice explanation may all be applicable and valuable, because each of those approaches might tackle different aspect of an international episode. As a result, identification of a best approach is unnecessary.

understanding the evolution of complex and large organizations (Schneider and Ershova 2018).

This point is closely connected to other points. Secondly, it might be hard to fit all the actors in front of the UNSC into rational choice model or find a convenient model for such situation. Thirdly, rational choice institutionalism encounters problems when dealing with informal institutions (ibid.), subtle rules or implicit meanings. It expects that actors have clearly defined interests that they are directly pursuing. Nonetheless, this might not be the case of the "sinking islands" in front of the UNSC. This dissertation attempts to demonstrate that actors tried to achieve their goal indirectly, by using legal interpretation, invoking background rules or blurring the borders of responsibility.

Rational choice institutionalism expects international institutions to reduce uncertainty. Despite that, in given case of SIDS in front of the UNSC, the behaviour of actors was intended rather to increase uncertainty and re-define the rules of the game. As will be demonstrated in chapter 5, each of the group of countries wanted to shift the rules in their own way. Through specific legal interpretations of the UNSC role and mandate, possible ways of engagement of the UNSC became more uncertain. Certain actors did not even directly state what their political intention was. To the contrary, they used legal argumentation to make their position seem apolitical, natural and simply given.

To demonstrate this further. We may compare the hypothetical expectations of rational choice institutionalism with the case empirics. Firstly, according to rational choice institutionalism, rapidly developing states should directly veto the discussion or signal willingness to veto any of its outcome, if it did not fit their interests. However, they did not do so, instead of "veto" they claimed that he UNSC missed the mandate.

Secondly, "sinking islands" acting in rational-choice world should have preferred other UN fora and existing coalitions (AOSIS etc.) to get a specific resolution passed. In the General Assembly, the "sinking islands" would have benefited from wider participation having much more votes. Or they also could have more robustly relied on already established negotiations structures of the UNFCCC. On the UNSC platform, those nations would be rather powerless, so it would not be rational and efficient to address this Council, because the "sinking islands" would be too week to get it in motion.

However, they were trying to get the issue on the UNSC agenda and redefine the UNSC mandate. Despite relatively powerless position, the "sinking islands" were able to direct UNSC attention to their case 5 times.

Finally, developed states would be expected to have no strictly given preference and thus eventually to bargain their support for one or other group in exchange for other benefits. However, they tried to keep the power over final decision while avoiding the responsibility for it.

CLG is more receptive towards the ways, how actors disguise their purpose and means used to achieve it.[68] Going back to Lessig's scheme, rational choice institutionalism would fall into category of theories that emphasize market and CLG offers wider perspective that fits better the characteristics of this case. Therefore, CLG took precedence over rational choice institutionalism, although this approach could undoubtedly also offer various advantages and insights into the case.

Securitization theory

Another alternative which could be used to theoretically grasp the case of SIDS in front of the UNSC is securitization theory. Securitization means a "process in which an actor declares a particular issue, dynamic or actor to be an 'existential threat' to a particular referent object" (McDonald 2008: 69), or in Balzacq's metaphor "linguistic manufacture for threats" (Balzacq: 2005). Securitization, as described by Copenhagen school (Buzan and Waever and Wilde 1998, 27), would represent an optics for analysis of several factors. Thanks to it we could examine who intended to proclaim the environmental situation of SIDS as security threat, which securitizing move those speakers used for their purpose and whether the public accepted or rejected this fact (cf. McDonald 2012). Consequently, we could study the reasons why securitization failed (UNSC did not address the situation of SIDS facing sea level rise), what impacts the

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[68] For similar reasons CLG seems more plausible than political economy. International Political Economy would be able to explain why particular actors took their positions, i.e. how their statements were influenced by their economic characteristics or what determined their behaviour (cf. general analytical approach of Persson and Tabellini 2000). It would not, however, assist in outlining how the actors tried to reframe and redefine the role of the UNSC to suit their interests. Especially, political economy could not show, how law and legal interpretation is supposed to serve as a justification for creating or maintaining power-structure. This would be similarly valid for World system theory.

securitization attempt aimed at or which extraordinary measures were supposed to be introduced.

Nevertheless, the major reason why to prefer CLG to securitization theory for the purpose of this dissertation is that securitization dedicates rather little attention to space, valid law and market. Recalling the classification of IR theories based on Lessig, securitization theory stays in the category of theories emphasizing "norms". Securitization process relies on linguistic and other semiotic norms and rules. By employing those rules, it intends to introduce new set of norms in regard to treatment of particular "securitized" issue. Those new norms prescribe that certain successfully securitized issue should be treated in a specific way by a specific set of security practices.

Nonetheless, securitization theory rather ignores the space as one of the key action determinants. Moreover, it also marginalizes the role of law. Through its lenses, law may just finalize a process of securitization by codifying its results such as extraordinary measures that are introduced as an outcome of securitization. Theory of securitization does not allow us to recognize how actors use or misuse existing law for their purpose.

In other words, securitization limits security to "a self-referential practice, because it is in this practice that the issue becomes a security issue – not necessarily because a real existential threat exists but because the issue is presented as such a threat" (Buzan and Waever and Wilde 1998: 24). Thus, securitization focuses on the process rather than the reasons why the process is commenced by an actor or how this actor uses applicable law to support his claim. As a result, other determinants such as law, space or market remain rather disregarded by securitization theory. Even Balzacq emphasized that securitization should be seen rather as "strategic (pragmatic) practice" (Balzacq 2005, 172) than self-referential practice. Consequently, it is vitally important to ask why the actors resorted to this practice and how the dynamics between space, market, and law determined their decisions. Therefore, CLG offers better tools for in-depth analysis of the strategies of actors in case of SIDS.

Moreover, securitization theory would not be able to explain an important puzzle. When the UNSC discussed the situation of SIDS, various countries resorted to securitization

moves. They proclaimed that rising sea level or climate change represented a threat for SIDS or wider international community. But they used this specific assertion to support different proposals. Some of them insisted that this threat is a reason why the UNSC should get fully involved, using securitization as a tool how to establish the UNSC mandate. Others admitted existence of this threat but insisted that it displayed special characteristics, and therefore it could not be addressed by the UNSC at all. Finally, other countries claimed that special character of this threat represented the reason why the UNSC should cooperate with other UN bodies. In conclusion, securitization was used for very different purposes and the securitization theory would not be able to elucidate why.

This claim is empirically underpinned in the 5th chapter. The research identified securitization moves in the UNSC negotiations. For this identification, the conceptual definition of McDonald (2008: 69) was used. A speech act becomes securitization move, if the speaker as securitizing actor proclaims certain issue a threat to referent object. This securitization move is usually intended to introduce some specific extraordinary measure. Therefore, securitization as a speech act must have three elements: a speaker, securitized issue and a referent object;[69] and it should aim at by-passing standard discussions and introducing special arrangements.

In given case, securitizing actors were speakers pleading in front of the UNSC on behalf of their countries. Relevant units of the text were chosen according to securitized issue: the speeches where sea level rise or climate change were proclaimed to be a threat were selected. The referent objects were either SIDS or international community and mankind as whole. As will be described in chapter 5, those selected securitization moves supported different claims. I.e. different securitizing actors used the same mean (securitization of the same threat to the same object) to promote very different actions. Securitization theory itself is unfortunately insufficient for explaining this and tackling the examined case.

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[69] Audience is sometimes regarded as a fourth factor required for securitization. Being aware of this fact, this dissertation decided to disregard it, because for all speeches, the audience was the same – other countries present at the UNSC negotiations.

Green Theory

Green theory, the last theoretical alternative discussed in this dissertation, presupposes that the institutional and political structures together with behavioural and economic patterns of world are the main source of current environmental crisis. It asserts that those structures and patterns must be altered (Paterson 2005, 236).[70] In using the classification based on Lessig, Green theory would be in a class of theories emphasizing architecture (environment) and norms and eventually market (to the extent of global capitalism critique). From the perspective of this dissertation, it does not pay sufficient attention to how actors use or misuse valid law to achieve their purpose. Additionally, it is (at least generally speaking) better at suggesting emancipatory alternatives than at analysing the strategies and attitudes of individual actors. To support this argument, the following lines will elaborate on three key concepts of Green theory as outlined by Patterson (ibid.): ecocentrism, limits of growth, and decentralization.

Firstly, **ecocentrism** is a concept supposed to alter anthropocentric thinking and emphasize the decisive character of nature for human survival instead (Eckersley 1992). As a result, current international structure of states should be changed in order to recognize centrality of the nature, replace competition by common responsibility and empower "all those potentially affected by ecological risks" to decide about policies generating ecological burdens (Eckersley 2004, 243).

Applied on the case of SIDS, those assertions implicate that the UNSC should abandon old patterns of thinking and deal with the case of SIDS, at least by issuing a declaratory resolution. This claim is inherently normative. However, it gives us little opportunities to analyse how individual actors reacted to the demands of SIDS raised in front of the UNSC; neither does it offer tools to describe how individual actors tried to define the role of the UNSC in the way that suited their interests.

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[70] In this regard, Green theory is different from environmentalism. Environmentalism may be demarked as a problem-solving approach positioned closely to liberal institutionalism. Environmentalism believes that current international structure based on states provides adequate mechanisms capable of dealing with climate change, e.g. through various environmental regimes. On the other hand, Green theory represents a critical approach. It sees the current world order as a problem, not a way to solution (Paterson 2005, 236). Environmentalism as such would also bring little conceptual contributions to this thesis. Environmentalists would presuppose that the countries could find an efficient institutional platform to deal with the situation of SIDS, so that SIDS would not have to address the UNSC at all. Such presupposition has however proved rather wrong so far.

Additionally, the sole notion of ecocentrism may be problematized. Fagan (2017) argued that by "placing nature first" the ecocentric and ecological approaches strengthen the division culture vs nature and the bi-directive, co-constitutive opposition between human and nature.[71] This division implicitly dominates the debate and might constrain it significantly. CLG on the other hand emphasizes various mutual interactions of space (environment) and power struggles; it perceives actors as both actively constraining and passively constrained.

Secondly, Green theory expects that the **limits of growth** (Dobson 1990; Meadows et al. 1972) must be set in order to avoid collapse. The possibility to grow is limited and the ever-accelerated growth should be replaced by sustainable development. While the "growth is quantitative increase in physical scale", the development could be regarded as "qualitative improvement or unfolding of potentialities'" (Daly 1990; Ekins 1983; Paterson 2005, 241).

In case of SIDS, this presupposition could effectively tackle the debate on CO_2 emission restrictions and perhaps also the possibilities of the UNSC to set the limits of growth. However, the basic claim arising from the application of this presupposition would be again rather normative. The analysis of the limits of growth would not be helpful in assessing the strategies of individual actors in front of the UNSC.

Finally, Green theory expects that **decentralization** could bring more empowerment and success in combating climate change (Paterson 2005, 237). Decentralization could create much efficient and nature-friendly structure. Also this assertion is prescriptive. It could be slightly confusing to apply it on SIDS' case in front of the UNSC. The UNSC is a council with highly centralized power, perhaps with the most significant concentration of power of the few over the many states in the world. On the one hand, decentralization argument would call for more inclusive approach than tackling the issue through the UNSC. On the other hand, it would not be able to explain what to do when the decentralized approaches have not yet brought satisfactory results, which might well be the case of SIDS.[72]

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[71] Cf. Hamilton (2017) for detailed account on this distinction - "humanity's separation, or dis-entanglement, from nature" (ibid.) in the age of Anthropocene, which will be described below.
[72] Cf. description of decision making under UN Framework Climate Change Convention and Intergovernmental Panel on Climate Change in the next chapter, section 3.1.

Discussion around decentralization would therefore just contribute to the debate whether the consequences of climate change should be solved by security organizations such as the UNSC as a security issue (cf. Deudney, 1990), under what circumstances and with what outcomes. Decentralisation would not bring any value added for the analysis of position of states and interaction of space, law and power in formulating and articulating this position.

At this point, the Green theory would also meet with general IR literature concerning security impacts of climate change. This literature tackles several aspects. It claims that congruence of ecological collapse and anarchical system of international relations can potentially bring disastrous results (cf. Kaplan 1994). It investigates the link between scarcity of resources and violent conflict (Ullman 1982; Gleditsch 1998; Homer Dixon 1999; Page 2000; Klare 2001; Zeitoun and Mirumachi 2008; Colgan 2013; Harrington 2014) or the link between climate change and conflict (Gleditsch ed. 2012; Burke et al. 2009; Salehyan ed. 2014; Selby and Hoffman 2014). It deals with impacts of climate change on human security (Redclift 2000; Barnett, 2001; McDonald 2011; Rüttinger et al. 2015), securitization of climate change (Floyd 2010; McDonald 2013; Peters and Mayhew 2016), "climatization" of security as the opposite process to securitization (Rothe 2015; Oels 2012, or McDonald 2012, Scott 2012.), or more generally altering security discourses (Corry, 2014; Trombetta, 2008) or resorting to complex perceptions of climate change and security interplay in a neo-liberal world order (Timoschenko 1992; Urry 2003; Harrison 2006; Nielsen and Reenberg 2012; Grove 2014; cf. also Chandler 2014, Stark 2014 Chandler and Reid 2016).[73]

This literature (as well as decentralization argument applied on the case of this dissertation) assesses the relationship of climate change and security. But again, it does not allow us to decipher the attitudes of actors and ways they shape the role of international institutions such as the UNSC through legal interpretation. Those reasons justify why to prefer CLG for the purpose of this dissertation also at this point.[74]

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[73] Cf. Dalby (2018, 1): "The big question for security scholars has been, "Will climate change cause conflict?" but this now needs to be superseded by a focus on a broader series of questions about institutions and adaptation that get beyond simple notions of resilience as the ability to bounce back after disruptions."

[74] Some authors suggested that the relationship between climate change and security must be assessed carefully and simultaneously from various perspectives, because pure links, e.g. between rainfalls plus temperature data and incidents of armed conflict might represent spurious causality and bring little value added for policymakers (Buhaug 2010; Theisen et al. 2013)

In conclusion, while Green Theory provides useful mind-set for identification of emancipatory alternatives, CLG is better at understanding the attitudes of actors as well as complexity of spatio-legal dynamics of status quo. Because the latter point is more consistent with the aims of this dissertation, the dissertation opted for CLG.

Moreover, environment-related IR discussions in general and Green theory in particular have been lately reflected and to a large extent altered by the debates concerning the Anthropocene (cf. Dalby 2014, Dalby 2015). The Anthropocene as the successor of Holocene can be defined as "the geological epoch defined by human action" (Harrington 2016, 478):

> "In the Orbis spike reading, the Anthropocene emerges with the discovery of the new world, and as the authors write, 'implies that colonialism, global trade and coal brought about the Anthropocene'. It demonstrates how social processes built upon unequal power relationships, economic growth, and globalised trade, are determining factors in the functioning of the Earth system. Indeed, both events – the Orbis hypothesis and the zenith of nuclear testing – represent the capacity of humans to enact violence, war, and destruction. The Anthropocene entangles political, economic, cultural, technological, and material processes, bridging oft-divided critical discourses of social science and humanities with the natural sciences" (ibid. 484).

CLG may well resonate with the Anthropocene debates, because those debates draw upon insights from many different disciplines such as climatology, geology, philosophy, and visual arts (Harrington 2016, 479). CLG is multidisciplinary project as well. But CLG and the Anthropocene have even more in common. Anthropocene discussions tackle the relationship between the natural space and the social actions with their tremendous impacts. As Tantram (2017) paraphrased famous idiom, the environmental degradation is no more "elephant in the room"[75], but the environment becomes problematic itself: "the elephant is the room".

Similarly, CLG enables closer examination of spatial issues; it analyses complex dynamics between law, power and space in the age of Anthropocene. In this regard, CLG may be used to demonstrate, how the typical aspects of Anthropocene manifests within the UNSC micro-world. Thanks to it, we may see how the changes brought by Anthropocene impact on the behaviour of actors in front of the UNSC when solving the case of SIDS endangered by sea level rise.

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[75] A phrase meaning obvious but overlooked problem.

Harrington (ibid. 480) emphasized that IR in the age of Anthropocene "must reconsider some of its core understandings – particularly the relationships between the normative categories of humanity, the international system of states based on sovereignty and non-interference, and the natural world. It must abandon its atomistic theories of the international and begin thinking much more deeply about ideas of human entanglements with the larger world within which we exist." CLG may well serve this purpose, because it is not limited by classical IR atomistic theories,[76] yet it sufficiently reflects their outcome while analysing power-influences. Moreover, it adds the analysis of how human interact with the space and how law enters this interaction.

More generally, the case of SIDS seen through the lenses of CLG can be used to demonstrate how the new realities of Anthropocene collide with the structure represented by the UNSC. It can also provide insights into dynamics of indecision and denial of the UNSC when facing the extinction (cf. Harrington 2016, 492) threatening SIDS ecosystems.

Criticism of CLG

Before concluding, this chapter briefly acknowledges and reacts to some of the criticism connected with CLG. The first point of criticism concerns with the fact that CLG is too broad and too much encompassing, the second point challenges the choice of actors that CLG resorts to and appropriateness of its tools to examine the role of those actors.

Starting with the first point, Economides pointed while reviewing one of CLG publications that "it is difficult to imagine what falls outside the scope of this ambitious interdisciplinary project" (Economides 2005, 207). Some of the CLG concepts such as boundaries, land, space and property might be just reiterating the obvious (ibid.) and repeating the common-sense truisms that law and space are both important and both dependent on each other. This dissertation acknowledges this argument and understands it as a warning against further broadening of CLG concept. To react for this critique, this dissertation focused on core processes between law, space, and power outlined in part 2.1 of this chapter. The analysis of those processes is not shallow, and as long as it

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[76] I.e. no more "world built upon clean divisions between humans, states, and global systems" (Harrington 2016, 481).

remains interlinked with empirical analysis in chapter 5 and brings tangible results, which would otherwise stay hidden, CLG remains extremely useful.

Obviously, some of the findings achieved by using CLG might appear intuitive, self-evident and even banal. It might not be surprising or enlightening that rapidly developing large countries do not fear sea level rise, but rather concern about the development of their industry. Nonetheless, plenty of theories, or approaches such as the CLG, contains some self-explanatory and evident parts, but on the other hand elucidate also empirical records that would be otherwise not easily explainable. For CLG and this dissertation, it would be the argumentation of countries by "background rules" and the focus on how the actors try to reshape the UNSC functioning. The value added of CLG is summarized in table 2.VII above. Although the criticism of CLG as too broad and all encompassing approach represents its weakest spot and severe limitation, I believe that the CLG applied on the case can still bring innovative findings.

Second point of criticism was emphasized by Stychin (1996), when he remarked that CLG distinguishes the local individuals, the central power and the community, which is in between as a group of individuals bound by certain space. Stychin argued that the communities may be rather imagined (cf. later Adler 1997) and artificially constructed (e.g. through web) than arising directly from certain spatial or legal boundaries. Those communities do not have to be in the role of the oppressed and the ignored, they may in fact play very active role as described by assemblage thinking, epistemic communities theory, actor-network theory, or non-representational theory (cf. Actuto and Curtis 2014; Adler and Haas 1992; Graham and Healey 1999; Murdoch 2006; Sheppard 2008). A regular individual may also not always be in the role of the oppressed by the elites through valid law and central power (Stychin 1996). The regular individual with his consumeristic habits requesting satisfaction of his demands from the state may be the oppressor himself.

This dissertation acknowledges also this second critical point, although I believe that it is not directly applicable when we employ CLG on the case of SIDS in front of the UNSC. As outlined in the methodological chapter 4, the actors such as "SIDS", rapidly developing states or developed states were grouped and their statements were coded in categories according to their argumentation and spatial-economic characteristic. It is

rather unnecessary to work with imagined communities, if sorting on the basis of statements and geo-economic categories works in a satisfactory manner.[77]

Similarly, the actors in front of the UNSC are states and states are those who decide. Expert assemblages and networks could potentially influence such decision;[78] nonetheless the analysis proved that the "experts" were rather used by the states as the source of arguments. Therefore, this dissertation focuses on states as the actors in front of the UNSC and on the way how space, power and law interact in their attitudes when discussing the situation of SIDS in front of the UNSC.

2.4 Conclusion

This chapter introduced critical legal geography as the theory underpinning this dissertation. It analysed its key concepts: power, law and space, and most importantly, focused on theorization of interactions among those concepts. Because CLG represents rather new theory among other IR theories, this chapter categorized it according to several IR typologies. The chapter introduced a classification of theories based on the analysis of Lessig (1999) and used this typology to justify why CLG is more suitable than other theories for examining the case of "sinking islands" in front of the UNSC. The chapter ended by acknowledging and providing a rebuttal to some of CLG critique. The third chapter continues with the literature reviewed concerning the UNSC and SIDS.

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[77] Yet, some aberrations from general patterns of behaviour of countries are described in section 5.4 and they might have been caused by a communitarian thinking – a country assumes specific position because its close community ties with other countries, although in purely spatial terms, it would otherwise fall into other category.

[78] Experts indeed appeared in front of the UNSC during the discussions, being invited by the UNSC presiding country.

3. Literature and Sources Review

This chapter summarizes discussions in the academic literature and other sources concerning "sinking islands" and United Nations Security Council. It is therefore divided into two parts dealing separately with the former and the latter topic. In regard to "sinking islands", i.e. SIDS endangered by the sea level rise, the chapter defines SIDS and outlines what challenges they face. It continues with a description of how certain SIDS brought their plight in front of the UNSC and it divides the literature concerning SIDS into five main parts. In relation to the UNSC, the chapter describes relevant discussions regarding the UNSC. It clarifies how this Council was established as a commutative justice body focusing narrowly on military threats, although such perception has been problematized in the recent years; attempts (to certain extent successful) appeared to re-shape its position as a distributive justice body focusing also on threats that are not purely military.

This review is atypical. It intends to bring value added represented by sorting and systematizing the sources, identifying common epistemological positions and providing critical reflection of the resources. As a result, it is not only a pure literature review, but also a result of author's analysis and interpretation of the available resources.[79]

3.1 SIDS and sea level rise

The UN (UNFCCC, 2007) designated fifty-one countries as so-called SIDS, which is the abbreviation for Small Island Developing States.[80] Many of those countries, prevalently in the Pacific Ocean, face adverse impacts from climate change, especially sea level rise. Their highest points are frequently located just only few meters above sea level. Therefore the sea level rise can make their territory uninhabitable (cf. Australian Bureau of Meteorology and CSIRO 2014, p. 114, 131) and cause it to gradually disappear beneath the sea surface during approximately half of a century from now (cf.

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[79] I believe that every literature review must be to certain extent subjective. Therefore, I do not see as an obstacle, if I systematically sorted and critically interpreted the resources. Thus, the following literature review may serve as a basis and for the following research itself and a framework for references and triangulation.

[80] The group of SIDS was internationally recognized firstly during the meeting of the United Nations Conference on the Environment and Development in Rio de Janeiro in 1992 as will be described below.

World Bank 2002, p. 22; Leonard et al 2014; Wyett 2013)[81]. For this reason, those islandic countries struggling with the sea level rise have been nicknamed "sinking islands". This term is both incorrect and biased. It is incorrect because the countries are being flooded by rising sea level; they are not sinking (diving), which could occur only due to tectonic change. The term is also biased because it creates specific view of the islands, as described in section 3.1.2 of this chapter. Despite that, or perhaps just because of that, the notion became widespread buzzword symptomatic for the situation of those SIDS endangered by the sea level rise. This dissertation included the notion "sinking islands" in its title for the same reason. By referring to it the dissertation means those SIDS endangered by the sea level rise and located mostly in Pacific Ocean.[82]

Four members of this group, namely Kiribati, Tuvalu, Marshall Islands, and the Maldives are at particular risk. Their territory consists of many smaller islands and atolls. As a result, they suffer from even greater impacts of rising sea levels, high tides, water intrusions into low-lands and storm exposure (Barnett and Adger, 2003). Salt seawater hinders agriculture, kills coconut palms and other plants and floods wells with drinking water (Wyett 2013, p. 171). Such environmental deterioration causes internal displacement, accumulation of population increasing poverty, criminality and instability. This could lead to waves of migration,[83] although displacement represents an extremely unfavourable option for the inhabitants of those islands (McNamara and Gibson, 2009).

International law has neither coined the term "environmental refugee" yet, nor has it offered any specific protection for those migrants. By the same token, slow disappearance of territory from those island nations could alter the position of those states in international relations system and international law. Impacts of territory disappearance due to the sea level rise on sovereignty remain without precedent.

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[81] The sea level is expected to rise by approximately 1 meter till the end of this century (cf. ILA 2018B; Scott 2018).

[82] This dissertation uses the terms "SIDS" and "sinking islands" to certain extent interchangeably. Nonetheless, it is important to note that not all of SIDS are that much endangered by the sea level rise and therefore "sinking". Certain exceptions are described in the section 5.4 of this dissertation.

[83] According to estimates (Internal Displacement Monitoring Centre 2014, p. 7), environmental issues might produce three times more displaced persons than armed conflicts. There could be up to one billion of environmental migrants around 2050 (Kamal 2017).

In 1980's, the SIDS gradually realised that they would be the first to experience the most severe impacts of climate change, concretely atmospheric carbon dioxide increase, consequent global warming and sea level rise, although they contributed extremely little to this phenomenon.[84] Because of their relatively low economic and military power, they joined in a coalition forming to pursue their aims internationally. They formed the Alliance of Small Island States: "Initially formed by 24 States at the Second World Climate Conference in Geneva in 1990, AOSIS is a coalition of small island and lowlying coastal countries that share similar development challenges and concerns about the environment, especially their vulnerability to the adverse effects of global climate change. It functions primarily as an ad hoc coalition and negotiating voice for SIDS within the UN system" Chasek (2005, 131)[85].The ecological and security issues that SIDS faced were officially remarked firstly in the year 1992 in course of the United Nations Conference on Environment and Development in Rio de Janeiro.[86] AOSIS played an important role in this process and actively participated in preparation of UN Framework Convention on Climate Change (FCCC) and Agenda 21. The SIDS were also "the first to propose a draft text during the Kyoto Protocol negotiations calling for cuts in carbon dioxide emissions of 20% from 1990 levels by 2005" (UNFCCC 2019). Those events were followed by academic evaluation of security implications of the sea level rise on SIDS (cf. Cocklin 1999, Connell 1993, 1999; Edwards 1999).

AOSIS succeeded also as a pressure group which contributed to the adoption of the Resolution 47/189. This resolution of the UN General Assembly established the Global Conference on the Sustainable Development of Small Island Developing States.[87] The conference published so called Barbados Programme of Action[88] in 1994. The programme identified 15 areas key for development of the SIDS and respective short-term, mid-term and long-term actions in those areas. Nonetheless, as Chasek (2005) emphasized, the AOSIS members struggled with identification of common priorities. There were three wide groups of SIDS: (1) Pacific SIDS, (2) Caribbean SIDS and (3)

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[84] Betzold (2010) outlines that the SIDS emit less than 0.003 % of overall amount of greenhouse gasses.
[85] For an overview of other Pacific SIDS cooperation organizations and platforms cf. ibid., 131.
[86] Cf. points 17.123–17.136 of the Agenda 21 document (UNCED, 1992, 193–195).
[87] UN GA. A/Res/47/189. Convening of a global conference on the sustainable development of small island developing States. Resolution adopted by the General Assembly on 22nd December 1992.
[88] United Nations Programme of Action on the Sustainable Development of Small Island Developing States.

African, Indian Ocean and Mediterranean and South China Sea SIDS, each of them having different economic and environmental priorities. On the one hand, the Barbados programme addressed the needs of SIDS comprehensively, on the other hand, it struggled with consensus on priorities. This lack of common priorities of various SIDS also contributed to the fact that UN reviews of Barbados programme in 1999 and in 2005 considered its implementation as rather unsuccessful (Chasek 2005, 132 – 137).

Also 2000 UN Millennium Summit dedicated certain attention to SIDS, when its outcome promised to "address the vulnerabilities faced by SIDS rapidly and in full by 2015" (UN Inter-Agency Secretariat for the International Strategy for Disaster Reduction 2002, 300). Five years later, in 2005, the UN General Assembly still just kept emphasizing the need to implement mitigation measures and action plans (UN GA A/RES/59/311 2005), without resorting to any tangible action. Significant number of authors emphasized that SIDS needed much more robust assistance and urgent responses than those that had been provided up to that point (cf. Burns 2000; Lal 2004; Nurse and Moore 2005; Tompkins et al. 2005; Woodworth 2005; or Church et al., 2006).

In 2006, SIDS suggested that the agenda of the UN Climate Change Conference should include the following provisional point: "Actions to address the specific needs and concerns of small island developing states pursuant to Article 4, paragraphs 4 and 8(a), and other relevant articles of the Framework Convention on Climate Change." However, their attempt failed, and the President proposed to address this point later "noting there was no consensus on the inclusion of this item" (UNFCCC/CP/2006/5, 9). In general, the Conference resulted in few responses that would help endangered SIDS (UNFCCC/CP/2006/5/Add.1) and was labelled as rather disappointing. As emphasized by the press, the conference represented a "disconnect between scientific imperative and political process" (Black, 2006).

SIDS faced those frustrating outcomes together with continuous worsening of environmental living conditions and with the prognosis of further environmental deterioration. The increase of carbon dioxide (CO_2) concentration in the atmosphere by around 40 % since the beginning of the industrial revolution remains highly likely[89] to be the cause of global warming. Some of the studies predict this warming could rise the

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[89] Now the scientists mention that the causality is certain.

global temperatures in the following decades up about 2 – 4 degrees[90] or at least about 1.5 degree[91] (Harrington 2016, 492). Such warming would cause further melting of Greenland and Arctic ice and significantly speed the sea level rise (ibid. 495[92]).

Above described unsatisfactory results of international cooperation together with those pessimistic outlooks motivated "sinking" SIDS to present their situation during the meeting of the United Nations Security Council in 2007. Their representatives claimed that the rising sea level and consequent degradation of the environment on their territory represented a threat to their national security as well as international security.[93] SIDS' pleas appeared on the UNSC agenda again in 2011 (UNSC 6587th Meeting Record S/PV.6587) and yet again in 2015 (UNSC 7499th Meeting Record S/PV.7499), 2018 (UNSC 8307th Meeting Record S.PV/8307) and 2019 (S/PV.8451). The 2015 UNSC meeting was chaired by New Zealand and dedicated especially to SIDS. [94]

The chapter 5 describes how various actors-countries attempted to shape and re-shape the role of the UNSC in regard to "sinking" SIDS and which strategies they used. The rest of this chapter summarizes the literature concerning SIDS (part 3.1) and the UNSC (part 3.2). The literature focusing on SIDS could be divided into five major parts, depending on epistemological position that it takes or reflects. Each part of the literature (or respective practice described in that literature) creates certain narrative; in other words, each part of the literature forms certain position that differs in perception of "sinking" SIDS, their residents and future prospect.[95]

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[90] Cf. Sherwood et al (2014).

[91] As the participants of the Conference of the Parties to the United Nations Framework Conventions on Climate Change (COP 21) pledged to safeguard in Paris in 2015.

[92] Cf. also National Snow and Ice Data Center (2015) or Clark et al. (2015), (as quoted by Harington 2016).

[93] The representative of Papua New Guinea demanded on behalf of the Pacific Islands Forum of SIDS: "the Security Council to keep the matter under continuous review so as to ensure that all countries contribute to solving the climate change problem and that their efforts are commensurate with their resources and capacities. We also expect that the Security Council will review particularly sensitive issues, such as implications to sovereignty and to international legal rights from the loss of land, resources and people." (UNSC 5663rd Meeting Record. S/PV.5663. 17th April 2007, New York, p. 29).

[94] The details how this topic appeared on the UNSC agenda are outlined in the next sub-chapter 3.2 focusing on the UNSC, in the section 3.2.6.

[95] The division into the five categories was done by the author of this dissertation, when systematizing the resources and identifying epistemological similarities (cf. table 3.I below). The authors of respective literature are unaware of this division and did not have a chance to identify themselves with it or to disqualify it.

The first part of literature is described in section 3.1.1 below; it deals with the situation of SIDS from the perspective of Westphalian order, it tackles the issues of territorial sovereignty and international position of SIDS in light of the fact that they are gradually losing their territory. The consequences of this process, such as environmental migration, are securitized on the international scene. This part also details several suggested legal solutions of the SIDS situation. The second part (section 3.1.2) of the literature describes (and criticizes) that SIDS have been frequently portrayed and perceived stereotypically as a "disappearing paradise" by "the West". The third part (section 3.1.3) usually utilizes rationalists' approach and examines the behaviour of the SIDS during various negotiations, the successes and failures of SIDS strategies and coalitions. The fourth part (section 3.1.4) either presents research outcomes of natural sciences or meta-theoretically examines the role of natural sciences in case of SIDS. Finally, the fifth part (section 3.1.5) of the literature utilizes resilience-related and risk-management thinking in order to embrace the complexity of the issue and suggest solutions.

The following table 3.I compares the individual parts of the literature according to how they reflect the perceptions of local populations and what normativity and effects those perceptions bring. Afterwards, each section always firstly introduces particular pile of literature and secondly briefly explicates its relevance for this dissertation.

Table 3.I: Different Framing of the literature focusing on SIDS

Narrative (epistemological position):	Subjects (local population):	Normativity:	Effects:
Territorial sovereignty reiterating Westphalian order	Subjugated primarily to a state. Sources of danger for other states ("securitization").	Sovereignty preservation, different set of solutions for "inside" and "outside".	Unwillingness of states to restrict their own sovereignty. Rigidity of state-based structure.
Disappearing paradise	Naïve, passive and indigenous victims.	The disappearance of SIDS seen as inevitable, the only possible option is migration and protection of the migrants as "environmental refugees".	Other locally sensitive options and adaptation strategies ignored.
SIDS as negotiators	Sources of domestic political legitimacy of state-representation in IR.	Rationalism as key lens to analyse the approach of SIDS and their counterparts.	The narrative focuses on successes or failures of SIDS, their strategies and coalitions within negotiations.
Expert approach and scientific analysis	Indicators that need to be further studied and analysed.	Solutions based on scientific data and expert inputs only.	Neglecting the role of political, moral and power-based decision-making on scarce resources.
Resilience and risk management	Active, responsible partners.	Complex approach, fostering of resilience of local population and environmental risk management.	Eclectic approach, partnership governance.

3.1.1 SIDS and territorial sovereignty of Westphalian state system

The problem of "sinking islands" has been frequently linked with the issues of sovereignty within the system of Westphalian states. Rayfuse warned that the statehood of "sinking islands" might vanish, because with ongoing inundation the islandic nations may consequently lose their population and territory, as two defining state features (Rayfuse 2009, 2011, 284). Wong (2013, 360) disagreed and claimed that the state may continue even without territory or a population located on that territory. Those are the two basic opinions on the legal impacts of flooding of state territory. Apart from them, there has been several suggestions how to solve the SIDS issue by means of international law.

Yamamoto and Esteban (2014) asserted that in order to preserve their sovereignty the islandic countries disappearing beneath rising sea level should purchase pieces of land from other governments through bilateral negotiations. The same authors outlined also other possibilities and scenarios (cf. Yamamoto and Esteban 2010) of sovereignty preservation: "If the Atoll Island cannot protect at least one of its islands then there are a number of other possible solutions for Atoll Island States to attempt to preserve their sovereignty such as the cession of territory, the construction of artificial islands in other maritime areas and amend United Nations Convention on the Law of the Sea (UNCLOS) to accept artificial islands as a "defined territory" (…), a merger with another State or becoming a De-territorialized States" (Yamamoto and Esteban 2014, p. 4; cf. also Kolers 2012 or McAdam 2010).

Chou (2012) agreed with the feasibility of de-territorialized state and also suggested free association of a SIDS with another state, exile governed population or introducing a personal status of its kind of SIDS inhabitants such as Malthusian knights[96]. Gagain (2012, 77 – 119) developed the above-mentioned idea of artificial island. He described an artificial island Hulhumalé built by the Maldives within their sovereign waters. Because UNCLOS does not recognize artificial islands as decisive for calculation of maritime zones, Gagain (ibid., 107 – 118) suggest how to amend it.

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[96] Cf. Constantinou (2004).

Retaining statehood with diminishing territory could be achieved also through similar amending or liberal re-interpretation (Busch 2018, 174 – 194) of UNCLOS. This change would not tackle artificial islands, but it would allow the "sinking islands" to preserve their maritime zones despite loss of respective land which delineates those zones. Current interpretation of UNSCLOS derives maritime zones from baselines. The baselines are perceived as "ambulantory". This means that they change according to geographical changes of coastlines. If the land submerges and the coastline thus stands back or disappears, the baselines should follow, diminishing the maritime zones of a country. This principle (called "land dominates the sea") determines that the maritime zones must shrink or even vanish together with the territory of "sinking islands" (Moritaka 2013, Schofield 2009, Scott 2018).

Nonetheless, if this principle was altered, the endangered SIDS could retain their maritime zones in spite of the disappearance of their territory. Consequently, they would be entitled to exploit resources within their exclusive economic zones, because those zones would be "frozen" in their current position regardless of the submerged land (Rayfuse 2010; Stoutenburg 2011).

Such "fixing" of the maritime zones as possible legal solution for the "sinking" SIDS has been proposed by several scholars and organizations. Scott (2018, 1) summarized available actions such: "physically reinforcing the coastline; formally promulgating charts with fixed baselines; interpreting UNCLOS to permit fixed baselines; recognising the historic rights of states; developing a general customary norm permitting fixed baselines; adopting a protocol to the 1992 United Nations Framework Convention on Climate Change (UNFCCC); adopting a decision of the parties to UNCLOS; amending UNCLOS; adopting a new agreement under UNCLOS; and adopting a United Nations General Assembly resolution"[97].

Also International Law Association[98] dedicated intense attention to this issue and established a Committee on Sea Level Rise and International Law.[99] On 78th Biennial

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[97] For detailed account of precedential actions that inspired those solutions cf. ILA (2018B, 9 – 24).
[98] A non-profit-making organization focused on study, clarification and development of international law.

Conference of International Law Association in 2018, this Committee submitted its final report (ILA 2018B), followed by a resolution 5/2018 published by International Law Association (ILA 2018A). The resolution, intended to be forwarded to UN Secretary General, also advocated "fixing" the baselines, as it proposed that the "baselines and limits should not be required to be recalculated should sea level change affect the geographical reality of the coastline" (ILA 2018A, 1).[100]

The "sinking islands" already adopted a common strategy to fix their maritime zones,[101] some of them made public proclamations in this regard and incorporated this solution in their domestic legislation (Scott 2018).[102] Thus, fixing baselines and preserving maritime zones seems to be viable option how the small islandic nations can preserve their sovereignty.

The legal solutions that have been discussed above reverberate the narrative of state sovereignty. Those solutions represent an attempt how to fit a new form of a state without territory into an old Westphalian system of territorial sovereign states, without having to change this system. In other words, the solutions attempt to preserve as many sovereign rights as possible for "sinking states", although their territory as one of common denominators of those sovereign rights disappears.

States play important role in all those suggested solutions, as does the state-centric public international law. However, this approach might not be appropriate, because the changes in geographical conditions will require profounder changes in international law than just "quick fixes". As Vidas (2014, 82) summarized, "many proposals on how to address the issues of sea-level rise aim at preserving a static legal situation in the face of an increasingly dynamic process of natural change. However, such processes require a

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[99] Already in 2016, the ILA Committee on Sea Level Rise and International Law published an interim report describing ramifications of sea level rise on state sovereignty, nationality and human rights and outlining proposals for progressive development of international law to limit those ramifications. This was a predecessor of the 2018 development.

[100] Cf. also ILA (2018b).

[101] The strategy endorsed on various workshops was called "Securing the Maritime Jurisdictions of Pacific SIDS against Climate Change" and proposed national, regional and global actions (FFA 2018, 75).

[102] Scott (2018) suggests that they could also develop a regional legal custom as well as conclude an agreement modifying UNCLOS pursuant to Article 311(3) and Article 41 of the 1969 Vienna Convention on the Law of Treaties.

response or transformation in accordance with the needs and purposes in the new situation, rather than the imposition of static forms that were built on the basis of an earlier, no longer valid, situation."

In this context it is fully understandable that the consequences of sea lever rise for (state-centric) international law have been noticed by the UN International Law Commission, a prominent body of legal experts assisting UN General Assembly with mapping, clarification, codification, and progressive development of international law. In 2018, the Working-Group on the long-term programme of work of the Commission recommended to cover the issue within the wider topic *Law of International Spaces*. Currently, the issue is under consideration of the International Law Commission, which shall utilize the method of a Study Group to prepare a report "Sea-Level Rise in relation to International Law". This report shall systematically review and integrate the existing international law, especially "the practice of States, international treaties, other international instruments, judicial decisions of international and national courts and tribunals, and the analyses of scholars" (UN International Law Commission 2018, 330). By doing so, the report will delineate possible impacts of sea level rise on three areas: the law of the sea, statehood, and protection of affected persons (ibid.).

Especially the last category mentioned – the protection of persons affected by sea level rise – already underwent thorough research scrutiny. Lange (2010) claimed that the citizens of "sinking" Pacific states should be provided with an assistance and adequate lands assets on the basis of international treaties.

Other authors (cf. Phelan and Gillespie 2003; Goodwill and McAdam 2007; Duong 2010; Betts and Loescher 2011; McAdam 2012, Buchanan 2015) suggest that those inhabitants who are forced to leave their homes because of environmental degradation should be newly entitled to international legal protection. The environmental migrants are currently not directly protected by international law. They do not meet the definition of a statutory refugee under 1951 Convention relating to the status of Refugees and its 1967 Protocol Relating to the Status of Refugees; they do not flee their country because of well-founded fear of personal persecution for given reasons. Therefore, there is no obligation of other states to accept those migrants and respect the rule of non-refoulement (i.e. protect the migrants from being returned to the country of their origin).

Sovereign states as the creators of international law have not yet agreed on the extent of protection of those persons.

This was the reason why the courts denied to grand protection for environmental migrant Mr. Teitiota in case described in the introduction of this dissertation. Westphalian-system framing was even present in the court reasoning in the proceeding. The High Court of New Zealand reaffirmed that it was not entitled to apply the protection of statutory refugees to Mr. Teitiota, because this privilege would belong to the legislative power of sovereign states.[103] Only those sovereign states thus have the power to negotiate new protective convention. Similar conclusion was reached by the Supreme Court that also rejected that Mr. Teitiota could be subjected to refugee protection; although the court admitted that climate change represented "major and growing concern for the international community"[104].

Thus, the courts reiterated the presupposition that sea level rise with its consequences is the matter of sovereign states and must be therefore addressed primarily by those states (cf. also Baker-Jones and Baker-Jones 2015; McAdam 2015).

Several authors suggested that the international community of states should adopt a specific protocol or a convention on climate migration which would grand environmental migrants the protection like the statutory refugees. Thus, a category of a climate change refugee could be created (cf. Bierman and Boas 2008).

This represents another type of a state-centric legal solution, expecting that the states should voluntarily limit sovereign exercise of their powers over "environmental migrants" and allow those migrants to stay within their territory. However, this type of solution received wide criticism. McNamara and Gibson (2009) emphasized that migration would be highly undesirable solution for local population. Globally, it is unlikely that countries would be willing to adopt such a convention, because environmental migration gets securitized in front of the international audience. Thus, environmental migrants from SIDS could be portrayed as a threat to other countries.

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[103] Decision of the High Court of New Zealand as of 26th November 2013. CIV-2013-404-3528 [2013]. NZHC 3125, para 51.
[104] *Teitiota v Chief Executive of Ministry of Business, Innovation and Employment* [2014] NZCA 173 at [41].

Evaluation of security implications of environmental migration necessarily includes certain amount of speculation about the future (Baldwin, Methmann and Rothe 2014). Consequently, fears of this future determine the securitization of environmental migrants. As an example, Doyle and Chaturvedy (2011) deconstructed the notion of "climate refugee". They asserted that this very term is a product of securitization[105] with varying meaning under realist, liberal and critical securitization framework. The notion is used preferably to more adequate notion "environmental migrant". Its usage increases the feeling of risk and danger. Doyle and Chaturvedy (2011) also claim that climate displacement could mobilize the entire geopolitics of fear and a chain of threat-reactions. The fear of a sudden influx of migrants and the securitization of the topic collides with humanitarian framing of the issue.[106] This causes the indeterminacy of states towards the topic and as a result, no convention on "climate refugees" has been adopted yet and is unlikely to be adopted in the future.

McAdam (2011a, 2011b) added that adopting such a convention might not be the best option also from other perspectives – statutory refugees and migrants are often gathered in camps and face problems in their country of inception. Such a practice is not necessarily worth mimicking, even if the states were not reluctant to accept an obligation to protect environmental migrants. Internal displacement[107] could be more frequent solution, at least as an initial response to the rising sea levels (McAdam 2011a, 2011b).

The expectation that the sovereign states would solve the issue through a migration convention thus proved inadequate. Nonetheless, the idea metamorphosed in a prospect that sovereign states should respect the right of an individual to relocate (Risse 2009) and that this right, or the right for adequate living environment could represent a human right (Lyster 2015).

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[105] Bloomley would call it "a splice" signalling both spatial condition of displacement and a proposal for legal status (cf. section 2.1.1).
[106] In the already mentioned case (AC (Tuvalu) [2014] NZIPT 800517–520. New Zealand: Immigration and Protection Tribunal) the family of environmental migrants was allowed to stay in New Zealand on humanitarian basis, though it was emphasized that this is a humanitarian exception from the standard which would command to return the migrants to their country of origin.
[107] Cf. also Cohen (2006), Cohen and Deng (1998).

Generally, the idea of protection transformed but the framing within the Westphalian system of sovereign states remained. In the initial position, the idea supposed that the sovereign states *may* adopt a specific convention protecting environmental migrants. In a transformed version, the idea expects that the sovereign states should respect the right of an individual to adequate living environment. The consequences of both the versions of the idea are surprisingly similar. The first version says that as long as the countries do not accept a legal mean of protection, the environmental migrants shall remain unprotected. The second version expects that it is primarily the concern of the domestic state to respect individual's right to adequate living environment, to safeguard this right and to enable internal relocation whenever necessary. The burden is thus again laid on the domestic state.

This approach, requesting that each of the countries including SIDS must care for environmental matters of its own population, was expressed even by European Court of Human Rights. "In the proceedings *Budayeva v. Russia* the European Court of Human Rights ruled out that human rights of individual citizens and inhabitants may be translated into obligations of their home states to protect them from consequences of natural disasters.[108] The same court in case *Oneryildiz v. Turkey* decided that state authorities are obliged to take responsible preventive measures to protect human rights of the inhabitants from catastrophes.[109] Thus the court reinforced the state centric narrative that the issue of environmental displacement is the issue of nation-states and should be addressed primarily by those nation states. In other words, the domestic states are primarily obliged to deal with the events that could eventually cause environmental migration[110]" (Bruner 2018B, 199).

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[108] Budayeva et al v Russia (complaint 15339/02, 21166/02, 20058/02, 11673/02, 15343/02) judgement of ECHR as of 20th March 2008.

[109] Though in this case the disaster was industrial, the basis of the reasoning is fully applicable on natural disasters. *Oneryildiz v. Turkey. Judegment as of 30th November 2004, Application no. 48939/99.*

[110] It is somehow paradoxical that human rights are used to reinforce the role and the position of the nation state and state centric system, although they were regarded as an element diminishing the role of state and empowering an individual.

We may observe similar state-centric approach in Draft Articles on the protection of persons in the event of disasters.[111] The UN International Law Commission prepared and submitted this draft to UN General Assembly in 2016 as eventual proposal of the future text of an international treaty. Article 10 prescribes that „the affected State has the duty to ensure the protection of persons and provision of disaster relief assistance in its territory, or in territory under its jurisdiction or control". Article 11 encompasses the duty of the affected state to seek external assistance. Article 7 orders the states to cooperate in case of a disaster. The key role is ascribed to the states who assume the responsibility to settle environmental problems of their population on their territory.

Comparable obligations of states are contained in Sydney Declaration of Principles on the Protection of Persons displaced in the Context of the Sea Level Rise. This declaration was adopted by a resolution 6/2018 of the Committee on Sea Level Rise and International Law (International Law Association – ILA 2018C). It has a status of a non-binding proclamation of an expert organization.[112] The very first principle prescribes that "states have the primary duty and responsibility to provide protection and assistance to persons with habitual residence in territories under their jurisdiction who are affected by sea level rise". Further principles request the states of origin, transit and destination to respect human rights of persons fleeing due to sea level rise. The principles also oblige states to cooperate or to evacuate the affected persons. The last, ninth principle asserts that states should admit transboundary-displaced persons and protect them from refoulement. This rather ambitious principle intends to achieve an outcome similar to previously discussed convention on "environmental refugees".

The last example how the issue of SIDS gets framed within the context of Westphalian state territorial system is the 2002 consideration of the island country Tuvalu to sue the United States for not ratifying the Kyoto Protocol (Jacobs 2005) and thus continuing to contribute to global warming by more CO_2 emissions. Interstate litigation is another practice typical for state system.

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[111] UN International Law Commission (2016). Draft Articles on the protection of persons in the event of disasters. A/71/10.

[112] For more information on the status and character of the Committee cf. information above in this section.

In conclusion, the narrative of Westphalian sovereignty of territorial states necessarily encompasses state-centric views and solutions. Thus, it reinforces state position and often causes that the states are less willing to accept any solution which would limit their sovereignty, independence and freedom of action. It presupposes that the states possess the best ability to solve the situation and also that the states should be made responsible for addressing it: "The narrative of territorial sovereignty reinforces binary perception that there are either states based on a territory, which are sovereign and powerful, or "non-entities" without any territory and any significance in international law" (Bruner 2018B, 200). The narrative attempts to identify eventual legal substitutions of territory – how the law could remedy the lack of territory or protect those displaced by the disappearance of territory. In both cases, territorial states are both the referential objects and key stakeholders of eventual action. The importance of territory within this narrative and the attempts to retain sovereign rights or personal protection despite the loss of this territory demonstrate the persisting importance of Westphalian thinking.

This narrative may unfortunately ignore or even prevent other options, which are not state-centric.[113] For example, voluntary environmental migration becomes prevented and averted by state borders (Piguet 2013). Additionally, Esteban et al. (2019) describe situations, where the communities were able to adapt to inundation and remain on their original place of location: 2011 Tohoku Earthquake Tsunami (subsidence up to 1.0 m), 2013 Bohol Earthquake in central Philippines (1.0 m) and ground water extraction in Jakarta (>5.0 m). As a result, migration or state-centric legal search for substitutions of territory might not be the best available options.[114]

Moreover, SIDS will be practically uninhabitable before they disappear beneath the rising sea level and lose their territory. The problem should therefore not be linked to the disappearance of territory and state, but to an environmental degradation.

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[113] For the discussion on conceptual plausibility and normative acceptability of de-territorialized state and its consequences for self-determination of its inhabitants cf. Ödalen (2014, 225-237). Moreover, due to space constrains this thesis does not deal with global mitigatory or adaptive strategies for countering climate change caused by the CO_2 emissions. For a detailed overview of geoengineering practice cf. Jamieson (2013).

[114] For a viability of another adaptation measure -a storm surge barrier – cf. Esteban et al. (2014).

Finally, as Vidas (2014, 78) asserted, the scope of changes brought by sea level rise and climate change may question the basic legal axioms, including the state itself, and thus call for adoption of other concepts that would more promptly reflect changes. Usual mode of legal work is to look to the past for a precedent. This situation is, however, unprecedented. Sea level rise „is not a problem that can be dealt with merely by adjusting certain rules or adopting amendments to this or that international treaty. It is not a political controversy per se, either. It is a major natural phenomenon, unprecedented since the emergence of modern human civilization and the development of its organizing forms as currently regulated through a territorially based and state-centred system of international law. Since core aspects of current international law rest on geographical conditions that are generally perceived as relatively stable, a significant change in those conditions — as a consequence of sea-level rise — could come to pose major challenges to the sustainability of our present-day system of international law" (Vidas 2014, 73 – 74).

This dissertation focuses on how the interaction of space, power and law mirrors in the position and argumentation of individual countries that were pleading in front of the UNSC during the meetings concerning climate changes and SIDS. Thus, this dissertation is also state-centric to the extent that it analyses positions of states and their groups. While the dissertation acknowledges that state-centric approach might hinder other eventual solution of SIDS situation, it bases on the belief that the state position needs to be analysed and understood. To this extent, the dissertation may demonstrate why the state system might be ineffective and how differences in states' approaches appear and emerge. It is left up to future research to provide an alternative[115] how and whether the UNSC could tackle the situation while abandoning the purely state-centric approach.

3.1.2 SIDS as disappearing paradise(s)

Farbotko (2010) questioned the reasons why an emotional term "Sinking Islands" is used to refer to SIDS and what meaning it adds to their situation. She concluded that

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[115] An emancipatory alternative that would make the research truly critical – cf. Hynek and Chandler (2013).

debates on SIDS often reverberate around Western mythologies. Oceania islands with a low territorial profile are therefore portrayed as disappearing paradise (Chevalier 2013). Although the climate mobility of SIDS population represented usual behaviour in the past, it is perceived as a production of refugees and undesirable consequence of the nature crisis (Farbotko and Lazrus 2012; Farbotko 2004). SIDS are remotely observed by "eco-colonial" gaze of the West that perceives them as experimental spaces that are likely to produce an evidence of consequences of global climate change. Thus "sinking" SIDS are a screen where a tragedy of global warming effects shall be displayed, allowing the Western audience to see their worst fears about climate change to come true (Farbotko 2010, p. 47 – 60). The UN Secretary General in 2014 provided an exemplary quotation demonstrating this approach, when he asserted: "I see SIDS as a magnifying glass. When we look through SIDS lens we see the vulnerabilities we all face. And by addressing the issues facing SIDS we are developing the tools we need to promote sustainable development across the entire world."[116]

This narrative presupposes that the local SIDS population on the islands consists of naïve indigenous people who stand as peripheral and powerless victims of the industrial core where the developed countries are located. Consequently, "alterity and individuality seem to be denied in favour of top down and international level policy options to deal with climate change-induced migration" (Chevalier 2013). The residents and governments of SIDS also understandably object to creation of such stereotypes (McNamara and Gibson 2009) and understand their situation very differently.[117]

Even the local governments sometimes abide "by a 'sinking nation paradigm', unreasonably constraining political visions of the nation's future" and willingly accept the projected position, which ignores the needs, desires and proposals of their local communities (Mallin 2018, 244 – 252).

This dissertation tries to avoid the trap of this narrative. Warned by the literature mentioned above, it critically analyses both the position of SIDS as well as the position of rapidly developing and the developed states in front of the UNSC in regard to SIDS.

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[116] UN (2014). Secretary-General's remarks at the opening session of the Third International Conference on Small Island Developing States. August 31, 2014. Apia, Samoa.
[117] Cf. Rudiak-Gould (2013) who outlined how the local populations sees the situation framed by their local values, modernity seductions and overall societal decline.

The dissertation claims that SIDS as well as other actors tried to rhetorically shape the role of the UNSC to suit their interests. Thus, it contributes analytical alternatives which unlock less biased perspectives.

3.1.3 SIDS as negotiators

Significant number of authors explore how SIDS participate in international negotiations about climate change, which strategies they use and what coalitions they form.

Despite low economic and political capacities and almost absent military power, SIDS achieved rather remarkable recognition on international scene and pursued their points in several agendas on various forums (Corneloup and Mol 2013, 282).[118] Deitelhoff and Wallbott (2012) outlined two possible strategies of small states: niche diplomacy and coalition building. By the combination of the two, small states may balance the hegemons and succeed as blocking or even winning coalition. However, the success also "seems to depend not only on the support of middle powers but, more importantly, on the institutional setting of the negotiations and the nature of the issue" (ibid., 346). This was the reason why the small states coalition supporting foundation of International Criminal Court gained more achievements, and succeeded as winning coalition, in comparison to small island states in AOSIS negotiating about carbon dioxide emissions within consensus based FCCC (ibid.).

Nonetheless, AOSIS did not remain without any attainments. The very adoption of UNFCCC represented great success for AOSIS, as its members managed to get 10 out 12 intended goals reflected in the Convention (Ashe et al. 1999). It was also the first time when "relatively marginal" countries formed a major coalition that got their issues internationally recognized and reflected by a binding legal agreement (ibid.). In the metaphor of Shibuya (1996), the small islandic mice "roared".

The success of the SIDS may be attributed to their intellectual, entrepreneurial, and environmental leadership strategies as well as their high moral standing (Corneloup and

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[118] Contrary to the widespread opinion that the result of negotiation depends almost entirely on great powers (cf. Hampson and Hart 1995).

Mol 2013, 288). "The future of small island states is at stake if negotiations about reduced CO2 emissions fail and sea level rise continues unabated. Therefore, high levels of actor-specific salience can lend countries high moral authority and may become yet another source of power during negotiations" (Weiler 2012, 559).

Those successes were unfortunately insufficient for both external and internal reasons. Externally, as described in introduction to the section 3.1 of this dissertation, the pace of global warming required even more resolute measures to cut carbon dioxide emissions. Internally, the coalition of SIDS faced the problem of cleavages and fragmentation. As already mentioned, AOSIS was divided due to diverging interests of Pacific, Caribbean and Mediterranean and South China Sea members (Chasek 2005). The lack of unity and agreement on priorities represented its major weakness (cf. Shibuya 2009, Betzold, Castro and Weiler 2012).[119] Therefore, the SIDS endangered by the sea level rise needed to open as much avenues to voice their demands and attract as much public attention as possible.[120] That is why they addressed also the UNSC.

This literature read together with the dissertation might inspire further research: Did the SIDS use the same strategies in front of the UNSC as in front of the FCCC? Was the internal fragmentation the true reason why the Pacific SIDS decided to voice their concerns also to the UNSC? Although those questions could bring interesting comparisons, they serve rather as an impetus for further inquiry.

This dissertation focuses on the reasoning of SIDS but also of other countries in front of the UNSC. It primarily intends to disclose how law, space and power interact together in statements of individual countries. The comparison with SIDS negotiation in front of the UNSC, yet very interesting, could be excessive and might better represent a core of a separate research. Moreover, most of the authors described in this section 3.1.3 take

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[119] As will be briefly mentioned in chapter 5., certain division appeared also in front of the UNSC. While the Carribean SIDS are endangered to a lesser extent, their interests sometimes lean towards rapidly developing states. On the other hand, most of "sinking islands" are located in Pacific and prefer cuts in CO_2, as they have little to benefit from unrestricted industrial development.

[120] There were various moves aiming at gaining public attention and opening international fora for the SIDS. In 2002, Tuvalu intended to sue the US for not ratifying Kyoto protocol (Jacobs 2005). In 2009, the government cabinet of the Maldives signed a declaration requiring cuts in CO_2 emissions under water (BBC 2009), traditionally dressed warriors danced against the tide in Tokelau in 2014 (Roden 2014).

the rationalist perspective. They see the negotiations as rational choice exercises. Conducting a comparison with UNSC would require adopting the same rationalist optic. The reasons why this dissertation opted for different approach than rationalism are described in the section 2.3.4 above.

3.1.4 SIDS as objects to be scientifically analysed

Another trope of literature reflects the view that SIDS's situation must be scientifically analysed and addressed by expert solutions. This view may be demonstrated by a conclusion of Chou who claimed that a broader importance of sea-level rise and climate change cannot not be fully comprehended until the model of major climate change becomes subject to scientific and political consensus (Chou 2012, p. 231 – 248). In the statement, "scientific" consensus symbolically takes precedence over the political one.

Similar scientific framing of SIDS situation was partially present during the negotiations of the UNSC about SIDS; each of the groups of stakeholders used references to science and expertise to support their diverging positions (Bruner 2017B). While some countries objected that the UNSC lacks scientific knowledge to deal with the subject-matter, others disagreed that science articulates an imperative for the UNSC to solve the issue. Other countries implicitly expected that scientists must assume responsibility for suggesting solutions, while respecting that the power to decide remains with the political actors (Bruner 2017B, 343 – 352, detailed description also in chapter 5 of this dissertation).

Finucane criticized such purely scientific framing of SIDS situation, because science itself cannot provide universal and immediate solution to the climate crisis (Finucane 2009). To the contrary, waiting for scientific certainty may hinder political decision-making. It might be even used for responsibility evasion, allowing decision makers to rely on the experts to assume accountability for suggested solutions in spite of the fact that any decision concerning scarce resources such as territory or living environment must be based also on moral, political and power-related basis (Bruner 2018B).

3.1.5 Realities, complexities, governance and resilience of SIDS

The last narrative concerning SIDS appeared as a reaction to the previous narratives. It gradually created (firstly) their antithesis and (secondly) their synthesis. This last narrative emphasizes the complexity of climate change, environmental migration and all related issues. The literature creating or reflecting this narrative is attempting to replace "misconceptions" about climate change, established by other earlier narratives, and compile the "lessons learned" from those narratives[121]. It frequently refers to "realities" or "realistic" solutions. For example McAnaney (2012) formulates basic points for a realistic solution of the situation of SIDS and their inhabitants: "(1) Migration Will Be Primarily Internal Rather than Transnational; (2) Movement Will Be Gradual, Not Sudden, (3) Movement Will Be Caused by a Multitude of Factors as Opposed to Solely by Climate Change."

Similarly, the Nansen Initiative on Disaster-Induced Cross-Border Displacement, a result of intergovernmental and civil society consultations, approaches the topic in the same way. It delineates the "realities" of environmental displacement in order to suggest "comprehensive approaches", "broad set of practices" and "combined policies" as a reaction.[122] It demonstrates how this narrative proposes an amalgam of combined responses and intends to establish solid institutional apparatus to tackle climate change through "risk reduction and management" and "resilience".[123]

This narrative is gradually reinforced also by various institutions. Warsaw International Mechanism on Loss and Damage, established within the framework of UNFCCC, is supposed to safeguard risk management, sharing of best practices and effective governance as well as to provide support to countries at risk, in spite of the fact that its' exact mechanisms are not specified, e.g. the very definition of loss and damage is unclear (Rachel et al 2015).

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[121] For this reason, I call it both the antithesis and the synthesis.
[122] Nansen Initiative on Disaster-Induced Cross-Border Displacement
[123] This approach bases on earlier writings of authors focusing on sustainable development or risks and opportunities assessment (Prasad 2003; Kerr 2005). Those writings emphasized key vulnerabilities and opportunities for the growth of resilient communities (cf. Majeed and Abdulla 2004; Dolan and Walker 2006; Nurse et al., 2001).

Felli (2012) explained how this narrative, perceived as a kind of problem management infiltrates organizations and institutions: "International organisations enact this management within the forms of neoliberal capitalism, including the framework of governance. Therefore, the promotion of 'climate migration' as a strategy of adaptation to climate change is located within the tendencies of neoliberalism and the reconfiguration of southern states' sovereignty through governance." Despite the emergence of this narrative as an emancipatory project for local populations, the narrative could be in fact absorbed by the neo-liberal state-centric approach and thus merge with or even get lost within the first *state-centric* framing of the issue. It might also merge with the third "scientific" narrative, because governance and resilience-based solutions require scientific and expert inputs.

3.1.6 Coexistence of the narratives

This sub-chapter identified four main narratives about SIDS that are created or reflected by the literature. The chart 3.II and the following lines demonstrate how the narratives coexist together and overlap.

Chart 3.II: Mutual position of narratives concerning SIDS

Narrative of:

☐ **negotiators**
☐ **territorial sovereignty (Westphalian order)**
☐ **disappearing paradise(s)**
☐ **scientific analysis and expert Approach**
☐ **neo-liberal resilience, risk mngmnt, challenges and complexities**

The narrative of territorial sovereignty (threatened by the migration from SIDS) partly overlaps with the stereotypical narrative of disappearing oriental[124] paradise(s). Within the area of the overlap, strong western statehood is seen as the opposition of weak oriental disappearing sovereignty of SIDS. Similarly, the narrative of scientific

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[124] The word "oriental" is meant as an opposite to the "occidental" to emphasize a biased binary perception.

approach also partly overlaps with the narrative of disappearing paradise. Again, within the overlap, the West is seen as scientifically advanced and developed in comparison to indigenous supposedly naïve population of SIDS.

The narrative of SIDS as negotiators overlaps with the narrative of state sovereignty. In order to participate in international negotiations, one needs to be recognized as a state. This narrative recognizes states as the basic units of analysis and primary actors.

The narratives of territorial sovereignty and scientific approach partly overlap only to a very limited extent; state centric solution might expect scientific inputs and those inputs may justify the solution of SIDS situation through state-centric policies. But to the prevalent extent those two narratives stand in opposition, because scientific and expert solutions are supposed to operate on a level different than state level and to choose approaches different than state-centric.

The narrative of disappearing paradise stands in opposition to the narrative of complexities and resilience. The narrative of complexities and resilience was supposed to provide an emancipatory alternative for local population, to perceive the local population as valuable partners, not as indigenous naïve people. Therefore, the narratives are mutually contradictive.

Finally, the fifth narrative of complexities and resilience gradually merges with the narratives of state sovereignty, scientific approach, and SIDS as negotiators. Although this narrative of complexities and resilience was intended to replace the two initially named narratives, correct their mistakes and take over their benefits, it steadily becomes embedded in state-centric neo-liberal thinking and engages scientific methods.

This dissertation intends to contribute to the above described literature from an innovative point of view and yet unexplored perspective. Thus, the dissertation is aware of the described narratives, but it does not specifically focus on any of them. Instead, it attempts to elucidate how the position of individual countries in front of the UNSC was determined and expressed in terms of interaction among space, law and power. The traces of the narratives do appear in the analysed records of meetings of the UNSC: the member states referred to science and expert approach, they called for complex

solutions and the very functioning and negotiation of the UNSC is the result of state-centric approach. Nonetheless, using interaction of law, space and power as the basic analytical matrix may be more elucidating for understanding the approach of the states and drawing general conclusions about this approach. It may also reveal how the scientific argumentation served the purposes of states or how the call for complex approach supported the responsibility evasion of states.

After the review of literature concerning SIDS, this chapter continues with review of literature concerning the UNSC.

3.2 The UNSC

This sub-chapter explains the general position of the UNSC in the international system and reviews relevant discussions in the literature that focus on this Council. The literature is generally divided into six broad parts dealing with the following topics: firstly, description of the UNSC with its powers, architecture and tasks, secondly, the role of the vetoes of permanent members of the UNSC, i.e. the countries empowered to block a decision of the Council, thirdly, analysis of voting and bargaining with votes among UNSC members, fourthly, relationship of the UNSC to other organs, fifthly its reforms, and sixthly, the mandate of the UNSC and its widening. [125]

Each part of the literature is introduced and its relevance for the topic of this dissertation is briefly summarized. The first and the sixth part, i.e. the role of the UNSC and gradual widening of its mandate, are described in greater detail, because they are most significant for this dissertation. They demonstrate the changing role of the UNSC and signs of shifting from commutative to distributive justice decision-making principles.

This sub-chapter does not intend to give an exhaustive overview of the literature related to the UNSC, but rather to outline basic debates eventually relevant for the topic of this dissertation and to explain that the UNSC was implicitly established on the basis of

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[125] Apart from that, there is considerable number of articles dedicated to individual UNSC resolutions, geographic places of UNSC involvement and reasons for this involvement, interaction of the UNSC with other organs and organizations, as well as literature dedicated to the sanctions of the UNSC and their enforcement. Nonetheless, comprehensive outline of this literature would be too excessive and bring little value added to the topic of this dissertation.

commutative justice principles, which slightly changed with the widening of the scope of its activities.

3.2.1 Role and Architecture of the UNSC: Commutative justice origins

The UNSC may be labelled as the most significant international decision-making forum. It was established as an organ of the United Nations by the Charter of the United Nations, signed on 26th June 1945 and entering into force on 24th October 1945. Important principles and drafts of some articles of the UN Charter had been discussed already during the conferences in Dumbarton Oaks in 1944 and Yalta 1945, the final wording being agreed upon on San Francisco conference (cf. Russel 1958, Simma et al. 2002, 444 – 445). This section describes UNSC composition and key powers. It intends to demonstrate that the UNSC was established on the basis of commutative justice and that the principles of commutative justice became implicitly embedded in the mandate of the UNSC. At the end of this section, we will be thus able to conclude that the references to the "UNSC mandate" made by certain countries during the UNSC discussions concerning "sinking islands" were also the references to commutative justice principles.

The UNSC belongs to main organs of the UN, together with the General Assembly, an Economic and Social Council, an International Court of Justice and a Secretariat. Although the Article 7 of the UN Charter prescribes that all those organs[126] are "principal" and significant effort was dedicated to presenting them as equally important (Hurd 2007, 84), the UNSC enjoys special privileges. It plays a central role in the Charter scheme in comparison with other UN bodies (cf. Lowe et al. 2008, 3) for two major reasons.

Firstly, as the only existing organ, it is entitled to issue directly binding decisions that are enforceable regardless of the position of the state(s) concerned in that particular decision. Article 25 of the UN Charter prescribes that all the UN members must accept and carry out the decisions of the Security Council in accordance with the UN Charter.

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[126] Also together with the Trusteeship Council.

Therefore, the UNSC has a special power to issue a decision binding for everyone from 193 UN members.

Secondly, the UN Charter takes precedence to other international obligations of member states, as prescribed by article 103 of the UN Charter. Those two reasons make the UNSC the most powerful organ on global scale. When acting under Chapter VII of the UN Charter, the Council may produce a decision – a resolution – that is globally binding and might be enforced by an involvement of militaries of member states. This makes it the only international council with a possibility to legally decide about offensive use of force, thus equipping it with "teeth" to solve breaches of peace and security (Bailey and Daws 1998, de Wet 2004, Luck 2006, Saroosi 1999, White 1990). The Council consists of fifteen members. The meetings of the UNSC are accessible also for the non-members of the Council, if the UNSC considers that the interests of that particular non-member are specially affected by the subject-matter of the discussion (Article 31 of the UN Charter). This organizational feature explains why SIDS could have participated on the meetings of the UNSC, although the individual island countries had not been elected the members of the Council.[127]

Article 23 of the Charter embedded permanent membership in the UNSC for five countries. The remaining 10 non-permanent members are elected for two-year term by the UN General Assembly.[128] The permanent members of the UNSC are China, France, the UK, Russian Federation and the USA, i.e. the countries that most significantly contributed to the victory in World War II. As described by Ikenberry (2001), those who win important conflicts tend to retain power gains and legitimize such power accumulation by adoption of rules how the power could be projected. As a result, agreements concluded after major conflicts usually establish institutions that help the winners to defend their power-position and prevent weaker states from acquiring similar powers in the future. In order to persuade weaker states to accept such agreement, the

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[127] The countries that cannot appear directly in front of the UNSC can still try to influence it through strategic diplomatic engagement with current UNSC members (Farrall and Prantl 2016).

[128] For the detailed account of how the individual members are nominated on regional level and ratified (or elected) by the General Assembly see Dreher et al. (2014).

winners offer them codification of predictable rules when and how the power could be projected.

One could claim that this happened also in case of the UNSC after the Second World War, when China, France, the UK, the USSR and the USA gained permanent membership in the UNSC as well as the possibility to veto its subject-matter decisions in exchange for defined rules of the UNSC functioning.[129] While the vetoes are elaborated on in the section 3.2.2, the rest of this section focuses on relevant tasks and powers of the UNSC. It also elaborates on the rules for its power projection that are defined by the UN Charter.

Key tasks of the UNSC are defined as maintaining international peace and security, determination of the existence of threat to the peace and security and actions to eradicate this threat to maintain or restore peace and security (cf. Bailey and Daws 1998, 3 – 5). This role of the UNSC is prescribed by articles 24 and 39 of the UN Charter which are listed in full below:

Article 24:
1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

Article 39:
The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.[130]

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[129] Another obvious reason for the adoption of the UN Charter, as its Preamble emphasizes, was to safe the succeeding generations from the scourge of war.

[130] Apart from deciding producing resolutions, the UNSC may engage in informal consultations (cf. Bailey and Daws 1998, 60). Nonetheless, it is unlikely that such consultations could help SIDS or have greater value than the resolution of the UNSC.

The Article 24 founded the fundamental role of the UNSC and established its position towards other UNSC organs and member states. The Article 39 was labelled as the "single most important provision of the Charter" (Simma et al. 2002, 445, 718). The following lines describe how the articles were formulated and interpreted in order to build up the UNSC on commutative justice principles.

Commutative justice, as outlined in the section 2.1.3 of this dissertation, is intended to redress particular wrongs committed by particular perpetrator(s); the wrongs need to be defined, identified and punished, or at least followed by specific prescribed action. Distributive justice on the other hand is much vaguer; it does not require identification of a perpetrator or wrongful behaviour. Instead, it tackles more equal distribution of costs and benefits under considerations of equity rather than under strict procedural rules. Therefore, if we want to assess whether certain organ should represent a commutative or distributive justice body, we need to ask whether its founding law requests the organ firstly to identify particular wrong, secondly to identify the perpetrator and thirdly to follow the prescribed rules when answering that particular wrong. We may conduct this exercise for the UNSC on the basis of Articles 24 and 39 of the UN Charter.

Firstly, we can examine whether the UNSC acts under a request to identify particular wrong. Article 39 of the UN Charter obliges the UNSC to determine whether "a situation constitutes a threat to international peace and security" and grands the Council significant amount of discretion upon this matter (Lowe et al. 2008, 14). Despite this discretion without serious substantive limitations, there is the procedural restraint[131] that the UNSC should determine the existence of threat prior to proceeding with further actions.

During the discussions on the UN Charter draft in San Francisco, many countries insisted that the Charter should even include detailed list of prerequisites for the enforcement actions of the UNSC in order to make it more predictable, i.e. that the

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[131] As Simma et al. (2002, 719) claim, the Charter emphasized procedural restraints over the substantive limitations. This confirms the assertion of Ikenberry (2001) that after major conflict, the powerful winners tend to lock in their power within an institution in exchange for predictable procedural rules for projection of this power.

determination of "particular wrong" should be subjected to even more detailed rules. But the powerful countries objected that this could be too rigid, legalistic and binding[132] (Simma et al. 2002, 718 – 719). However, the first commutative justice condition to identify particular wrong was still met and prescribed by article 39 of the UN Charter. The threat to peace and security, determined by the UNSC, was traditionally interpreted in terms of a military danger, risk of "a use of force on a considerable scale" (Simma et al. 2002, 726).

Secondly, we have to assess whether the UNSC needs to find particular perpetrator. This condition is also met, although not explicitly stated in article 39. The necessity to identify the perpetrator is inherently included in the necessity to determine "*threat to the peace, breach of the peace, or act of aggression*", because every of those deeds must have a cause. Additionally, if the UNSC resorts to actions under articles 41[133] or 42[134] of the UN Charter, it needs to know the perpetrator in order to direct the actions against him. Finally, it has been inherently expected in the past that the UNSC had to identify the perpetrator. In the era of the League of Nations, there were several unsuccessful proposals "to allow the Council [of the League of Nations] to determine the aggressor with binding force" (Simma et al. 2002, 718). Thus, during drafting of the UN Charter, the necessity to determine the concrete threat to peace and security was supposed to distinguish the UN system from the League of Nations system and represent important improvement.

In other words, the countries from the very beginning intended to empower the UNSC with the authority to point out to specific source of threat or a wrongdoer that violates international rules for peace and security. Moreover, during the discussions in San

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[132] With a latent self-interest that their own actions could be perhaps found as an aggression.

[133] Article 41 prescribes which actions *short of force* can be taken by the UNSC: "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

[134] Article 42 prescribes the actions including the use of force which can be taken by the UNSC: "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

Francisco in 1945, many founding states wanted more detailed definition of aggression which would allow even more nuanced identification of the perpetrator threatening peace and security, as suggested e.g. by Bolivian proposal (Simma et al. 2002 , 718 – 719).

It was expected that the states shall be the primary sources of threat and aggression, but the UNSC gradually recognized that there might be inter-state sources of threats that need to be addressed by the action of the UNSC as well (Simma et al. 2002, 726).[135] The identification of the threat to peace and security in those cases almost merged with the identification of its source. For example, during the discussions about situation in Angola and South African apartheid it appeared that "the decisions on whether the SC could become active in cases of human rights violations without first determining the existence of a threat to the peace in the sense of the Chapter VII of the Charter, (…) were again left open, because with increasingly strong arguments the SC has qualified gross violations of human rights as constituting a threat to the peace under the Charter" (Simma et al. 2002 451). Therefore, also the second condition of the commutative justice decision making is present, because the UNSC should explicitly or at least implicitly delineate a perpetrator or a source of threat against whom the actions of the UNSC shall be targeted.

Finally, we may examine the third condition of commutative justice, i.e. whether there are strict rules how to act once a threat and its source are identified. Here we can depart from the Article 24 of the UN Charter. It is not clearly stated whether the UNSC can use only the "specific" powers outlined in Chapters VI, VII, VIII and XII of the UN Charter, or whether it can – apart from the "specific" powers – use also certain "general powers" that are in its discretion. By a systematic, historical and teleological interpretation and evidence of UNSC practice, Simma (et al. 2002, 448) advocates the latter option. He argues that the UNSC has the wide range of "general powers" to fulfil

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[135] As the International Court of Justice confirmed in the Expenses Case (ICJ 1962), organs of the UN enjoy large authority to determine their own jurisdiction or competence. Thus, also the UNSC has wide range of legal discretion to determine what issues represent threats to peace and security.

its mandate, while article 24 lists some of them as "specific".[136] Nonetheless, when exercising those powers, UNSC is bound by strict procedural rules and principal substantive rules; therefore the third feature of commutative justice is also present. The considerations of the UNSC should be subjected to the rules and principles of United Nations. The first sentence of the article 24, paragraph 2, prescribes that the UNSC must act, in discharging its duties, in 'accordance with the Purposes and Principles of the United Nations'."

The UN Charter is in this regard less legalistic than its predecessor, the Covenant of the League of Nations, but it still intends to bind the UNSC by international law – by the applied principles and purposes of United Nations and the UN Charter (Simma et al. 2002, 445, 447). Thus, the UNSC's material discretion should be regulated by the core values of international society expressed by international law (de Wet 2004). In other words, despite being prevalently a political body, the UNSC cannot act completely arbitrarily or just according to pure equity principles (cf. Šturma 2013, 299 – 305; Buchanan and Keohane 2006, 434; Chan 2013, 877 – 878).[137] As ICTY summarized: "In any case, neither the text nor the spirit of the Charter conceives of the Security Council as *legibus solutus* (unbound by law)."[138]

Procedurally speaking, when encountering and determining the threat to peace and security, the Charter prescribes the UNSC to issue recommendations or to resort to

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[136] Simma et al. (2002, 448) and Kelsen (1964, 230) argue that Article 24, para (2), second sentence (*The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII)* is only declaratory proclamation without legal relevance, because same conclusions might be drawn from the general systematic interpretation of the Charter. Though, incorporation of such a declaratory clause proves that the authors of the UN Charter emphasized importance of following certain rules. The inclusion of this sentence thus marks that the UNSC should follow also third commutative justice principle – to follow particular wrong by particular prescribed action.

[137] Cf. also the statement of the ICJ in advisory opinion *Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter):* "The political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment. To ascertain whether an organ has freedom of choice for its decisions, reference must be made to the terms of its constitution." (ICJ Reports 1947–8, 64).

[138] ICTY (ILM32 1996): The Prosecutor v. Tadic´. Appelate proceedings. IT-94–1-AR72, 35.

actions under Article 41 and 42 of the UN Charter.[139] Those actions for the UNSC are clearly defined; the UNSC has to follow those given possibilities.[140]

We may conclude that all the three conditions of commutative justice are met in case of the UNSC deciding under Chapter VII of the UN Charter: identification of particular wrong, its perpetrator and prescription of remedial actions.[141] The duty to determine a (prevalently military) threat to international peace and security and conduct specific steps to counter it represents the core of the UNSC mandate as well as the basis for its evaluation as a commutative justice organ.

As such, this position has been gradually accepted as a background rule for the UNSC functioning that is simply given and scarcely discussed. As Simma et al. (2002, 450) explain: "The small number of cases in which Art. 24 has been invoked as the direct basis for action by the SC, or in which it has been discussed in connection with actions taken by the SC, stand in clear contrast to the fundamental importance of this provision. (…) There are, however, (…) resolutions, draft resolutions, and other documents where paras. 1 and 2 of Art. 24 have been referred to as the basis of action, although without any detailed discussions of these references to Art. 24 and paras. 1 and 2."

Thus, commutative justice became embedded in the UNSC mandate and the reference to the UNSC mandate gained also meaning of the reference to commutative justice principles vested in this mandate. During the first years of the Council's functioning, the UNSC neatly followed commutative justice rules. Between 1946 and 1963, during its 1085 meetings, the Council tried to analyse whether alleged perpetrators – in that period exclusively states – breached the rules of international peace and security and which actions should be consequently taken against them. Its agenda was dominated by the

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[139] Cf. footnotes on previous pages listing the actions under articles 41 and 42.
[140] There is an interpretation that the measures under Chapter VII do not have to be necessarily directed against the guilty party as long as they are necessary to maintain peace and security (Stigen and Fauchald 2009, 341 referring to Kelsen 1964, 434-435). This nonetheless does not diminish the fact that Chapter VII lists definite and exhaustive set of responses as a rule that must be followed.
[141] The analysis of the Chapter VI of the UN Charter would lead to the similar conclusions, although in that case, the perpetrator would not have to be identified, because the Council is empowered just to issue recommendations under Chapter VI of the UN Charter.

situations in Palestine and in Kashmir, followed by Greece and the Congo (Petersen 1965,[142] 819 – 821; Goodrich 1965).

Under the above listed principles of commutative justice the Council decided also in important cases of Korean War, the Crisis in Suez, East-Timor conflict, wars between Israelis and Arabs, Pakistan and India and Iran-Iraqi war (for detailed account on the Council involvement cf. Lowe et al 2010, chapters 11 – 21[143] or cf. also Malone 2004). The Council acted also in cases of former Yugoslavia and Rwanda, where it established *ad hoc* tribunals to prosecute individual perpetrators of atrocities. Thus, it robustly applied principles of commutative justice not only to state level, but also to sub-state level.

The principles of commutative justice strongly echoed also in 1992 Agenda for Peace,[144] a report submitted by an UN Secretary General upon the request of the UNSC. The report was supposed to outline the recommendations how to strengthen the UNSC role in maintaining peace in the post-Soviet era. Although the report recognized new types of threats, it still implicitly expected that the UNSC should adhere to commutative justice principles by identification of particular perpetrator threatening peace and security and adoption of specific responses against this perpetrator.

As the primary aim of the UNSC, the report listed: "To seek to identify at the earliest possible stage situations that could produce conflict, and to try through diplomacy to remove the sources of danger before violence results." Furthermore, it contained detailed measures to address this situation such as preventive diplomacy, peace-making, peacekeeping and peacebuilding. Thus, it still based on commutative justice principles, when it suggested that the perpetrator threatening peace should be identified and specific actions should be taken – the report even intended to provide greater detail of those specific actions and thus strengthen the commutative justice principles by specifying predictable and *a priory* given reactions to the violation of specific rule.

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[142] For detailed account of the Council's decision-making cf. ibid.

[143] List of situations dealt with by the UNSC is available in the annexes to this volume.

[144] UN Secretary General. An Agenda for Peace. Preventive diplomacy, peacemaking and peace-keeping. Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992. UN Doc. A/47/277. 17th June 1992. Available online [26. 10. 2018]: < http://www.un-documents.net/a47-277.htm >, hereinafter as "The Agenda for Peace".

> The recognition of the new types of threat by the Agenda for peace
> was framed as an exploration of new possible sources of conflict[145]

The Agenda acknowledged population growth, socio-economic problems and environmental degradation as potential problems, but just as a source of military conflict. Military conflicts remained at least similarly important; the UNSC should therefore address the military consequences of the new threats, while the matters beyond military threats should be left to the other UN organs.

We may summarize this section by reiterating that the UNSC was established by respective provisions of the UN Charter as a Council implicitly deciding on the basis of commutative justice principles. Such "mandate" focused primarily on military threats got embedded strongly in the UNSC decision-making practice in the past and mirrored also in the 1992 Agenda for peace report. In case of SIDS in front of the UNSC, this strengthened the position of the rapidly developing states that could simply refer to the insufficient mandate of the UNSC in order to get the issue of SIDS in particular and climate change in general out of the UNSC agenda, as will be described in the section 5.2 of this dissertation. By a simple reference to insufficient mandate, the rapidly developing states could invoke the background rule and close off the debate. Moreover, the rapidly developing permanent members could avoid future necessity to cast a veto on eventual Council decision. The issue of vetoes is discussed in the next section 3.2.2.

3.2.2 Vetoes of the "Big Five"

Permanent members of the UNSC: China, France, Russia, the UK and the US, informally nicknamed the "Big Five", are equipped with the possibility to veto any material decision of the Council. Consequently, they possess extremely high voting power in comparison to non-permanent members (O'Neill 1996). Therefore, there is significant amount of literature dedicated to analysis of casted vetoes. By reviewing it, we may discover whether it offers any clue why China or Russia did not signal boldly that veto would be cast.

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[145] The Agenda for Peace, point 13 and 15. Partly, the Agenda for peace might have signalled gradual shift to distributive justice, but this will be described in section 3.2.6 below.

Vetoing sparked vivid discussions already during the drafting of the UN Charter in 1945 (Hurd 2007, 84). On the one hand, small and middle-powers "have questioned the veto power and even the allocation of permanent seats on the Council" (Baccarrini 2018, 97). On the other hand, the strong countries advocated veto based on the experience with the League of Nations to ensure that all the powerful stakeholders are involved in decision-making (Goodrich 1965, 429 – 431). Lowe (2008, 14) summarized the outcome in following words: "The veto power as laid down in Article 27 ensures that the P5 cannot have action mandated by the UN Security Council used against them, or indeed against a close ally. The veto system is much criticized, but it may have saved the UN from wasting time and political capital in contemplating hazardous actions against major powers and their close allies; and it is actually less of an obstacle to action than was the more general veto system in the League of Nations Council."[146]

Shortly after the Council commenced its meetings, the East-West tensions caused significant increase in the number of vetoes: "Between 1946 and 1986 the veto was wielded 212 times," which is more than five times bigger number than in the following 20 years (Weiss and Kalbacher 2008, 330). This almost blocked UNSC decision-making: "during the first five years of the United Nations, the Soviet Union used the veto 50 times. Until May 1990 the number of vetoes cast by permanent members were as follows: France 18, China 22, United Kingdom 33, the United States 82, and the Soviet Union 124" (Osman 2002, 194).

Frequent vetoing invoked disappointment with the Council's functioning. There have been numerous suggestions how to adjust the veto system or limit the veto power (cf. Golden 2017). In spite of them, the UNSC permanent members preserved the possibility to cast the veto and thus block any material decision of Council upon their sole discretion. The right of veto bears an effect of a deterrent. A permanent member may simply signal its willingness to cast a veto, which easily persuades other participants of the UNSC meetings that there is no value in drafting a resolution, because it is likely to be stopped (Osman 2002, 196).

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[146] There are various hypotheses why the weaker states and the middle powers accepted this solution, for details cf. Russel (1958, 248).

This point is relevant for the situation of SIDS and their demands from the UNSC. Supposing that the rapidly developing states disagreed that the UNSC can discuss SIDS situation, why then did they not simply veto or explicitly signal their willingness to veto any decision concerning the situation of SIDS or environmental threats? There are two possible explanations. Firstly, Russia and China as the permanent members might have considered their expressed objections sufficiently clear to suggest that the veto could be cast. Secondly and perhaps more importantly, direct speaking of vetoes would represent de-legitimizing step that could be perceived as aggressive or even blunt.

As Hurd (2007) explained, legitimacy has played important role for the functioning of the UNSC.[147] Thus legitimacy might also explain why China and Russia did not resort to vetoing the discussions invoked by SIDS. In order to maintain their legitimacy and keep the veto as truly extraordinary measure, they might have opted for more careful and astute approach. They claimed that the issue of SIDS does not fall under the mandate of the UNSC. Such reference to the mandate of the UNSC (cf. the discussion above) made their statement seem more natural and legitimate. The statement that the UNSC should not decide about the situation of SIDS was subsequently disguised as a simply given fact supported by law rather than a political position.

Moreover, this argument was durable, could be conveniently repeated and China and Russia would not be shamed for misusing their vetoes against the endangered SIDS. This is also an additional reason why this dissertation uses the CLG as an underlying theoretical concept. CLG enables us to study exactly sophisticated rhetorical positioning, which is preferable to other theories used e.g. to analyse the rules of vetoing.

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[147] Cf. also Barnett (1997) and Hurd (2002) on the role of the UN, UNSC and legitimacy acquisition and maintenance. Cf. Chapman and Reitner (2004) for a detailed overview how discussion of the UNSC can increase a domestic support (and thus the legitimacy) of a political leader.

3.2.3 Voting and bargaining of the UNSC members and the reasons to address the UNSC

Similarly to analysis of vetoing patterns, another part of literature tries to generalize the patterns of voting[148] within the UN/UNSC (cf. Monteleone, C. 2014, Kim and Russet 2009) and patterns of bargaining with votes in exchange for various advantages gained within or outside of the UN platform (cf. Dreher, Sturm and Vreeland 2009; Kuziemko and Werker 2006). Furthermore, Behfar and Svari (2016) inquired how the UNSC resolutions are determined by attitudes and subsequent votes of individual states. Chan (2013) explained voting and argumentation of an individual permanent member of the UNSC on the example of China.

In this regard, it is important to mention why this dissertation does not analyse whether why and how SIDS bargained directly with individual UNSC members for support on the UN platform or elsewhere. Firstly, SIDS would have probably low bargaining position, secondly, the records of this bargaining, if it took place, would be limited and hard to obtain.[149] Thirdly, basing on the two previous reasons, this dissertation focuses on the negotiations in front of the UNSC as a whole and on the arguments of concerned stakeholders, analysing the interplay of law, space and power by using CLG. The analysis of bargaining would probably have to employ game theory or its derivate(s), which would lead to limited conclusions. On the other hand, using CLG to evaluate the negotiations catches better the entire the dynamics between law, space and power as described in the chapter 2.3.3 and 2.3.4.

Within this trope of literature, there are also authors who investigate, why countries use the UNSC and benefits this is supposed to bring. Thompson (2006, 1) inquired why "powerful states channel coercive foreign policies through international organizations (IOs)", namely the UNSC. He concluded that powerful states might not seek legitimacy by such step, but rather use the UNSC as forum for information transmission, where

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[148] This literature and also this section inquire what are the voting preferences of the UNSC members and why. The formal regulation of the voting process is in great detail described elsewhere (see e.g. Bailey and Daws 1998, 221 – 258) and does not have direct significance for the topic of this dissertation.

[149] From what the literature suggests, we know e.g. that some countries like Australia, Bhutan, Cambodia, Luxembourg, or the Ukraine were willing to promote environmental agenda on the Council meetings in exchange for being elected a Council non-permanent member (Conca et al. 2017, 2).

they test the level of international support or opposition (ibid.). As a result, the powerful states may discover consequences of their intended action and adjust their behaviour accordingly.

As far as this dissertation is concerned, the UNSC was not asked by great power, but by small island states. Thompson (ibid.) nonetheless provided also certain general clue, why such smaller states might reach out to the Council: "Governments that lack resources or expertise often require IO assistance for material and technical reasons, and weak states rely on inter-national forums to increase their political clout and bargaining power." The SIDS would fall into this category, as they intended to open another avenue by asking the UNSC to address their plight. This dissertation focuses on the argumentation of SIDS and (counter-)argumentation of other countries during this process. The UNSC in this regard probably served the purpose of transmitting strategic information, as Thompson (ibid.) suggests, but this dissertation is rather interested in how and why various countries justified their proposals.

This dissertation considers similarly another trope of literature perceiving the UNSC as a source of legitimacy. Certain authors (e.g. Claude 1966; Haass 1994; Hurd 2002; Hurd 2007) explained that obtaining a resolution of the UNSC is an important legitimizing step for an actor.

Voeten (2005) suggested a compromise between legitimacy and information-exchange role of the UNSC. He asserted that when "governments and citizens look for an authority to legitimize the use of force, they generally do not seek an independent judgment on the appropriateness of an intervention; rather, they want political reassurance about the consequences of proposed military adventures" (Voeten 2005, 528). Thus, legitimacy gets rather pragmatic definitions of "the extent to which actors in international politics believe that norm compliance produces favourable outcomes" (ibid. 529). The UNSC subsequently represents an elite pact which exercises constraints "defined not by legal, moral, or efficiency standards, but by an undemocratic political process that seeks to achieve compromise" (ibid., 551).

The case studied by this dissertation does not necessarily require deciding between suggested roles of the UNSC (information transmitter, legitimacy provider, provider of

reassurances) and state which is more relevant. All of them can be valid and various countries might have approached the UNSC with different expectations concerning its aim in the UNSC case.

3.2.4 Relations of the UNSC to other relevant UN bodies

The following section outlines the relationship of the UNSC with other UN bodies, namely the International Court of Justice, the mechanism of UN Framework Convention on Climate Change and the General Assembly. The purpose is not to provide an exhaustive explanation of the mutual legal position and factual relations, but to comment only on the relevant aspects of relations with relevant UN organs.[150]

Starting with the International Court of Justice ("ICJ"), the relationship of the two bodies is usually mentioned in connection with the judicial review of UNSC decisions. The authors (e.g. Gowlland-Debbas 1994; Akande 1997; Martenczuk 1999) discuss whether or how the Court is authorised to enforce the limits of the UNSC authorisation and whether the Court may interpret the position of the UNSC and its resolutions in international law. Since there has been no resolution of the UNSC in case of "sinking" SIDS, the ICJ would have nothing to review and this debate is not (yet) relevant for this dissertation.

Nonetheless, the relationship of the two is relevant from different angle. Article 96, paragraph 1, of the UN Charter allows the Council to request the ICJ to give an advisory opinion on any legal question. Thus, if there is a discrepancy concerning the mandate of the UNSC to tackle the situation of "sinking" islands, the Council could ask the ICJ to advice. The Charter states that the advisory opinion may tackle *any* question. The ICJ could subsequently clarify whether the Council can get involved and under what circumstances. This would solve the dispute about the sufficiency of Council's mandate.

Although this may seem legally plausible, such development is highly improbable. The Council has been very reluctant to ask ICJ for advisory opinion and did it only once, in

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[150] For a comprehensive description of legal and factual relationship of the UNSC with other UN organs cf. UNSC (2019).

1970 in Namibia case (cf. Security Council Report 2016). Moreover, this question would concern the competence of the Council, where the members of the Council might be extremely unwilling to pass such decision on a different body, completely outside of their influence. The members of the Council shall be rather attempting to define the role of the Council in a way suiting their interests, which is one of the points of this dissertation. In other words, this proves that the dispute around the UNSC mandate is not "legal", but political in its nature, while the law serves just as a legitimizing tool.

As far as UN Framework Convention on Climate Change is concerned, there is no direct legally outlined relationship. The UNFCCC mechanism was adopted in 1992 (many years after the UN Charter entered into force) in order to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. The Convention did not address the relationship to the UNSC. The UNSC debates on climate change has referred to UNFCCC and its documents. Nonetheless, the ideal way of cooperation or division of labour between the two bodies is still subject to discussions. The discussions concerning the role of the UNSC in environmental security are described in the section 3.2.6 below. The chapter 5 of this dissertation consequently outlines how the countries argued that the "sinking islands" issue should be dealt with either by the UNSC or by the FCCC, or by both.

Finally, we may examine the significant relation between the UNSC and the General Assembly. The UNSC and the Assembly were established as two different bodies with distinct functions, usually operating entirely separately (Vallat 1952, 78). The competences shared between the Assembly and the Council may be deduced from articles 10, 11 and 14 of the UN Charter. The GA may make recommendations to the Security Council in regard to any questions or any matters within the scope of the present UN Charter. It may also make a recommendation for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations. Thus, it shares with the GA the competence to peacefully settle the disputes and deal with disarmament (cf. Šturma 2008, 322; Koskenniemi 1995, 338).

However, in comparison to the UNSC, the Assembly cannot resort to actions with respect to threats to the peace, breaches of the peace or acts of aggression under the Chapter VII of the UN Charter. The Assembly cannot issue resolutions calling for measures short of force or including the use of force. Finally, under article 12 of the UN Charter, the Assembly cannot deal with a specific matter, as long as the Security Council is engaging with the issue, unless the Council request so.

As a result, the Council possesses hard powers and primacy in addressing the threats to peace or security, while the Assembly may exercise only soft, recommendatory powers, possibly in cooperation with Economic and Social Council under article 62 of the Charter, and only if the Council does not object and decide to seize the matter itself. "This dichotomy between *hard UN* (political activities for which the Security Council is mainly responsible) and *soft UN* (activities for which the General Assembly – through the ECOSOC – is mainly responsible) is functionally and ideologically the most significant structuring feature of the organization. (…) It has been both a source of constant tension in the orientation of the UN's activities as well as an invaluable asset in overcoming difficult periods – most conspicuously by allowing soft activities to compensate for the problems which the Cold War occasioned for carrying out hard ones" (Koskenniemi 1995, 336).

When assessing the relationship between the GA and the UNSC, Koskenniemi (ibid.) used a metaphor of police and a temple of justice. The police should be responsible for maintenance of the order. The temple should ensure that there is general social justice within given society. The activities of both are necessarily interlinked, because order and justice are mutually constitutive; order helps to maintain justice and justice legitimates order, making it widely acceptable.

The UNSC should be tasked with maintaining international peace and security, thus preserving the order. Therefore, it should represent the police; its procedures and composition are accommodated for this purpose (ibid., 344). On the other hand, the General Assembly with wide participation should be the temple of justice. Both the organs should control each other: "The Council's functional effectiveness is a guarantee against the Assembly's inability to agree creating chaos; the Assembly's competence to discuss the benefits of any policy – including the policy of the Council – provides, in

principle, a public check on the Great Powers' capacity to turn the organization into an instrument of imperialism" (Koskenniemi 1995, 339).

However, this balance has not been always working properly. To the contrary. On number of occasions, the GA tried to alter the activities of the Council, because the Council had been blocked by a Great Power's veto (ibid., 339 -340). And as will be described below in the following section 3.2.5., the Council started to "legislate" and subsequently used its hard powers in the areas traditionally tackled by the Assembly, which raised controversy.[151]

Koskenniemi (ibid., 344) criticizes this development and claims that the UNSC might be practically inappropriate as a forum of justice. The Council should not defend its intrusions into the competences of the Assembly on the basis that it secures wider conditions for peace and perceives security comprehensively: **"The view that 'security' is comprehensive and depends also on the presence of acceptable conditions of social life is certainly not manifestly implausible. But there is a long way from the truth of that statement to the falsity of the view which says that it is the Security Council's task to bring about those conditions. Dictators always saw everywhere a threat to the *Ordnung;* and no conflict was too small for the intervention of the security force. Theirs, too, was a comprehensive notion. (…) There is a crucial difference between policies intended to safeguard 'security' and policies intended to bring about the good life – a difference encapsulated in the distinction between the police and the Temple"** (ibid., 344).

Those observations are relevant for this thesis for two major reasons. Firstly, this thesis does not advocate the UNSC's action in case of the "sinking" SIDS. The thesis just intends to analyse how individual countries tried to shape or re-shape the role of the international institution to suit their interest, and how they interpreted its mandate in this regard. It is not the purpose of this thesis to discuss, whether the UNSC is an appropriate forum to deal with climate change or whether such step would interfere with the authority of other organs. Nor does this dissertation presuppose that the UNSC would have all the legal and factual means to efficiently deal with the problem. The dissertation just compares how states perceive and try to construct the role of the UNSC

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[151] Koskenniemi (1995, 341) quotes dissenting opinion of judge Fitzmaurice in this regard "It was to keep the peace, not to change the world order, that the Security Council was set up".

to suit their interest, eventually, how they disguise their political aims behind legal or scientific claims to make them seem more objective and natural, or how they exploit various concepts and expectations.

Secondly, if we accept that he UNSC should be accountable for maintaining the "order" as the police, while the GA should be the temple of justice, significant questions arise. Why to talk about commutative and distributive justice in connection with the UNSC at all? If the temple of justice is located elsewhere, what value added does this bring? Does keeping the international peace and security encompass decisions basing on justice? It could seem that discussing justice is entirely irrelevant. Nonetheless, there are various reasons why justice remains highly important for the UNSC.

Koskenniemi (1995, 325) claimed that order and justice are constitutive of each other. The UNSC might be a policeman to restore order. But this order must be part of system preserving social justice, otherwise the order would be neither legitimate nor sustainable. Consequently, each act of the UNSC should contribute to justice, although it primarily maintains order. Such an order maintenance necessarily contributes to commutative justice. If the order is violated, particular wrong appears, and the UNSC action is supposed to redress it. This thesis claims that the UNSC was originally supposed to answer the call of commutative (retributive) justice call by maintaining order. Nevertheless, this might be changing, because the UNSC is, for good or for bad, requested to fulfil distributive justice tasks. Thus, discussing justice in this regard remains important: "Among people and States — unlike among angels – institutions are needed to undertake the distributive and retributive tasks that justice calls for" (Koskenniemi 1995, 329).

Additionally, the fact that the UNSC is a body supposed to maintain order does not mean that it is immune to different interpretations of justice that the actors may exploit to shape its role. Koskenniemi described an imbalance between order and justice in the UN Charter. This imbalance favoured order.[152] Despite that, "the maintenance of

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[152] The Charter was prepared during the epoch of struggle against Nazism. Therefore, stopping the war and bringing about new conflict-less order was prioritized over establishing wide social justice: "For the Great Powers, the United Nations was a structure devoted to maintaining order. International justice was simply not dealt with - possibly as the overwhelming problem in this

international order" was still combined with the purpose of "providing for (minimal) conditions of international justice" (ibid., 337). Thus, justice was and is not entirely disregarded. Moreover, this imbalance has been challenged by practice of states (ibid. 337) that expected the UNSC to reflect social justice. The same might be well happening in the case of the "sinking" SIDS, who request the Council to "make (distributive) justice", despite its original task to maintain order.

Finally, Koskenniemi (ibid.) acknowledged and criticized that the UNSC assumes the role of the Temple of Justice as its activities interfere with the traditional competences of the General Assembly. Although it may be normatively incorrect, justice already started to be directly relevant for the UNSC. To sum up, commutative and distributive justice plays significant role when analysing the rhetoric and attitudes of states in front of the UNSC.

3.2.5 UNSC reform

Remarkable pile of literature deals with the reform of the UN in general or the UNSC in particular (cf. Šmuclerová 2006; Butler, 2012, Hassler 2013, Kuchařová 2018). The debates around the reform deal besides other things also with the UNSC mandate and its role, which is a topic similar to the one disputed between SIDS and other countries in examined case. Therefore, this literature shall be briefly summarized as well.

The reform remains to a mean to react to the changing world (Soderberg 2015). Thanks to it, the UN and the UNSC would bridge legitimacy deficit emerging from changed circumstances of world geography and politics (cf. Souza 2007).[153] The reform was also supposed to redress the fact that the UNSC might not have fulfilled its initial promises (Stephen 2018, 96 – 121) or that its history has been a "constant interplay between the Charter's provisions and the actual practice of states" (Lowe et al. 2010, p. 2).

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field was still to attain victory from 'Hitlerism', in comparison to which every other grievance must have seemed secondary" (Koskenniemi 1995, 335).

[153] Overview of the literature related to UN legitimacy and inter-organisational democracy available ibid.

Nevertheless, intensive efforts to conduct full pledged reform have not been successful (Runjic 2017). The steps towards the reform proceed very slowly, which many scholars see as a result of organizational path-dependency and rigidity of veto-players (cf. Hosli and Dörfler 2017). This section summarizes the content of the literature concerning both the formal and the informal reform and draws three conclusions for the topic of this dissertation.

Formal reform

A formal reform of the UN was envisaged in articles 108 and 109 of the UN Charter. Those articles expected relatively high quorum and formalized procedure for the reform to occur. This resulted in a stalemate, so called "lock-in effect" that prevented formal changes of the UN Charter in most of the cases (Gowan 2017). Therefore, there has been only partial formal reform so far. It occurred in 1960's and increased the number of non-permanent members of the Council.

In 1963, the General Assembly with the approval of the permanent members of the UNSC added 4 new non-permanent member seats to the Council increasing the number of non-permanent members to 10. As O'Neill (1996) noted, this decreased the importance of individual votes of non-permanent members.

The subsequent attempts to reform the UNSC included an effort to institutionalize a council of ministers of foreign affairs in 1977 and attempts to enlarge the UNSC and broaden the Security Council's agenda in 1980's and 1990's; none of those being successful (Chapnick 2018; Harrington 2017, 39 – 77).

In 1993 the GA established an 'Open ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council'. It focused on "the composition of the Council, the number of new permanent and/ or non-permanent seats, new categories of members, the distribution of these seats by geography or by financial contribution, the periods in which these updated issues should be dealt with, the majority of votes required in case of expansion, the veto rights of current permanent members, and possible new permanent members"(Baccarini 2018, 98 – 99). Nonetheless, no formal

changes according to the proposals of the working group have occurred yet.[154] This opened the door for informal changes of the UNSC practices and procedures that are outlined in the next paragraphs.

Informal reform

The UNSC's functioning has undergone also informal development. First informal change was the interpretation of the UN Charter in regard to absence of a member (including permanent) on a meeting. It was concluded that such absence does not mean that the member disagrees or in case of permanent member "vetoes" proposed decision (Baccarini 2018, 106). Despite the fact that article 27 of the UN Charter prescribes *affirmative vote* of UNSC members for a decision to be passed, it was interpreted that the disapproval, the veto, should be rather exceptional tool, therefore it cannot be implied from a sole fact that a permanent member is absent from particular meeting (Simma et al. 2002). The absence does not therefore mean the veto.[155]

Other informal changes introduced in course of the UNSC functioning (cf. Baccarini 2018, 108 – 111) were for example peacekeeping missions,[156] "Arria-formula" meetings or sanction ombudsperson (Kirchner 2010), while there were also attempts to introduce other normative practices such as responsibility to protect doctrine (Banketa 2016, 382 – 423; Genser 2018, 420 – 501).[157]

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[154] Eleven of current reform proposals were evaluated by Gould and Rablen (2017), who assessed also eventual effects of expansion of the UNSC membership. They inquired how various reforms could impact on Council's efficiency and equity among the members. Their model shows that from all the suggested changes, only one proposal is likely to induce more efficiency and equity. It is the proposal that two negative votes would be required for a veto to become effective (Gould and Rablen 2017).

[155] The contrary opinion claimed that a deliberate absence from the meeting is an essential political action with clear disapproving meaning; therefore, it should not be evaluated "purely legally" (cf. Prandler 1974, 210).

[156] Famously nicknamed by Dag Hammarskjöld, the second UN Secretary-General, as the operations under the Chapter six and half of the Charter (cf. UNIS 2008).

[157] Further informal changes are discussed in the literature, while it is not entirely clear whether they already occurred, whether they are still occurring or whether those are not changes at all, but rather aberrations from UNSC standard. This includes questions around existing practice of states in creating opposition against the actions of the UNSC (cf. Tzanakopoulos 2011) as well as introduction of legal and extra-legal checks and balances of those actions (cf. Whittle 2015, Scheu 2007).

Finally, controversies arise around the question, whether the UNSC already informally assumed the role of "World's legislator", i.e. whether the resolutions of the UN are formal sources of international law with general validity. This would represent probably most notable informal change concerning the UNSC.

The literature usually connects the advent of the UNSC legislative-like activities with its resolutions creating the UN Compensation Commission, establishing *ad hoc* criminal tribunals or determining that the Geneva Conventions were applicable to the occupied Palestinian territories (cf. Harper 1994: 126 – 129; Koskenniemi 1995: 325 – 326; Kirgis 1995: 506 - 522). The moment when the countries as well as the scholars widely recognised that the UNSC is issuing decisions with general applicability that might well substitute other sources of international law arrived with resolutions 1373 (2001) and 1540 (2004) (Talmon 2005: 176 – 177, Rosand 2004: 542 – 590).

This somehow controversial development sparked vivid discussions that persisted till today. Opponents criticize that the UNSC represents undemocratic and unrepresentative legislative-making body. Its resolutions do not belong among the sources of international law listed under article 38 of the Statute of International Court of Justice. Moreover, those resolutions impair the axiom that international law is based on consensus.

The proponents of this development usually answer that undemocratic and unrepresentative character does not matter in case of Chapter VII actions; therefore, it should not be an obstacle for legislative-like activities that would fall rather under chapter VI. In regard to article 38 of the ICJ Statute, the advocates of legislating UNSC claim that resolutions represent secondary Charter law, the law envisaged by the Charter and entrusted to the Council. The sole adoption of the UN Charter proofs that there had been sufficient consensus for those actions (Talmon 2005, 179). On the one hand, the resolutions of the Council should be focused on exactly defined situations[158] with time

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[158] For details cf. Vnenková (2013: 11 – 48). Talmon (2005: 182) argues that the UNSC can perform its legislative role only in those situations described by the Charter. If neither international peace nor security are threated, the UNSC must yield the legislative activities to

limits and case-based reactions. On the other hand, this should not prevent the UNSC from addressing global problems by universally applicable resolutions (Rosand 2004, 542). Finally, Scott (2008) even asserts that assuming legislative powers of the UNSC is plausible exactly because it gives the UNSC powers to address climate change, where other instruments of international law proved inefficient.

Koskenniemi (1995) divides those who comment the UNSC newly assumed "legislative" roles in two groups. "Realists" within the first group argue that whatever the UNSC says *is* the law, because as long as the major world powers agree, they can define the rules of the game regardless of the status of their decisions. The second group, consisting of lawyers, objects that there is a difference between simple power projection and legitimate widely accepted norm. From this perspective, the status of the UNSC resolutions as "law" remains dubious (Koskenniemi 1995, 327 – 328). In conclusion, this development will probably remain polemical (cf. also Roele 2016, Genyushkina 2016, Urbanová 2016; Schachter 1964).

Nonetheless, it is very important for the case of "sinking islands". If the UNSC addressed their situation by a resolution, it could create a precedent. Moreover, if the resolution contained generally applicable abstract rules, it could be extremely helpful for the SIDS but also directly and perhaps unpleasantly binding for the other countries. The case of "sinking islands" in front of the UNSC read in context with the UNSC becoming "World's Legislator" could be crucial.

There are two further conclusions that can be drawn from the literature summarized in this section 3.2.5 for this dissertation. Firstly, formal changes may be blocked by a deadlock caused by a lack of present consensus and willingness to openly subscribe to suggested amendment. Therefore, the space opens for an informal change, as happened in the past in case of reinterpretation of article 27 of the Charter, peacekeeping or "Arria-formula" meetings.

The informal changes occurred through interpretation, re-interpretation and repeated practices. The pleas of SIDS addressing the UNSC can be regarded as an attempt to

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General Assembly, which deals with codification and progressive development of international law.

introduce such an informal change. This attempt for informal change gains special importance when the formal changes are blocked. This also represents an additional reason why to use CLG as a theoretical concept. When the direct formal changes are disabled by negotiation stalemate, the CLG offers tools to analyse how the law interacts with space and power and how this interaction could result in an informal change, without amending a single letter of the UN Charter. This dissertation in its chapter 5 intends to provide a detailed analysis how the countries attempted to alter the UNSC agenda without editing the UN Charter.

Secondly, this dissertation might contribute to the literature on the UNSC reform in analysing the role of commutative and distributive justice in the UNSC decision making. The dissertation demonstrates that the concepts are implicitly used by the actors, the UNSC members, in support of their claims. Nonetheless, the concepts of commutative and distributive justice are neither sufficiently recognized nor analysed in the literature on the UNSC reforms, although it would be highly desirable to investigate what consequences emerge from the shifts of the decision-making principles from commutative to distributive justice. The next section therefore summarizes how the agenda of the UNSC broadened in time and how this broadening might have pushed the UNSC closer towards the principles of distributive justice.

3.2.6 Widening ("encroaching") of the UNSC mandate: from military threats to climate change

The following last section of this chapter summarizes how the mandate of the UNSC gradually widened from the narrow perception of merely military threats to peace and security up to the point when the UNSC discussed issues such as gender aspects of conflicts, HIV and most importantly environmental degradation. This widening of the mandate is still seen by some of its members as implausible "encroachment". It however directed the UNSC closer to principles of distributive justice, which should be also demonstrated by this section.

After its establishment, in late 1950's and 1960, the Council appeared to be rather inoperative due to East-West conflict, which resulted in frequent vetoes and a decrease in number of sessions (Simma et al. 2002, 444), as noted in the section 3.2.2 of this

dissertation. The General Assembly solved the questions of international peace and security more frequently. Nevertheless, the attempts to embed this position and practice of the GA in an official document[159] were not successful (ibid.). When the Council did act at that time or in consequent years, it strictly adhered to commutative justice principles of decision making: it tried to identify a situation endangering peace and order measures to redress this particular wrong.[160] Moreover, it dealt exclusively with the issues of military peace: "For obvious historical reasons, international security was originally understood as connoting the protection of the state and its vital interests from military attacks by other states" (Stigen and Fauchald 2009, 313).

The first attempts to informally broaden the UNSC mandate and achieve "widening scope for what the council judged to be a 'threat to international peace and security" appeared in late 1980's and 1990's (Weiss and Kalbacher 2008, 330 – 331). Thanks to support of Canada and Japan, the UNSC started reflecting the blurred borders between international and domestic affairs or state security and human security. In summer 1989, the UNSC Resolution 638 (1989) was issued and dealt with hostage-taking and abduction. It was labelled as "the beginning of efforts on the Security Council to broaden the traditional view of issues that constitute a threat to global peace and security" (Chapnick 2018, 264 – 265).

This process resulted in an "enlargement of the Council's powers (…) through a new interpretation of what counts as a 'threat to the peace'. The sense of 'peace' has been widened from the (hard) absence of the use of armed force by a State to change the territorial *status quo* to the (soft) conditions within which – it is assumed – peace in its 'hard' sense depends; a change from a formal to a substantive meaning" (Koskenniemmi 1996, 341).

This was an opportunity for the climate change to appear among the factors such as human rights violations or drug trafficking that represent threat to peace and security,

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[159] E.g. the Uniting for Peace Resolution 377 (V) 1950 should have transferred part of the powers to decide on peace and security from the UNSC to the General Assembly, but was massively criticized for being a harmful extension of UN powers or at least impairment of initial division of labour between UN organs (for further details cf. Prandler 1974, 297 – 298).
[160] Details concerning significant decisions of the UNSC at that time are described in the section 3.1.2 of this dissertation.

although they are not directly linked to state security. Nonetheless, the ideas and proposals to broaden the agenda of the UNSC encountered immediate resistance, because they were perceived as potential threat to sovereignty of certain UNSC members. Countries feared that embracing those new elements in agenda could have disrupted functioning of the Council in more traditional areas (Chapnick 2018, 265).

Therefore the approach expressed in the 1992 report of the Secretary General to the UNSC "Agenda for Peace" remained rather conservative, still focused on military threats and discussed other social or economic factors just as eventual causes of armed conflict.[161] In 1992, the same year when the Agenda for Peace was submitted to the UNSC, the UNSC President declared on behalf of the Council:

> "The absence of war and military conflicts among States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through the appropriate bodies, needs to give the highest priority to the solution of these matters."

By this ambiguous statement, the President recognized the importance of economic, social and environmental factors for international peace, but also signalled that those factors should be solved by the UN as a whole rather than by the UNSC (Stigen and Fauchald 2009, 325, the quotation taken ibid.).

In the following years, the attempts to link those economic, social, humanitarian and ecological factors with international peace continued. The Council gradually expressed growing interest in links between international human rights violations and international peace and security; it increased its use of economic sanctions and engaged in criminal prosecution (Weiss and Kalbacher 2008, 330 – 331).

Further changes leading to mandate broadening were sponsored by Canada and its minister of foreign affairs Lloyd Axworthy who claimed that the Council should focus

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[161] Details concerning the Agenda for peace report are provided also in the section 3.2.1. 1992 was also the same year, when the UN Conference on Environment and Development met and produced non-biding declarations and legally binding conventions: Framework Convention on Climate Change (FCCC) and Convention on Biological Diversity. During the discussions in front of the UNSC, the rapidly developing in-land countries often claimed that the climate change and environmental degradation must be solved within the framework of the FCCC.

rather on "human dimension of security". Thanks to this effort, the UNSC dealt with international humanitarian law and issued a resolution denouncing targeting of civilians (Chapnick 2018, 266). In 1995, the UNSC intensified cooperation with peacekeeping troops-contributing countries and started meeting with NGOs.

The cooperation of the UNSC and NGOs resulted in establishment of dedicated working groups with specific mandates. As an example, in 1999 the UNSC issued a resolution on children in armed conflict and six years later, it established a specific working group focused on this topic (Bode 2018).

Another example of agenda broadening is the resolution 1325 issued in 2000. It focused on Women, Peace and Security and encompassed the gender agenda within the UNSC decision making (Shepherd 2008). Additional resolutions, studies and reports on this matter followed in subsequent years (cf. Basu 2016; Heathcote 2018). When focusing on women and children, the Council embraced certain aspects of distributive justice decision making; it dealt with unequal distribution of the burden of armed conflict between men, women and children and it abandoned the classical scheme of commutative justice, which rested on identification of particular wrong, its perpetrator and adopting remedial measures under given rules.

Further steps which might have moved the UNSC closer to distributive justice occurred in 2000. The UNSC issued a resolution on HIV epidemic in Africa (cf. Sternberg 2002; Elbe 2006). This was unique decision because it tackled a threat the nature of which lied outside of the military matters. Yet, the resolution did still interlink the HIV/AIDS with strictly military subject; that of health and situation of peacekeeping personnel. The resolution prevalently requested measures to protect the peacekeeping personnel from the HIV pandemics. Despite that, in the last of its six points, the resolution emphasized interest of the UNSC in discussion of related UN bodies concerning "progress, inter alia, on the question of access to treatment and care, and on prevention"[162]. Thus, by expressing interests in (equal) access to treatment, care and prevention, the Council signalled that it might be reflecting also distributive justice principles.

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[162] UNSC. (2000). *Resolution 1308 (2000)*. Resolution on HIV and International Peace-keeping operations. Adopted on 17th of July 2000.

Similar situation repeated fourteen years later, when the Council identified Ebola virus as a threat to international peace and security. In Resolution 2177/2014, the UNSC claimed that "the unprecedented extent of the Ebola outbreak in Africa constitutes a threat to international peace and security"[163]. The Council called on UN Member States to provide and facilitate assistance for affected countries. This resolution directly embraced the principles of distributive justice, when it called for equal sharing of Ebola burden and abandoned reactive actions neatly prescribed by the UN Charter.

Further topics demonstrating broadened agenda appeared on the UNSC schedule after 2010, e.g. small arms and light weapons or police forces in peacekeeping. Inclusion of those topics was usually supported by middle-powers (Farrall and Prantl 2016). The UNSC also introduced new means such as targeted sanctions (cf. Gordon 2013).

After the turn of millennium, the UNSC also gradually became interested in environmental issues and their connection with peace and security. In 2004, the High Level Panel of UN reiterated and emphasized the links between poverty, illnesses, environmental degradation and outbreak of wars (cf. UN Doc. A/59/565 2004 or Chesterman et al.2008, 575). Similar approach was generally held by the UN in the following years, when the organization regarded climate change as threat multiplier causing and aggravating conflicts and causing significant risk for human security of most endangered populations (Maertens 2018, 2).

The UN Security Council usually departed from this general approach, when it dealt with climate change and environmental issues. It connected climate change and environmental matters with sustainable development and conflicts over resources (Stigen and Fauchald 2009, 325). Any attempts of the Council to address the issue in more detailed way and to prioritize it over particular conflict resolution met with resistance of larger rapidly developing states.

The UNSC member states have always remained "deeply divided over the presence of the subject on the Security Council's agenda" (Maertens 2018, 1). Binder and Heupel (2018) summarized the position of states during first two UNSC meetings in 2007 and 2011, which might be readily generalized also for the consequent meetings in 2015 and

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[163] UNSC. (2014). *Resolution 2177 (2014)*. Adopted on 18th September 2014.

2018: "Only a slight majority of all evaluative statements on the Council's authority to address climate change are positive (55 percent) while nearly as many are negative (45 percent). When states ascribe legitimacy to the Security Council addressing climate change, they primarily refer to the Council's mandate but also to its expertise in this matter and its authority derived from previous resolutions." (Binder and Heupel 2018, 204 – 205).

The first meeting of the UNSC which tackled climate change and where SIDS firstly opened their pleas, occurred in 2007, presided by the United Kingdom. There was the following way how the topic appeared in the programme. In the first half of 2007, the "Intergovernmental Panel on Climate change released The Summary for Policymakers of its Fourth Assessment Report. Some findings of Working Group II on 'Impacts, Adaptations and Vulnerability' presented daunting scenarios under which, if climate change is not stopped, its negative effects on environment, such as sea-level rise, desertification or erosion of glaciers, may lead to violent conflicts in the future. However, these impacts form only the proverbial tip of the iceberg" (Sindico 2007, 29).

The UK took the advantage of its presidency in the UNCS and raised the issue of climate change to the attention of this international organ primarily responsible for prevention of violent conflict and maintenance of peace and security. According to the paper circulated in advance by the UK presidency, the discussion should have been focused on three specific topics: impacts of climate change on causes of conflicts (conflicts over energy, water and food), migration and control of borders (Conca et al. 2017, 3). However, due to opinion differences, the Council did not arrive to any conclusion or decision.

In 2009, the UN General Assembly took the initiative and passed a resolution claiming that the climate change, and particularly the sea level rise, represents threat to international peace and security. This GA resolution was regarded as a victory of small island states, the "sinking islands", because it might "help put climate change on the agenda of the more powerful U.N. Security Council" (Parsons 2009, 1).

Indeed, the climate change appeared on the agenda of the UNSC once again in 2011, nonetheless, the same discrepancies repeated, and the countries agreed just on the

compromise that a presidential statement could confirm the importance of security risks caused by climate change. The presidential statement supported optimistic view that "the Council may be edging closer to assuming a lead role in the global response to climate change" (Scott and d'Andrade 2012, 215). Despite this optimism, the opinion cleavage within the UNSC members whether to involve in climate change (and related "sinking islands") issues remained and caused that the next debate on the matter was informal and unofficial.

In 2013, the UNSC held an *Arria-formula* meeting organized by Pakistan and the UK. Arria-formula meetings are neither public nor recorded. The available resources just document that also this meeting did not bring any consensus: "Again, the Group of 77 and China refused to consider climate change as a legitimate concern for the Council, instead defining it as a development issue. The choice of the Arria-formula for this meeting indicates a move away from public, officially-documented debates, towards confidential meetings which do not involve a vote on a presidential statement or a resolution" (Maertens 2018, 4).

Another meeting occurred in 2015 and was dedicated especially to small developing states. Vulnerability of SIDS to climate change was one of the key points of the meeting. Nevertheless, this meeting tackled some other threats that SIDS face such as organized crime, drugs and weapons smuggling, money laundering or enforced labour,[164] but similarly to previous meetings it did not bring any tangible result. It was followed by a special meeting dedicated to relationship between water, peace and security.[165] Also this day long debate on 22nd of November 2016 did not result in any tangible outcome.

In 2017 and 2018, the UNSC adopted Resolution 2349/2017 and Resolution 2408/2018. The former tackled the situation in Chad Basin and in its point 26 recognized: "the adverse effects of climate change and ecological changes among other factors on the stability of the Region, including through water scarcity, drought, desertification, land

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[164] This dissertation focuses primarily on SIDS' threats in form of impacts of climate change; those other challenges are intentionally omitted. That is additional reason, why the title of the dissertation says "sinking islands" and the UNSC, not SIDS and the UNSC.
[165] UNSC (2016). Meeting on 22nd November 2016. Maintenance of International Peace and Security. UN Doc. S/PV.7818

degradation, and food insecurity."[166] It also emphasized "the need for adequate risk assessments and risk management strategies by governments and the United Nations relating to these factors."[167] The latter dealt with the situation in Somalia and acknowledged the "the adverse effects of climate change, ecological changes and natural disasters among other factors" on its stability.[168] Both of those resolutions however concerned particular region and addressed primarily terrorism and political instability. They regarded climate change as one of the underlying causes, but urged rather for disarmament, demobilisation, de-radicalization and human rights protection. There was no further attention dedicated to environmental issues or any clue that the UNSC would have intended to re-distribute burdens of climate change.

Furthermore, the Council addressed the climate change and related security issues in a remarkably warm summer of 2018. Again, eleven years old cleavage re-appeared: "While speakers agreed that climate change and its impacts pose serious threats, they disagreed over the degree to which the Security Council has a responsibility to address climate change, with some arguing that the Council must address climate change as a security risk, and others warning against expanding the Council's mandate or encroaching on the jurisdiction of other bodies" (Mead 2018, 1).

The last meeting up to date when the UNSC dealt with climate change occurred in 2019 and was presided by the Dominican Republic.

This dissertation analyses the above-mentioned meetings of the UNSC in 2007, 2011, 2015 and 2018. The analysis of the 2019 meeting was only partial due to time and space constraints, it is contained in specific sub-chapter 5.5, which acknowledges its limitations.[169] Thus, this dissertation aims to contribute to the literature (cf. Cousins 2013; Detraz and Betsill 2009; Gupta 2009; Scott and Ku 2018) examining the engagement of the UNSC with climate change. More detailed review of this literature is provided below.

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[166] UNSC. (2017). Resolution 2349 (2017). Adopted on 31st March 2017.
[167] Ibid.
[168] UNSC. (2018). Resolution 2308 (2018). Adopted on 27th March 2018.
[169] The meeting of 2013 was held Arria-formula, therefore this dissertation cannot analyse the meeting records. Nonetheless, the fact that it was held as non-public, confidential meetings, signals the fear of the UNSC of eventual exposure to public criticism for cleavages etc.

Petersen argues that the discourse of environmental disasters in front of the UNSC contributed to the securitization of climate change (Petersen 2018). Stigen and Fauchald (2009) conduct a legal analysis whether the UNSC can react to environmental threats by actions under Chapter VII of the UN Charter. Because the "plain reading" of the Charter does not offer any answer to this question (Stigen and Fauchald 2009 314),[170] they suggest finding the answer to this question by general means of interpretation applied to the UN Charter as an international treaty.

They argue that the Article 39 of the Charter enables and obliges the UNSC to act against "the threat to peace" and once the Council assumed the responsibility also for conflict prevention in its resolutions, it must be given the discretion and power to determine in advance what is threat to peace, including environmental threats (ibid. 324):

> "In cases where a "threat to the peace" is to be established on the basis of the probability that the environmental situation will trigger a reaction from a state that can be qualified as a breach of the peace or an act of aggression, we must assume that it will be possible to identify one state or a group of states as responsible for the environmental situation. On the other hand, it does not seem appropriate to limit the range of relevant situations to those where only one state or an identifiable group of states is suffering from the environmental situation." (ibid. 323)

Thus, Stigen and Fauchald claim that environmental situation may result in threat to peace, but somehow indirectly, as a trigger of certain aggressive state behaviour. In that situation, they expect that there will be other states – perpetrators – responsible for environmental degradation. They also immediately add that it would be inappropriate to limit the Council involvement on the situation when the victims (and the perpetrators) are identified. Obviously, in case of environmental degradation, identification of the state-perpetrator might be extremely difficult.

Those conclusions of Stigen and Fauchald have special importance for this dissertation in two aspects. Firstly, they demonstrate the necessary shift from commutative to

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[170] The fact that the Charter is not at all clear on whether the UNSC can engage with environmental threats in fact allowed SIDS to address the Council in a lawfare-like attempt to re-define the Council's mandate in a way that would suit their interests.

distributive justice. As long as we have the perpetrator and the victim, we can decide on the basis of commutative justice principles. But we cannot "limit the range of relevant situations" on those, where the perpetrator and victims are identified, and pre-defined means are available to redress their relations. Therefore, we need a different set of (distributive justice) principles which will allow tackling the new situation. Thus, this shift necessarily represents a cornerstone of environmental discussions in front of the UNSC. Secondly, the quotation emphasizes why it was so important for SIDS to turn to the UNSC. If they succeeded in persuading the UNSC to act, the Council could impose severe restrictions on the countries contributing to environmental degradation.

Stigen and Fauchald also emphasize that should the UNSC seriously address environmental threats, it must be aware of several specific aspects of this new agenda. Firstly, it would need new tools for information gathering, specific knowledge acquisition and new types of re-active action (ibid. 431). Secondly, the UNSC would have to proceed carefully, because as demonstrated in recent years, it has the power to effectively curb the corporate and other economic activities, which could have various ramifications. Finally, it should pay due attention to issues of transparency and legitimacy, to avoid the situation when a few members of the UNSC would be deciding about many countries around the world, as criticized by Sudan during the first 2007 UNSC meeting (ibid. 342).

Further recommendations for the UNSC involvement in climate security issues were provided by Nyman (2018) who suggested strengthening "the Security Council's ability to identify and manage climate-related security threats". Because the tools to achieve this remained underexplored (Conway 2010, 375), Nyman (ibid.) proposed that the UNSC should as a first step improve risk assessment, reporting and early warning systems. The UNSC should also plausibly ensure that the entire organisation and its members pay sufficient attention to climate change. Similarly, it could establish an institutional harbour for climate security agenda (Nyman 2018).

Also Voigt (2009) believed that the UNCS involvement in combating climate change is worth exploring. She saw the following potential in such involvement: "the Council's competences to impose sanctions, to 'legislate', and to condemn state actions or inactions. Also, in this part, the competences of the Security Council to request of the

International Court of Justice an advisory on opinion legal questions in relation to climate change" (Voigt 2009, 292). The UN Charter should not represent an obstacle in this regard, because it is solely up to the UNSC to determine, whether an environmental issue represents a threat to peace and security (ibid., 298).[171] Voigt also believed that the UNSC possessed several means to deal with the issue. Starting from the hardest, the UNSC could issue a "legislating" resolution requiring states to take effective mitigatory actions. In a lighter version, the UNSC could condemn pollutive behaviour. Or at least, the UNSC could contribute to awareness raising. For all the three options, the agreement between the US, Russia and China would be both most decisive and most challenging task (ibid., 311 – 312).

Scott (2015) created an entire typology of eventual UNSC responses to climate change and related security issues. In order to avoid binary perception of the UNSC involvement or non-involvement, Scott developed a classification of how could the UNSC act or stay passive. This typology is based on four variables that may alter the UNSC response. First variable is whether the UNSC gets involved directly and solve climate change as such, or whether it should engage indirectly and focus only on those consequences of climate change that threaten peace and security, for example migration flows. Second variable is whether the UNSC focuses on mitigation of climate change or whether it shall deal with the adaptation on climate change.[172] Third variable determines whether the UNSC should use the existing tools or develop new ones to manage climate change. The fourth variable asks whether the UNSC shall use recommendatory or compulsory powers, alternatively whether it shall act in reactive or anticipatory manner (ibid., 1318 – 1321).

Basing on those variables, Scott (ibid. 1321, 1333) distilled four eventual scenarios of future UNSC response: (1) explicit rejection of any role in climate change, (2) a non-response to climate change, but reactive adaptive response to security issues caused by

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[171] This argument is very interesting: the rapidly developing countries argued that the UNSC is prevented from acting just because of not having sufficient mandate stemming from the UN Charter.

[172] "'Mitigation' refers to 'a human intervention to reduce the sources or enhance the sinks of greenhouse gases'. 'Adaptation' refers to the process of 'adjustment to actual or expected climate and its effects; in human systems, [it] seeks to moderate or avoid harm or exploit beneficial opportunities'" (Scott 2015, 1319 – 1320).

climate change, (3) explicit, but measured response using recommendatory power and prevalently adaptive measures and finally (4) full engagement of the UNSC with adaptive as well as mitigation measures with binding power. So far, the UNSC stayed with the second option – a non-response to climate change, but focus on the security threats exacerbated by climate change. Scott's classification adds valuable analytical clarity to the division of eventual UNSC responses. This dissertation, however, takes a different approach and tries to understand the position and strategies of countries pleading in front of the UNSC through analysing an interaction of law, space and power.

Conca and others evaluated further proposals what the UNSC could do when facing environmental threats. They focused on six eventual responses: "incorporating climate risks into peacekeeping operations, developing an early-warning system, managing the threat to small-island states, engaging in preventive diplomacy, addressing climate refugees, and embracing a climate-related analogy to the norm of a responsibility to protect" (Conca et al. 2017, 1). They concluded that none of the responses might be optimal: "Our review suggests that, for several reasons, the climate challenge fits poorly with the Council's modus operandi. In general, the Council is reactive, hierarchical, often poorly informed, and has weak monitoring and follow-through. These are nontrivial obstacles to any Council role beyond jawboning" (ibid. 15). They suggest rather soft and symbolic measures that the Council should take in relation to climate change.

When the same authors evaluated the relationship of the UNSC and SIDS, they expressed pessimism about eventual ways how the Council could engage and help. They asserted that in comparison to military or migration crises, there is no basis in international law or widespread practice that would be applicable on the disappearance of an entire state territory. Therefore, the Council would have little clues for its actions. Moreover, SIDS are not unified, while the Pacific countries want the UNSC to act, the Caribbean islands oppose this action.[173] Finally, actions of the UNSC could interfere with the mandate of the UNFCCC and related politics of compensation of loss and damage (Conca et al. 2017, 11).

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[173] Cf. also section 3.1.3. and 5.4 of this dissertation.

The implausible interference of the UNSC with the UNFCCC mechanism is for those authors (ibid. 2) one of several reasons, why it is generally problematic for the Council to engage with environmental risks. Other reasons are: mistrust in the Council's hierarchical membership and procedures, anxieties that the Council could lose effectiveness, undesirable consequences of securitization or politicization including lack of expertise or legitimacy, and a danger of gridlock. All those reasons are strengthened by the past bad experience with the Council in cases of conflict prevention.

In general, Conca et al. (2017) elaborate on the reasons why the Council might not or should not act in case of climate change in general or in case of SIDS in particular. However, in comparison to this dissertation, this analysis is problem-solving, while this dissertation attempts to provide a critical reflection, deconstructing (unlike Conca et al.) the positions of individual states. In order to achieve this aim, this dissertation analyses the relationship between law, space and power in creation and expression of the position of individual states; those three aspects and their interplay were omitted by Conca and rather under-researched in the remaining literature, as the conclusion below suggests.

3.3 Conclusion

This chapter summarized the literature concerning SIDS and the UNSC and identified its relevant key points. In relation to SIDS, it outlined how the literature co-constitutes or reflects key narratives about SIDS. In relation to the UNSC, the chapter explained the significance of vetoes and voting. Most importantly, it described how the Council initiated its decision making on commutative justice principles, although recently there have appeared gradual signs of shift towards distributive justice decision making. The dissertation intends to contribute to the literature summarized in this chapter, to develop the debates further and provide alternative angle of view.

4. Methodology

This section delineates which data have been used for the analysis and introduces the employed methodology. The dissertation analysed meeting minutes from five meetings of the UNSC: in 2007, 2011, 2015, 2018, and partly 2019.[174]

The first meeting was organized under the UK Council presidency on 17th of April 2007 (meeting record S/PV.5663) and included the statements of representatives from 53 countries, who discussed the consequences of climate change for security in general, and for the small island states in particular. The second meeting occurred on 20th of June 2011 (S/PV.6587); 62 countries dealt with the impacts of climate change on maintenance of international peace and security.

During the third meeting on 30th of July 2015 (S/PV.7499), 68 countries debated the same topic. This third meeting was dedicated especially to the small islands developing states; however, it did not focus solely on climate change causing sea level rise and gradual flooding of the islands. It added also other challenges for SIDS on the schedule, e.g. organized crime, illicit drug and weapons trafficking, smuggling etc. This wider framing partially influenced the results of the analysis as will be noted below.

The fourth meeting occurred on 11th July 2018 (S/PV.8307) and the record contains the statements of 6 guest countries and 15 UNSC members on the topic of security and climate change with closer focus on the "sinking islands". The last meeting (S/PV.8451) took place in 2019. Owing to the fact that this meeting contained very fresh data and occurred the same year, when this dissertation was submitted, after the major part of the research had been closed, its content is just summarized by a brief note in the section 5.5.

The records (minutes) from those five meetings are hereinafter referred to by using the name of the country claiming quoted statement, the year of the meeting and the page of the record, where the reference may be found. Letter R next to the page number

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[174] In the meantime, the UNSC organized several Aria-formula meetings on the topic of security and climate change. I intentionally omitted those Aria-formula meetings from the analysis, as the records are unavailable and the meetings might have different dynamics, considering their informal character.

signifies that the page is in afternoon Resumption of negotiation. E.g. the reference "(India 2007, 22R)" denotes that the statement was made by India in the 2007 UNSC meeting and is recorded in the minutes after the afternoon resumption of the meeting.

The dissertation contextualized and triangulated the analysis of UNSC meeting minutes against chosen geographical data: size of a country, length of its coastline and its GDP. Those data were gained from a publicly accessible database.[175]

The records from the four UNSC meetings were analysed using thematic analysis employing also the features of content analysis[176].

Thematic analysis as "the process of encoding qualitative information" (Boyatzis 1998) examines the presence of typical topics, arguments and ideas in the speeches. This method searches for general patterns, symptomatic structures and various recurring features of the data set and summarizes their frequency. Thematic analysis works through coding in order to distil the results from the raw data (cf. Guest, MacQueen and Namey 2012). I employed it by asking a specific set of questions outlined below and inquiring, what did the statements of individual countries contained and aimed to. I called the thematic analysis contextualized, because it also recognized who the speaker was and what was the intended consequence of the text, i.e. the action that this actor proposed in the text. I coded the raw material manually as outlined in the annex to the dissertation.

To certain extent the thematic analysis utilizes means of summative content analysis. Summative content analysis is a method which counts specific feature or features of the analysed material and then creates numerical account of the presence of the feature(s). Unlike directed content analysis, the summative content analysis does not approach the

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[175] CIA. World Factbook. Available online [10. 2. 2019] < https://www.cia.gov/library/publications/the-world-factbook/ >

[176] We might say that the research was a discourse analysis in wider sense. If we understand "discourse analysis" generally as a methodology analysing texts, practices and other samples of discourse; we may recognize that it contains specific methods, including, but not limited to thematic analysis and content analysis. Given the fact that the dissertation emphasizes the role of power and hidden power structures, the general methodology could be labelled *critical*. Nonetheless, discourse analysis or critical discourse analysis in stricter sense of the word denotes a specific method (CDA). To avoid confusion, I stated above that the dissertation uses thematic analysis and certain means of content analysis, without subsuming those to (critical) discourse analysis.

reviewed text with *a priory* given theoretical assumptions or expectations to be confirmed (Hsieh and Shannon 2005, 1277 – 1288). It derives its results purely from reading the text(s). Additionally, in comparison to simple quantitative content analysis, summative content analysis also interprets the analysed text; it recognizes latent content (Holsti 1969) and underlying meaning of words (cf. Babbie 1992; Krippendorf 2004; Neuendorf 2002). Thus, summative content analysis compares the numbers and distinguishes nuances of used words or phrases within the text (Hsieh and Shannon 2005, 1283 – 1285). Thanks to it, we can learn how frequently were certain words or phrases present in the text and how the individual usage of those words or phrases differed. Being inspired by summative content analysis, I prepared the table in the annex 1 of the dissertation.

Concrete analysis of the texts was conducted according to the guidelines derived from methodological suggestions of Phillips and Hardy (2002, 33–35), and Jäger and Maier (2009, 55)[177]. According to their suggestions, the texts were inspected by using the following questions:

> 1. Who are the speakers in front of the UNSC? What is their general position and how is it influenced by space and power?

> 2. How do the speakers define the role and the position of the UNSC towards the discussed subject-matter? What arguments do they use; to what facts or organizations do they refer and how? What other significant features do their speeches contain?

> 3. What are the speakers trying to achieve; what is their desired outcome and expected effect of their statements? How are those expected and desired outcomes linked to space and power?

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[177] The former two authors wrote generally about how to examine a discourse, the latter two scholars focused on critical discourse analysis. I believe that individual methods need to be perceived flexibly and fixed to be applied on certain material smoothly. Therefore, I got inspired by those authors when preparing my own set of questions to examine the UNSC meeting minutes. Concerning sometimes vaguely perceived distinction between discourse analysis, critical discourse analysis and employed methods cf. previous footnote.

After such inspection of the records, the statements of individual countries in the records were compared, grouped and manually coded.[178] I equalled a speech of one country to one single statement. Total number of contained statements is displayed in the annex to this dissertation and in respective tables in empirical section. It is the number behind the slash[179]. One statement might contain several rhetorical features and therefore fall into several coding categories.

The results of this analysis show the different approach of the 3 groups of states: firstly, "sinking" SIDS, secondly, rapidly developing states and thirdly developed states. This distinction was supported by the contextualized information relating to the question 1 above regarding the speakers' position: members of each of the separated group were compared according to their GDP per capita in 2015, size of territory, coastline and ratio of coastline to territory. This comparison is supposed to illustrate the spatial conditions of the countries within each group and to facilitate understanding how the space influenced the position of those states in front of the UNSC.

The analysis disclosed that each of the three groups had a specific position and argumentation in front of the UNSC. The results of the analysis are described below in the 5th empirical chapter. They are also summarized in annex 1 to this dissertation. The annex contains an overview table. For each of the three groups of countries, the table summarizes spatial and power-related motivations. Furthermore, it enumerates how many times the countries within each group resorted to a specific key argumentation between 2007 and 2018. Finally, it summarizes what results this argumentation was supposed to have on space and power. Moreover, the codebook for each of the group of countries and each individual UNSC negotiation in 2007, 2011, 2015, 2018 and partly in 2019 is contained in the annexed file as well: individual sheets of the codebook always state a year of particular UNSC negotiations and group of countries the statements of which are coded in the sheet.

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[178] The excel codebook is an the excel file annexed to the dissertation, on sheets 2nd and further.
[179] E.g. the number 22/24 means that in respective coding category there were 22 relevant statements with specific rhetorical feature out of overall number of 24 statements (of 24 countries within the category).

The coding values are explained together with the empirical findings in the next chapter. The coding followed the operationalization of CLG provided in the table 2.II and the section 2.2 of this dissertation, and was supposed to reveal the interplay among law, space and power in the position of the states within each of the groups.

I preferred manual coding to using coding software(s) such as InVivo, Maxcuvial or other computer assisted qualitative data analysis software because of the following reasons. Firstly, the texts required a deeper understanding, careful reading and interpretation. Computational analysis could struggle to pierce the diplomatic language, metaphors, various indications, allusions or implicit references to those background rules that are never discussed although they tangibly form the debate. E.g. there was no direct reference to commutative or distributive justice, although those two perceptions of justice significantly influenced the debate and informed the position of states.

Secondly, the statements of individual countries had to be contextualized. This means that to understand the position of individual countries pleading in front of the UNSC, one needs to be aware of the spatial and power-related conditions within which those countries exist and pronounce their statements.

Thirdly, manual review and coding of the text allowed better understanding of aberrations that are discussed in individual section (5.4). In conclusion, to critically reveal the interaction between space, law and power, careful reading, interpretation and manual coding of all the 257 pages of the UNSC meeting records between 2007 and 2018 seemed more appropriate for me.[180]

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[180] As already mentioned above, I conducted also a shorter analysis of the 2019 meeting, the results of this analysis are discussed in section 5.5.

5. Empirical findings

The empirical analysis showed that there were three broad groups of countries taking different positions in regard to the role of the UNSC and "sinking islands": developed states, rapidly developing states and the sinking islands (i.e. SIDS that face the adverse impacts from sea level rise). The three groups were sorted by reading the text, asking a set of questions outlined in chapter 4 and searching for common patterns and similar discursive positions and rhetoric plus analysing those in the context of who the speaker was. Concerned countries did not officially identify themselves with this type of distinction, although some alliances indeed resorted to common statements and countries aligned with each other in their statements.[181]

The representatives of SIDS affected by climate change asserted that the UNSC had entirely sufficient mandate to address the SIDS situation and that it should start acting to protect SIDS or at least closely monitor their situation. On the other hand, the rapidly developing countries denied that the UNSC would be equipped with mandate to deal with the situation of SIDS. Those rapidly developing states insisted that the UNSC should remain inactive in this regard and appropriate responses should be provided by other international fora from UN and other platforms. Finally, the developed states admitted that the UNSC should address the issue of climate change in general and "sinking islands" in particular, but those states required the UNSC to request various inputs of other organs, committees or experts, thus the exact tasks of the UNSC in this regard were not clearly articulated.

This division into the three groups interestingly differs from similar groupings within the UNFCCC platform. Under the UNFCCC umbrella, there are more formal, semi-formal or informal working groups, where various countries join. Some of them reflect similar economic conditions of their members, such as Group 77 or the Least Developed Countries. Others mirror ethnical conditions (the Arab States) or geographic conditions such as the group of SIDS, the EU group, and the group of African negotiators. The groups frequently overlap and differ in their activity depending on

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[181] This grouping may be generalizing, but the purpose of this dissertation was to look for general patterns and similarities rather than to explain the behaviour of each individual country.

exact topic (UNFCCC 2019). The degree of formalization of various groups differs, but the countries are aware that they are members of this group and usually identify themselves at least partly with the group. This represents a difference from the grouping identified in this dissertation, which is in most of the cases rather informal.

Apart from this accepted division within the UNFCCC, there are also "clubs" acting outside of the UNFCCC such as within G8, the Climate and Clean Air Coalition or the Major Economies Forum (MEF) (Widerberg and Stenson 2013).

Finally, more broad grouping within the UNFCCC distinguishes countries with "conservative approach" to climate change and with more pro-active approach in cutting CO_2 emissions.[182] There might be various reasons why the division identified by this dissertation differs, e.g. different stakes of countries at UNFCCC and at the UNSC or the fact that the negotiations in front of the UNFCCC are more intensive, broader and ongoing for longer time. It is up to future research to determine further differences and their causes.

Nevertheless, the distinction provided by this dissertation (which joints the countries in groups of "sinking" SIDS, rapidly developing states and developed states) partly converges with the division of Voigt (2009, 296). She divided the participants of the 2007 UNSC meeting also into three groups. Firstly, the EU and some least developed states, which "accepted a broad concept of security, including human and international security" and considered the UNSC action appropriate. Secondly, the SIDS that "expected a more active role of the Council". And thirdly, "in stark contrast to these views were the positions of fast developing economies, such as China and India, who considered climate change a development issue, rather than a security threat. The reasons for keeping climate change out of the Councils programme of work are linked to a fear that developed countries might use the Security Council as a tool to influence

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[182] Cf. Harrison and Sundstrom (2007). Viola, Franchini and Ribeiro (2012) distinguish three groups: "**Conservative**: India, Russia, Argentina, United Arab Emirates, Indonesia, Saudi Arabia, Iran, Egypt, Nigeria, Pakistan, Thailand, Ukraine, Venezuela and Vietnam. **Moderate conservative**: USA, China, Brazil, Canada, Colombia, South Africa, Malaysia, Mexico, Turkey, Israel, Australia, Bangladesh and Philippines. **And reformist**: Norway, Taiwan, Switzerland, Singapore, the European Union, South Korea and Japan." And finally Schreurs (2016) deciphers the attitudes of the three biggest polluters: the EU, the USA and China.

the development strategy – and therefore impact on state sovereignty – of developing nations" (ibid.).

In comparison to Voigt (ibid.) this dissertation offers more nuanced understanding of the rhetoric of the countries. The following sub-chapters also intend to elucidate how individual countries exploited "background rules" or concepts to shape the UNSC role to suit their interest. This view aspires to be more detailed than the one provided by Voigt, but also generally confirming her findings.

Following sub-chapters elaborate on the position of each of the groups: (5.1) SIDS, (5.2) rapidly developing states and (5.3) the developed states. Each sub-chapter starts with the delineation of the examined group. It continues with an explanation how space and eventually power determined the position of the countries within this group. Furthermore, it analyses the rhetoric of the group, providing samples. It also refers to further concepts from section 2.1.3 that allow us to understand the behaviour of countries. Finally, each chapter concludes with considerations, how the statements of countries in that particular group were supposed to impact on law and power. The summary of findings is provided in table 2.VII after the section 5.3. The section 5.4 discusses aberrations. Finally, the section 5.5 shortly elaborates on the last meeting 2019 that occurred in the same year when this dissertation was submitted.

Additionally, the analysis proved an important general pattern – the countries from all the three groups: SIDS, developed states and rapidly developing states, frequently resorted to securitization of climate change in general and SIDS' situation in particular. As defined in section 2.3.4 of this dissertation, securitization is a speech act in which an actor proclaims an issue to be a threat to security. If an issue is securitized, extraordinary resources get mobilized to address it. In course of analysis, I sorted out the securitization moves, where the speakers proclaimed climate change or sea level rise (securitized issue) a security threat to SIDS or wider international community (referent object).

During the four UNSC negotiations in 2007, 2011, 2015 and 2018, the representatives of SIDS performed 22 direct securitization moves, in 56 % of statements. The representatives of the rapidly developing states attempted to securitize the issue also 22

times in 25 % of statements. And the representatives of developed states securitized 18 times, in 26 % of statements. For the overview of individual cases see the table 5.I below.[183]

Table 5.I: Direct securitization moves during the examined meetings of the UNSC:

Direct securitization:					
Year of meeting:	**2007**	**2011**	**2015**	**2018**	**Total:**
SIDS:	7 out of 10	2/4	12/22	1/3	**22/39**
Rapidly developing states:	2/23	7/29	10/25	3/9	**22/86**
Developed states:	3/19	10/24	4/18	1/7	**18/68**

To provide several examples, the representative of Canada labelled climate change "one of the greatest threats facing the world today" (Canada 2007R, 33). Luxembourg (2015, 58) claimed that "Sea-level rise threatens the very existence of these States and the security and well-being of their populations; it may result in the loss of territory, thereby undermining the territorial integrity of small island developing States."

Similar securitization moves were performed by the representatives of rapidly developing countries. They stated e.g.: "Far more important than an uncertain international security threat is the existential threat to many small island developing States, and it is, therefore, crucial to mobilize resources and technology for immediate adaptation measures there" (India 2007, 22R). Or: "Climate change threatens not only prospects for sustainable development, but also the very existence and survival of the countries, societies and ecosystems of Mother Earth" (Bolivia 2018, 17).

Finally, direct securitization was present also among the statements of SIDS, when e.g. Micronesia (2007, 25R) explained that the climate change posed threat to its very existence as a country and as a people. Kiribati (2015, 28) ascertained: "As Pacific island leaders, through the Majuro Declaration adopted in the Republic of the Marshall

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[183] If a country repeated the securitization move several times, it still counted as 1 attempt. In other words, the countries could be coded either as directly securitizing (+1 in the respective row of the table) or not directly securitizing (+0 in the respective row of the table).

Islands in 2013, we declared climate change to be a security threat to Pacific island nations and even sought to bring the matter to the attention of the Council for consideration."

Although the members of all the three groups securitized the topic (SIDS comparatively more than other two groups), their members reached very different conclusions whether the issue should be dealt with by the UNSC or not. This fact supports the conclusion outlined in the section 2.3.4 of this dissertation that the securitization theory does not represent convenient framework to explain this case. Securitization might be present and clearly identified in the statements of actors, but it supports very different proposals of each of the group of actors. In other words, securitizing actors differ and so does the purpose and aim of securitization, i.e. the extraordinary measures that securitization should introduce. This puzzling outcome was summarized by Voigt (2009, 297): "While there seems to be a developing consensus on viewing climate change as a security issue, it does not lead to generally accepting a role of the Security Council – whether active or passive – in this context."

Thus, using only the securitization theoretical framework could be more puzzling than elucidating. This was an additional reason why I decided to go beyond securitization in this dissertation. Yet, I took this opportunity of thorough review of the UNSC meeting records to highlight this observation. Other remarks relating to securitization are mentioned in individual sub-chapters concerning each of the groups of countries.

5.1 "Sinking islands"

The first category of countries with specific generalized position articulated to the UNSC consisted of the "sinking islands", i.e. SIDS directly endangered by sea level rise, and certain other small islandic nations. The countries within this category occupy relatively small land area, 6.796 km^2 on average; 17 out of 25 of those countries being significantly below the average, as the average was increased by bigger islands of Dominican Republic, Fiji and Timor. Those countries have very long coastlines, 1 192 km on average. For a typical member of this group, most of the territory is located on coastline, as the average coefficient of coastline to land reaches to 1,42. The countries

display the characteristics of underdeveloped economies, with rather low GDP per capita: in 2015 this GDP was 9 957.14 USD on average. The list of those countries with individual characteristics is provided in the table 5.II below.

Table 5.II: List of "sinking islands" and other SIDS[184]:

Country:	Land (km2):	Coastline (km):	Coastline to land ratio:	GDP per capita 2015 PPP (USD):
Antigua and Barbuda	442,6	153	0,34568459	24 900,00
Cape Verde	4033	965	0,23927597	6 600,00
Comoros	2235	340	0,15212528	1 600,00
Cook Islands	236	120	0,50847458	9 100,00
Dominican Republic	48670	1288	0,02646394	15 500,00
Fiji	18274	1129	0,06178177	9 800,00
Haiti	27560	1771	0,0642598	1 800,00
Jamaica	10831	1022	0,09435878	9 100,00
Kiribati	811	1143	1,40937115	2 000,00
Maldives	298	644	2,16107383	18 100,00
Marshall Islands	181	370	2,0441989	3 400,00
Mauritius	2030	177	0,08719212	20 800,00
Micronesia	702	6122	8,72079772	3 200,00
Nauru	21	30	1,42857143	1 600,00
Niue (New Zealand)	260	64	0,24615385	15 200,00
Palau	459	1519	3,30936819	5 800,00
Papua New Guinea	452,86	5152	11,3765844	3 700,00
Saint Vincent and Grenadines	389	84	0,2159383	11 300,00
Samoa	2831	403	0,14235253	5 300,00
Seychelles	455	491	1,07912088	26 900,00
Solomon Islands	27986	5313	0,18984492	2 100,00
Timor-Leste	14874	706	0,04746538	6 200,00
Tonga	717	419	0,58437936	5 400,00
Trinidad and Tobago	5128	362	0,07059282	34 400,00
Tuvalu	26	24	0,92307692	3 600,00
Average:	**6796**	**1192**	**1,42**	**9 957,14**

Those countries are particularly endangered by the sea level rise, which causes their territory, often very small, to be gradually flooded and subjected to environmental

[184] Data Source: CIA World Factbook. Available online [2nd January 2019] < https://www.cia.gov/library/publications/the-world-factbook/ >

degradation. At the same time, their rather low GDP does not allow them to resort to a robust economic solution of the situation or any other vocal action. Interlinking those facts with the space and power discussions in section 2.2 of this dissertation, we may assert that the deplorable spatial conditions and lack of power forced those countries to turn to the UNSC, when the solutions of their situation on other fora seemed slow or ineffective (section 3.1).

Due to those spatial and power-related conditions, the members of this group had to address the UNSC and try to introduce a legal interpretation that would allow the UNSC to solve their situation as a security issue. They used the possibility provided by the international law to address the UNSC as a basis to gain an advantage. This advantage should have been twofold. Firstly, it should be represented by unlocking new available platform for discussing the solutions of their situation – the platform concentrating most of international powers in its hand. As the representative of Papua New Guinea (2007, 29) expressed: "The Security Council, charged with protecting human rights and the integrity and security of States, is the paramount international forum available to us."

Secondly, addressing the UNSC should draw the attention of the world to SIDS' situation and attract eventual countries that would be willing to assist SIDS. The representative of Fiji (2011, 36R) emphasized this by saying: "We wish to emphasize that special attention must be given to the obvious calamities associated with sea-level rise. We call on the Council to begin earnest preparations to deal with the security implications of climate change." Solomon Islands indirectly called for more funding from other countries by saying: "The wider United Nations system must structurally respond to the call — not only the General Assembly and the Economic and Social Council, but the Security Council as well. (…) These agreements have not been matched by resources for the small island developing States. The Mauritius Strategy will remain a strategy unless it is financially supported" (Solomon Islands 2007, 13R). Similarly, the Maldives pleading on behalf of 37 SIDS complained that "There have been persistent funding gaps for adaptation that trail far behind climate financing provided for mitigation. That must be remedied, with a larger share of public and grant-based financial resources for adaptation" (Maldives 2018, 27).

This demonstrates how SIDS tried to use possibilities provided by international law to gain advantages and how they interpreted the lack of clarity on whether the UNSC should solve environmental issues in their favour, trying to establish and confirm the UNSC mandate to solve their situation. This moves their attempt close to the lawfare of ambiguity, as described in section 2.3.1 of this dissertation.[185]

Nonetheless, SIDS had to cope with several problems. First was the fact the UNSC had traditionally focused only on the matters of strictly military security and it has so far addressed issues exceeding this area only in a few cases, as the section 3.2.1 and 3.2.6 of this dissertation described. Secondly, as the following section 5.2 outlines, the rapidly developing inland states rejected that the UNSC should address the issue at all.

SIDS reacted to those challenges primarily by asserting that the UNSC has sufficient mandate and the circumstances require the UNSC to act in this case. By this move, they opened the dispute with the rapidly developing states and started the moment of justice as described in the section 2.1.3 and 2.2. Within this moment, SIDS claimed that the UNSC has sufficient mandate to address their situation and that it should be deciding according to principles of distributive justice, which dictates equal sharing of burdens and benefits. On the other hand, the rapidly developing states, as will be described in section 5.2, insisted that the UNSC should remain a commutative justice decision making body. This interesting debate has been to a large extent implicit and readable only through indications and allusions hidden behind the statement that the UNSC possessed sufficient mandate.

In total, SIDS declared their situation to fit within the UNSC mandate in 30 cases and 77% of their statements, the numbers of those references by years are listed in the table 5.III.

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[185] Eventually also lawfare of litigation to the extent that the SIDS used the UNSC meetings as a platform for shaming the biggest polluters and requesting actions against them.

Table 5.III: References to sufficient mandate

Justifications of sufficient mandate by SIDS (*distributive justice*):					
Year:	**2007**	**2011**	**2015**	**2018**	**Total:**
Cases:	**7** out of 10	**4/4**	**16/22**	3/3	**30**/39

Already in 2007, the representative of Papua New Guinea stated (emphasis added):

> "This debate in the Security Council suggests that there are additional avenues for discussing one of the most critical issues for the survival of our Pacific island communities. (...) Pacific peoples have inhabited their islands for thousands of years and have rich and vibrant cultures. We are **likely to become the victims of a phenomenon to which we have contributed very little and which we can do very little to halt**. (…) We do not expect the Security Council to get involved in the details of discussions in the Framework Convention on Climate Change, but we do expect the Security Council to keep the matter under continuous review so as **to ensure that all countries contribute to solving the climate change problem and that their efforts are commensurate with their resources and capacities**. We also expect that the **Security Council will review particularly sensitive issues**, such as implications to sovereignty and to international legal rights from the loss of land, resources and people." (Papua New Guinea 2007, 29)

This statement demonstrates how SIDS referred to distributive justice principles. The speech requires the UNSC to ensure that each of the world countries shall contribute to combating climate change according to its own resources and capacities. At the same time, the speaker emphasizes that his home country is carrying burdens of climate change, although it has benefited incredibly little from the industrial processes that caused it. This is an opened declaration that the Council should be assessing the case and deciding on distributive justice principle.

Other SIDS did not refer to distributive justice principles so openly, but they invoked those principles indirectly, by claiming that the UNSC simply must act because it is required by justice, by the new realities and perspectives or by the fact that the Council already left the commutative paradigm when deciding on HIV/AIDS or Ebola. This is best visible on the statement of the Tuvaluan representative (emphasis added):

"We strongly believe that the Security Council should permanently place the issue of climate change and environmental security on its agenda, **just as it wisely decided to do in 2000 with regard to the issue of the security threat posed by HIV/AIDS**. (...) We humbly call upon the Security Council to understand and respond **to these new concepts of security** and conflict. (...) The Security Council must consider the threat to our national security and, ultimately, to global security, from **a new perspective**. We are a peace-loving nation and have no army. We will pose no security threat even if we face the full consequences of climate change; but we must not disappear from the Security Council radar screen. As the great Martin Luther King said, "**Injustice anywhere is a threat to justice everywhere**". (...) Finally, **we strongly encourage the Security Council to review its Charter obligations and to fully embrace the concept of environmental security within its mandate**. This is not simply a matter of identifying trouble spots where armed conflict may be linked to environmental decline. We believe that the Security Council should address environmental decline as a security issue in itself" (Tuvalu 2007, 9R).

The statement emphasizes that the UNSC should abandon old (commutative justice) perception of security to embrace new perspective. In case of HIV/AIDS the Council did not decide according to strictly given rules when answering particular wrong as stipulated by commutative justice principles. Therefore, this case is invoked as a precedent. Reference to Martin Luther King's statement on justice completes triad of indirect allusions to distributive justice.

Similarly, other SIDS frequently referred to UN Charter, its individual articles, and Council's overall obligations or its mandate. Micronesia (2007, 25R) argued that the "Council is charged with maintaining international peace and security. Thus, it should first formally recognize that climate change is a threat falling within its mandate. It should then have the Secretary-General identify regions at risk and the potential impact on international peace and security, as well as appropriate responses, in line with Article 99 of the Charter. Finally, the Council should remain seized of the matter, since climate change is evolving."

The UN Charter, the UNSC mandate and its responsibility was similarly recalled also e.g. by Nauru (2011, 24) on behalf of Pacific SIDS, by Palau (2011, 26R) or by Tonga (2015, 50) that recalled article 2 of the Charter and stated that the human made climate change interferes with territorial integrity of the country. Saint Vincent and the Grenadines even pressed the Council to act by the expectations of millions of people:

"Today there are over 50 countries, with over 50 million people, that are expecting the Council to fulfil the letter and the spirit of its Charter obligations. Please do not let us down" (Saint Vincent and the Grenadines 2015, 39). Papua and New Guinea argued that "the Charter of the United Nations is clear" on the fact that "the Council should and must exercise its mandate relative to addressing the adverse impacts of climate change, which may have security implications, including future contingencies that may arise" (Papua New Guinea 2011, 18R).

Two additional quotations below demonstrate another way how the allusions to distributive justice were made through suggestion that equal sharing of burdens must be restored and all the UN members should contribute accordingly:

> "**Comoros does not cause greenhouse gas emissions**, but climate change **increases the difficulties for the sustainable development of our country**, which is already fragile. (...) My country would like to recall **that the responsibility of the Security Council is the maintenance of international peace and security, as stipulated in the Charter of our universal Organization**" (Comoros 2007, 35R).

> "What we are asking the Council to do is to fulfil its responsibilities as conferred upon it by the Charter. **All Member States** agreed under the Charter that in carrying out its duties and responsibilities, the Security Council acts on our behalf. We rely on the Council's wisdom to represent the interests of all Members of the United Nations and its organs in the **fulfilment of its mandate**. **We urge the Council to deliver on its part**" (Fiji 2011, 36R).

References to the sufficiency of the UNSC mandate, which SIDS made 30 times, were supposed to gradually concentrate all those justifications and interlinks and if the mandate embracing the "new realities and perspectives" would be accepted by other countries, the UNSC could start deciding on distributive justice principles. The wording of the Charter would remain the same, while content of its articles and decision-making practice would change.

We might recall the conclusion of previous sections that the UNSC and the Charter was juridically engineered[186] to fix the power of the permanent members in exchange for predictable use of its projection. By this lawfare-like attempt, the SIDS exploited the fact that the competences of the UNSC are not clearly delineated.[187] They tried to change this result of juridical engineering and demanded that the UNSC should unconditionally address their case. In the metaphor of Koskenniemi outlined in section 3.2.4, the UNSC should not do so as mere police redressing specific and exactly defined wrong under commutative justice principles. To the contrary, it should redistribute the environmental costs and benefits and thus decide on distributive justice basis, which is usually done by the "temple of justice".[188]

SIDS supported their position with various other arguments, often reacting to the position of the rapidly developing states that refused that the UNSC should solve their situation. Firstly, SIDS emphasized urgency and dire consequences of climate change:

> "Were the Security Council to ignore climate-induced risks to international peace and security, that would be a mistake of historic proportions. From fires to famine, to flooding, every continent is feeling the fury of climate change, and we cannot wait until we clarify which United Nations agency is most appropriate to respond." (Maldives 2018, 27)

Secondly, SIDS resorted to direct securitization; 22 securitization moves of SIDS representatives have been already mentioned in the table 5.I above. Apart from those direct securitization moves, SIDS also tried to securitize the issue of climate change with metaphors and comparisons. This was the reaction to the objection that the UNSC should stay engaged strictly with the traditional military security matters. Securitizing metaphors or comparisons were supposed to equal threat of climate change to the threat of armed conflict.

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[186] For the meaning of juridical engineering cf. respective part of the section 2.1.3, for UNSC establishment cf. section 3.2.1.

[187] Paradoxically, this fact was primary intended to empower primarily the permanent members of the UNSC, who could thus define the competence of the UNSC more flexibly.

[188] Hypothetically, if successful, the SIDS would significantly outweigh the advantages of the stronger countries within the Council. Because under distributive justice principles, the more power you wield, the more you are obliged to assist those who are less powerful.

To state several examples, Tuvalu (2007, 8R) reasoned that the "world has moved from a global threat called the cold war to what should now be considered the "warming war". Our conflict is not being fought with guns and missiles but with weapons from everyday life — chimney stacks and exhaust pipes. We are confronted with a chemical war of immense proportions." Solomon Islands (2007, 13R) added that more "people die from the effects of climate change than from domestic and international wars put together" and compared climate change to terrorism. Similarly, Nauru linked the danger of climate change to that of nuclear weapons proliferation: "Neither nuclear proliferation nor terrorism has ever led to the disappearance of an entire nation, though that is what we are confronted with today" (Nauru 2011, 23). The Maldives (2018, 26) concluded that: "where there are clear threats to the security and survival of any country — whether such threats originate in climate risks or from conventional military aggression — the Security Council has to take appropriate action."

This securitization through metaphors or comparison was supposed to support the claim about sufficient UNSC mandate and deflect the arguments of the rapidly developing states that the UNSC must deal only with issues of more traditional security. Although the securitization through metaphors appeared only in 18 % of statements, this must be read together with the fact that in 56 % of statements the SIDS securitized directly.

Table 5.VI: Securitization through metaphors and comparisons by SIDS

Securitization through metaphors, comparisons etc.:					
Year	**2007**	**2011**	**2015**	**2018**	**Total:**
Cases:	**3** our of 10	2/4	1/22	1/3	7/39

Also 2 countries from the group of the developed states resorted to this type of securitization; therefore, this rhetoric strategy was not limited to SIDS.

The third and the final pattern of SIDS arguments was a tendency to refer to "reality" or "failing science". Again, this practice was supposed to counter the argumentation of the developing states. The developing states wanted to emphasize insufficient UNSC mandate by the claim that the UNSC lacks expertise to deal with the issue of climate

change and that this should be primarily tackled by scientists or experts, not by the UNSC members. In 5 cases, SIDS tried to oppose this argumentation by claiming that the climate change is already a reality and that science failed to deliver a solution to their situation, therefore UNSC must act. For example, the Maldives (2007, 23) witnessed that the climate change is "already an everyday fact of life" and added: "Over the past two decades we have seen, first-hand, the real, practical reality of climate change and sea-level rise. The Maldives is made up of about 1,200 small coral islands, of which about 200 are inhabited. Today, over 60 per cent of those inhabited islands are facing varying degrees of coastal erosion, which is physically threatening the human settlements on them. (...) Climate change is now a fact. It is not an issue surrounded by scientific uncertainties." But because there were just 5 cases of this type of argumentation in total, the pattern was not that strong. This argumentation was present in less than 15 % of the statements. It rather illustrates how the SIDS reacted to argument of rapidly developing states that the UNSC cannot deal with such specific "scientific" or "developmental" issue.[189]

We may conclude that primarily SIDS supported their position by references to sufficiency of the UNSC mandate, implicitly basing on distributive justice basis. They added arguments emphasizing urgency and securitizing the climate change, either directly or through metaphors and comparisons. Finally, they referred to realities and failing science to persuade other countries that their case was admissible in front of the Council and did not need further "scientific" examination instead.

By this behaviour, SIDS facing sea level rise were trying to achieve important change in the UNSC practice, without changing any single letter in the UNSC Charter. If their argumentation succeeded, they could effectively compensate current imbalance of power. While not having enough resources to deal with their situation themselves, they would obtain the UNSC support in one or other in its form. This could contribute to the improvement of their spatial conditions and partially redress the spatial inequality that they face. Nonetheless, their argumentation was not successful; the UNSC did not issue any resolution, nor did it anyhow address the situation, except from vague and general

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[189] Sub-chapter 5.2 below will explain how this argument was supposed to achieve specific power-related hierarchy through fragmentation.

presidential statement in 2011, which immediately met with objections. The argumentation of SIDS clashed with the position of rapidly developing states. This position is described in the next sub-chapter 5.2.

5.2 Rapidly developing states

The second cluster of countries with similar argumentation in front of the UNSC was the group of the rapidly developing states. This group consisted of large countries (cf. table 5.VII) with the average territorial area of 1,677,407 square kilometres. Most of its members were developing rapidly, the average 2015 GDP per capita being USD 18 306, which is almost twice as big as the average GDP in SIDS' group. The group also includes those countries that are not developing rapidly, but possess large mass of the land and cannot be consequently severely endangered by the sea level rise. The average ratio of coastline to landmass in this group is 0,021, which is 100 times lower than within the group of SIDS.

Table 5.VII: List of the rapidly developing countries:[190]

Country:	Land (km2):	Coastline (km):	Coastline to land ratio:	GDP per capita 2015 (USD)
Angola	1246700	1600	0,001283388	7 600,00
Argentina	2736690	4989	0,001823005	21 200,00
Bangladesh	130170	580	0,004455712	3 800,00
Barbados (on behalf of CARICOM)	430	97	0,225581395	18 300,00
Bolivia	1083301	landlocked	-	7 200,00
Brazil	8358140	7491	0,000896252	16 300,00
Colombia	1038700	3208	0,003088476	14 200,00
Congo	341500	169	0,000494876	7 500,00
Costa Rica	51060	661	0,012945554	16 100,00
Cuba (on behalf of non-aligned movement)	109820	3735	0,034010199	12 100,00
Ecuador	276841	2237	0,008080451	11 700,00
Egypt	995450	2450	0,002461198	12 400,00
Egypt (on behalf of non-aligned movement)	-	-	-	-

[190] Data Source: CIA World Factbook. Available online [2nd January 2019] < https://www.cia.gov/library/publications/the-world-factbook/ >

Ethiopia	1096570	landlocked	-	1 900,00
Ghana	227533	539	0,002368887	4 400,00
Chad	1259200	Landlocked	0,000001	2 700,00
China	9326410	14500	0,001554725	14 800,00
India	2973193	7000	0,002354371	6 500,00
Indonesia	1811569	54716	0,030203652	11 500,00
Iran	1531595	2440	0,00159311	17 700,00
Jordan	88802	26	0,000292786	9 300,00
Kazakhstan	2699700	Landlocked	-	25 800,00
Kenya	569140	536	0,000941772	3 300,00
Kuwait	17818	499	0,028005388	69 200,00
Lebanon	10230	225	0,021994135	19 300,00
Malaysia	328657	4675	0,014224556	27 100,00
Mexico	1943945	9330	0,004799519	19 400,00
Namibia	823290	1572	0,001909412	11 700,00
Pakistan	770875	1046	0,0013569	5 100,00
Pakistan (on behalf of the 77 Group):	-	-	-	-
Panama	74340	2490	0,033494754	23 700,00
Peru	1279996	2414	0,001885943	13 000,00
Phillipines	298170	36289	0,121705738	7 600,00
Qatar	11586	563	0,04859313	134 200,00
Russia	16377742	37653	0,002299035	27 500,00
South Africa	1214470	2798	0,002303886	13 800,00
Sudan	1861484	853	0,000458237	4 400,00
Sudan (on behalf of the African group):	-	-	-	-
Tanzania	885800	1424	0,001607586	3 000,00
Thailand	510890	3219	0,006300769	16 700,00
Turkey	769632	7200	0,009355127	25 000,00
Urugway	175015	660	0,003771105	21 600,00
Venezuela	882050	2800	0,003174423	17 300,00
Average:	**1359731**	**5931**	**0,021117251**	**18 306,06**

How did the space and power influence the position of those countries in front of the UNSC? Typical rapidly developing states such as Brazil, India, China or Russia needed rather unrestricted space for the CO_2 emissions, in order to allow their industry to develop further (cf. Azevedo et al. 2018; Maryam et al. 2017). Eventual resolution of the UNSC on cutting CO_2 emissions could place them to a disadvantageous position in relation to the developed countries: while the developed states were rather unrestricted

in CO_2 emissions during their rapid industrialization in the past, the rapidly developing countries would have to cool down their economy and purchase or develop technologies for emissions' cutting.

The permanent members such as China or Russia would have to consider vetoing the resolution, which would expose them to public pressure and reputational risk. The non-permanent members would risk that the issue of CO_2 emissions and other environment-related restrictions could be discussed on a forum, where they did not hold a permanent seat. Thus, a decision could be passed without their participation, which could decrease their power.

Finally, countries like Egypt, Kuwait or Qatar, with their economies largely dependent on petroleum export, faced eventual threat that a resolution praising carbonless economy could lower foreign petroleum demand and thus decrease their incomes from international trade.

As a result, rapidly developing countries generally wanted to prevent the UNSC from discussing the situation of SIDS in particular or climate change in general. For this purpose, they simply argued that the UNSC has no mandate to address the topic. For example, Egypt (2007, 4R) suggested that such a topic "lies totally beyond the Council's mandate". Russia (2007, 16) demanded that the "United Nations Security Council, for its part, should only deal with the consideration of questions that directly relate to its mandate." South Africa (2007, 16) reiterated that "the mandate of the Security Council does not authorize it to deal with such matters". Argentina (2011, 26) underlined "how important it is that the General Assembly, the Security Council and the Economic and Social Council work within their respective mandates, as set out in the Charter." China (2015, 24) highlighted that "The General Assembly, the Security Council, the Economic and Social Council and the specialized agencies all have their own mandates and functions. When helping SIDS address challenges and pursue comprehensive development, there should be a clear division of labour, so as to avoid redundancy in functions and waste of resources." And finally, Bolivia (2018, 17) pleaded that:

"The challenges facing the Security Council in the fulfilment of its mandate are indeed many and complex, but we believe that those that truly jeopardize the efforts of the Council and our Organization to prevent the breach of international peace and security are linked to the insufficient application of the mechanisms provided for in the Charter of the United Nations. We are convinced that it is essential to maintain the focus on the powers and mandates of each organ, carrying out the coordination tasks that allow for the best alternatives to face the problems emerging from conflicts, thereby avoiding the unnecessary duplication of work and, above all, overlap and interference in the specific mandates of the other organs."

The references to insufficient UNSC mandate were very frequent within the group of the rapidly developing states. There were 54 references to the UNSC lacking mandate, which amounts to 63 % of the statements of rapidly developing states. The overview is provided in the table 5.VIII below.

The drop in 2015 is a result of the fact that the UNSC discussed also other challenges that SIDS face: organized crime, illicit human and weapons trafficking, drugs smuggling etc. Those topics seemed more appropriate as an agenda of the UNSC for the rapidly developing states. Therefore, those countries focused on them and did not often generally deny the UNSC mandate. Despite that, in 6 cases, the rapidly developing countries also in 2015 explicitly mentioned that the UNSC is not the proper forum to deal with the adversary impacts of climate change on SIDS.

Table 5.VIII: References to lacking mandate

References to lacking mandate by the rapidly developing states (*commutative justice*):					
Year:	**2007**	**2011**	**2015**	**2018**	**Total:**
Cases:	**20** out of 23	**24**/29	**6**/25	**4**/9	**54**/86

By the references to the lacking mandate, the rapidly developing states invoked a "background rule". An allegedly technical and formal norm which should not be discussed (the mandate is simply given) and which was supposed to justify the demand that the issue must be excluded from the UNSC agenda. As was described in the second theoretical chapter and as would Kedar (2003, 412) put it, contingency was portrayed as

a necessity and the created was portrayed as the found, objective and apolitical. This is an example how the power influenced the interpretation of the law and how the reference to the law (UN Charter) was supposed to help the rapidly developing countries to retain power.

Those countries indeed referred to the UN Charter together with their claims about the mandate in order to make their position seem more natural, justified and legitimate. Egypt (2007, 4R) saw the discussion of the UNSC on security impacts of climate change as "a clear and deliberate neglect of the provisions of the Charter." Venezuela (2007, 10R) demanded that the "Security Council should frame its actions in accordance with the spirit and letter of the Charter of the United Nations, by adopting the strictest interpretation of what really constitutes a threat to international peace and security, in accordance with Article 39 of the Charter." China (2018, 16) emphasized the division of labour between various UN organs under the UN Charter and Pakistan (2007, 24) claimed on behalf of the Group 77 (emphasis added):

> "The Group is of the view that Security Council's primary responsibility is for the maintenance of international peace and security, **as set out in the United Nations Charter**. On the other hand, other issues, including those relating to economic and social development, are **assigned by the Charter** to the Economic and Social Council and the General Assembly. The ever-increasing encroachment by the Security Council on the roles and responsibilities of other principal organs of the United Nations represents **a distortion of the principles and purposes of the Charter**; it also infringes on their authority and compromises the rights of the general membership of the United Nations."

Those statements of the members of this group implicitly based on the fact that the UNSC decision making should be based on the principles of commutative justice. Thus, those statements contrasted with the statements of SIDS which called for distributive justice decisions. As explained in the section 2.1.3 of this dissertation, commutative justice is the justice redressing particular wrong according to strictly given specific rules. Commutative justice therefore requires adopting previously prescribed measures against the perpetrator who violated certain rule. When the rapidly developing states invoked the argumentation that the UNSC lacked the mandate to address climate change and SIDS' situation, they implicitly recalled a presupposition, or a background rule that the UNSC should be a commutative justice organ.

Sometimes, the references to commutative justice principles became more explicit. Several rapidly developing countries argued that the UNSC should stay within the mandate, because there were other fora enabling wider participation on decision making. Those fora did not have such a narrow authorisation to act. For example, Argentina argued that (emphasis added):

> "The competence to substantively address the issues of climate change, energy, agriculture, the supply of drinking water and the habitat of endangered populations undoubtedly belongs within our Organization: to the General Assembly, the Economic and Social Council, the United Nations Environment Programme, the United Nations Human Settlements Programme, the Commission on Sustainable Development, the regional economic commissions, the United Nations Framework Convention on Climate Change and specialized agencies such as the Food and Agriculture Organization of the United Nations, the World Health Organization, the World Meteorological Organization, the World Bank and the regional development banks, among others.
>
> Adequate and fluid cooperation, **within the terms established by the Charter**, among the various organs, the programmes and specialized agencies of the Organization is necessary to face situations that could potentially affect security and whose origin lies in the extreme consequences of climate change. **In our view, this must not lead, under any circumstances, to the question of climate change being incorporated into the agenda of the Security Council** (Argentina 2007, 7R)."

Many rapidly developing countries connected the adversary impacts of climate change on SIDS and other areas with the sustainable development (e.g. Argentina 2007, 26R; Cuba 2011, 10R; Brazil 2015, 57; Egypt 2015, 79) and the principle of common and differentiated responsibilities (e.g. Qatar 2007, 9; South Africa 2011, 16). By claiming this, they implied that what must be addressed are the root causes of this phenomenon; not its security implications. The reference to common but differentiated responsibilities invoked equal sharing of burdens and benefits, which is the premise of distributive justice. By asserting that the UNSC cannot address this issue because of lacking mandate, the rapidly developing states argued that there are other organs that enable distributive justice decision making, not the UNSC. Therefore, the discussion on the issue should be entrusted to those other platforms.

For example, the representative of Indonesia (2007, 14), despite acknowledging the importance of raising awareness of climate change, believed "that it should not create a

precedent for the future work of the Security Council", adding that "this issue is being addressed, and should be addressed more effectively, in other forums of the United Nations system, including the Commission on Sustainable Development, which will deliberate on the issue of energy and climate change at its fifteenth session." The representative of Cuba (2011, 10R) provided similar argumentation in a nutshell:

> "The **relevant powers and functions** of the various bodies within and without the United Nations must **be duly respected**. We are seriously concerned about the Security Council's growing interference in the functions and responsibilities of the other principal United Nations organs. Climate change is an issue that, by definition, should be discussed under the sustainable development cluster. ... If the Security Council, despite its limitations and lack of jurisdiction in this area, wishes to demonstrate any seriousness in reviewing this issue of universal concern and making a meaningful contribution to the search for solutions…" (Cuba 2011)

Similarly to Cuba, also other rapidly developing countries criticized that addressing the issue of climate change represents encroachment of the UNSC mandate. E.g. Egypt on behalf of the Non-aligned movement objected to placing climate change on the UNSC agenda:

> "In this context, the **Security Council's continued encroachment** on the functions and powers of the General Assembly, the Economic and Social Council and the relevant subsidiary organs, by addressing issues that traditionally fall within the competence of those organs, remains a source of deep concern for the Movement. The Non-Aligned Movement stresses that the Security Council must fully observe all provisions of the Charter establishing the delicate balance among the competencies of all principal organs" (Egypt 2011, 26R).

The criticism of Council's mandate encroachment was present in the statement of Pakistan which was already quoted above. The representative furthermore added:

> "The issues of energy and climate change are vital for sustainable development. Responsibilities in the field of sustainable development belong to the General Assembly, the Economic and Social Council, their relevant subsidiary bodies, including the Commission on Sustainable Development, and the United Nations Environment Programme. Climate change is the subject of a binding multilateral agreement — the United Nations Framework Convention on Climate Change — and a supportive protocol — the Kyoto Protocol. No role was envisaged for the Security Council.

We hope that the decision by the Council to hold this debate does not create a precedent or undermine the authority or mandate of the relevant bodies, processes and instruments which are already addressing these issues." (Pakistan 2007, 24)

Furthermore, the rapidly developing states claimed that if the Council focuses on this issue lying outside of its mandate, it will decrease its efficiency (presupposing that the commutative justice decision making principles of the UNSC are inadequate for addressing the topic). In this way, Mexico (2007, 20R) warned against eroding the Council's efficiency. Iran (2011, 19R) objected that if the UNSC systematically dealt with the climate change, it would overstretch its mandate and have "grave consequences for the functioning of other United Nations bodies and the fate of those issues in which the Council shows interest." Finally, Russia (2018, 16) reiterated that:

"With regard to climate change, I want to say once again that **the constant securitization**, as it were, of this vital issue irreparably **undermines the process of our joint quest to resolve it**. (...) We believe it is essential to allow all the United Nations mechanisms related to combating climate change to do their work in peace, without creating artificially intersecting approaches that merely obstruct the advancement of our shared interests."

Another allusion build upon distinction between distributive and commutative justice was the reference to participation. Rapidly developing states (cf. Egypt 2007, Tanzania 2011) argued that the UNSC does not allow wide participation. The issue of equal sharing of burdens and benefits was supposed be solved by widest possible involvement of all countries. The UNSC is an organ deciding on the commutative justice principles, when a few selected countries decide about the actions possibly affecting many states. This mechanism is inadequate for discussing how to share the burdens of climate change and distribute the resources more equally.

Qatar (2007, 10) therefore believed that "rich, developed and industrialized countries are assigned responsibilities different from those of poor and developing countries. (…). We need mechanisms capable of enforcing their own resolutions, provided that **those mechanisms are of wider representation**." The representative of Brazil (2015, 57) claimed:

"Instead of debating climate change in a forum where SIDS themselves are seldom represented, we should seek solutions to this real problem in the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 21), where the voice of SIDS has acquired increased resonance. Climate change cannot be considered a threat to international peace and security per se or a "threat multiplier". Instead, it is the foremost sustainable development challenge of our times."

Finally, China (2018, 16) referred directly to equality and justice: „the international community must uphold equality and justice and ensure that international rules are effectively respected and implemented." Also this statement was supposed to support the conclusion that the issue of climate change should be addressed by other fora, where there are all other countries equally represented and distributive justice principles admissible: "China believes that all Member States should, in line with the Charter of the United Nations and their obligations under the relevant documents, and based on the functions and divisions of labour of United Nations organs, promptly address and properly respond to climate-change issues" (ibid.).

Apart from references to insufficient mandate per se, the rapidly developing countries also occasionally claimed that the UNSC lacks expertise or scientific knowledge to address this issue. As a reference to Butler (2009, 331) in a theoretical chapter 2 explained: "Fragmentation is perhaps the most obvious characteristic of the spatial organisation of the contemporary world. It is manifested in the [legal] breaking down of space into discrete units which can be privatised and traded as commodities and is enhanced by the fragmentation of the sciences into separate domains which carve up space according to disciplinary interests."

By stating that the UNSC lacks expertise to address the issue of climate change, the rapidly developing countries tried to fragment the space as described by the quotation. They attempted to claim that the UNSC should be dedicated exclusively to politics and decisions on military security *per se*, i.e. it should deal with the spaces where armed conflicts occur, and where perpetrators violate international peace and security. On the other hand, the space of SIDS should be appropriated by the experts and scientists outside of the UNSC. This argumentation was supposed to expel SIDS issue from the UNSC agenda and create a landscape of inequality as a result. The table 5.IX below

contains the numbers of cases per year, when the rapidly developing countries referred to scientific approach or expertise as a reason, why SIDS problems with climate change should be excluded from the UNSC agenda and addressed by more appropriate scientifically-equipped organ. This type of argumentation appeared only in 12 % of all statements. Despite this, it repeated during all the meetings. Moreover, there was similar dynamics at play when the rapidly developing countries argued that climate change is "developmental issue" and should be therefore addressed by other organs. Again, the issues were fragmented on "security" vs. "developmental", homogenized under authority of bodies and thus ordered in specific hierarchy.

Table 5.IX: Number of rapidly developing states referring the scientific knowledge or expertise as a reason to exclude SIDS issue form the UNSC agenda

Scientific approach as a reason for exclusion of the agenda:					
Year:	**2007**	**2011**	**2015**	**2018**	**Total:**
Cases:	**4** out of 23	**3**/29	**2**/25	**1**/5	**10**/82

To provide some examples, Russia (2018, 16) accepted climate change as a grave threat, but believed that "the Council has neither the specialized expertise nor the tools to put together viable solutions for effectively combating climate change."

Almost the same argument, combined with the demand for more legitimate and representative organ to decide, was raised by Brazil three years earlier (2015, 57): "The Security Council lacks the tools, the expertise, the representation and the legitimacy to deal with the economic, social, environmental, humanitarian, scientific and technological aspects of this global debate." China (2011, 9) ascertained that the UNSC "lacks expertise in climate change and the necessary means and resources". Tanzania (2011, 38R) urged to conduct a comprehensive study as point of departure for the General Assembly (i.e. not the Council). And finally, Qatar (2007, 9) challenged the sufficiency of the UNSC knowledge by asking: "What policies can we put in place with respect to sources of greenhouse gas emissions? In other words, what is the impact of

population density, income level, energy and carbon concentrations? The answer to these and other questions may not be adequately given in this forum as they require in-depth, detailed study, which must precede the formulation of specific policies or recommendations."

In a nutshell, the rapidly developing states invoked an interpretation fragmenting the space and dividing it on a space of "scientific/expert" approach and space for political and security approach. SIDS and climate change belonged to the former, while the latter was supposed to be occupied by issues of military security. In this way, fragmentation of space was supposed to create a global homogeneity, as presupposed by Butler (2009, 322) and described in chapter 2. SIDS issues and climate change should be globally addressed by the scientists and experts on other fora, while the UNSC should stay unfilially focused on issues of military security. Thus, global hierarchy and power structure should be reiterated strengthened; giving the UNSC the competence to decide what belongs among its own competences.

As was described in the previous section 5.1, some SIDS tried to challenge this argumentation by referring to "failed science" and "realities". This was supposed to break the division into spaces that the rapidly developing states were trying to establish. SIDS intended to disqualify fitting the environmental consequences of climate change into "scientific/expert space".

Finally, at in conceptual chapter 2 we outlined an expectation that legal regulation is formed in a way to facilitate spatial use that allows capital accumulation and reproduction. The attempts to limit this reproduction, e.g. by cutting of CO_2 emissions, are likely to be labelled as "countering the law". This proved true in case of rapidly developing countries, which criticized that the encroachment of the UNSC mandate violates the UN Charter, as demonstrated by the statements above.

Such restrictive interpretation of the Charter and the UNSC role was supposed to defend spatial use which nurtures and strengthens the global forces of production (cf. explanation from Butler 2009, 329, section 2.2 of this dissertation). This would allow the rapidly developing states to further enhance their economic capacities. Moreover, the rapidly developing states did not have to admit that their position was political, and

power related, because the references to UN Charter and mandate made their position to seem natural and objective.

By expelling the issue of SIDS to other fora, the rapidly developing states safeguarded that their representatives with permanent seat would not have cast a veto. Other representatives gained higher level of certainty that they would be allowed to participate and vote on negotiations on other fora – negotiations that shall directly influence how much their forces of production dependent on CO_2 emissions shall be restricted. The Council did not issue any resolution and the global hierarchy was re-iterated.

5.3 Developed states

Last group to be generalized and analysed by this dissertation was the group of developed states. This group consists either of the EU member states (or countries that aspired to EU membership and aligned themselves with EU foreign policy), or countries with universally developed and diversified economy with the lowest possible GPD per capita in 2015 35.000 USD. The countries included in this category are listed below in the table 5.X.

Table 5.X: List of the developed countries

Australia	Iceland	Portugal
Belgium	Ireland	Republic of Korea
Bosnia and Herzegovina	Italy	Singapore
Canada	Israel	Slovakia
Cyprus	Japan	Slovenia
Denmark	Lichtenstein	Spain
Estonia	Lithuania	Sweden
Finland	Luxembourg	Switzerland
France	Netherlands	UK
Germany	New Zealand	USA[191]

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[191] The USA surprisingly did not object to the UNSC involvement even before and after the term of Barrack Obama. However, they occupied typical position of "empire in denial" state, as will be explained later. They did not voice unconditional support of the UNSC involvement, to the contrary, they just wanted to increase information sharing and risk monitoring. It would be interesting to conduct further research in the link between US domestic situation and the US position to climate change within the UNSC.

Germany (on behalf of the EU and other European states)	Norway		
Hungary	Poland		

Either EU members (aspirants) or 2015 GDP per capita over 35 000 USD plus universally developed economy.

The developed states had rather specific position. Thanks to their technologies, they would be able to both gradually reduce carbon dioxide emissions and to withstand most of the adversary impacts of climate change, at least from the short and middle term perspective. Though, they were hesitant to enter into a strict commitment and assume responsibility for implemented decisions, or to direct SIDS to other fora as the rapidly developing states.

As a result, the developed states opted for the approach that Chandler (2016) described as an empire in denial. On the one hand, they wanted to retain power to decide about climate change and eventually SIDS on the UNSC forum. On the other hand, they wanted to deny that they exercise any power at all. Thus, although they claimed that the UNSC had mandate to address certain impacts of climate change and SIDS situation, they did not want to take the responsibility for the final decision and consequences of this assertion.

As a result, the developed states insisted that the UNSC is an appropriate forum for the debate and eventual decision, but they demanded that the UNSC must gain inputs from and cooperate with other organs and fora. Moreover, they requested that the UNSC must base its conclusions on inputs from experts and scientists. The former rhetorical move was supposed to split the responsibility among various platforms, organizations and organs; the latter was supposed to outsource this responsibility on scientists and experts. Following lines describe both rhetorical moves.

The developed states frequently claimed that the UNSC had mandate to deal with climate change and its security impacts on countries such as SIDS, but they emphasized that the UNSC needs to gain inputs from or cooperate with other bodies to exercise such task plausibly. This argumentation was present in 55 cases, in 80 % of all the statements. The details listed per year are in the Table 5.XI below.

Table 5.XI: Numbers of developed states claiming sufficient mandate, but requesting cooperation of the UNSC with other fora and platforms

Mandate sufficient but inputs requested from / cooperation needed with other platforms:					
Year:	**2007**	**2011**	**2015**	**2018**	**Total:**
Cases	**14** out of 19	**23**/24	**12**/18	**5/7**	**55/68**

To provide some of the examples of this rhetoric, we can quote the representative of Norway (2007, 24R, emphasis added):

> "**Climate change**, as part of the peace and security agenda, **should and must be addressed by the Security Council**. The Council could become less effective in preventing and resolving conflict if it was to ignore the environmental dimension when analyzing the underlying causes of conflicts. (...) Such knowledge may also prove vital in preparing **a coherent response to the risks of climate change among the United Nations membership and across the United Nations organizations. We would suggest that the Department of Political Affairs, in cooperation with the United Nations Environment Programme and other relevant United Nations institutions**, be requested to look into how **the current knowledge base** on the interlinkages between climate change and security could be improved and made more readily available."

Similarly, Japan (2007, 29) requested "involving all relevant organs and bodies of the system, including the Security Council, as relevant to their respective mandates, because doing so is essential for system-wide coherence on the issue." USA (2011, 7R) believed that the Council had "an essential responsibility to address the clear-cut peace and security implications of a changing climate," but requested "greater collaboration on the effects of climate change, especially at the local and regional levels".

On those examples, we may observe how the developed countries repeatedly reified mandate of the UNSC as sufficient, but requested a response of various other organs, a joint action involving other stakeholders, without clearly delineating final responsibility for the actions taken or a division of labour between organizations.

The developed states also frequently emphasized the importance of partnership, collective approach, raising awareness and crisis management. Instead of concrete proposals, those soft and rather intangible criteria and values were invoked. This extremely closely resembles the empire in denial rhetoric.[192] Such phrases basically do not leave any space for eventual opposition, reducing the scope of actual decision making and disagreement. For example, the representative of Italy (2007, 4) mentioned:

> "Climate change is an unequivocal global threat. Today's debate helps to raise awareness of the dangers associated with environmental problems and to provide food for thought on the actions to take in the competent forums, in the specialized agencies, and among the United Nations membership. (...)

> We need to enact common strategies to address the risks related to climate change and our current model of economic growth. In the context of United Nations reform, we should strive to strengthen multilateral governance that helps to counter and manage such phenomena."

The quotation calls for sharing the responsibility among multiple organs and it adds universal soft requirements for "raising awareness" enacting "common strategies", "strengthening multilateral governance". Those phrases both deny that any power could be projected through such practice, and cannot be disagreed with, because they base on supposedly universally beneficial values of cooperation and knowledge spreading.

In regard to framing the issue in terms of universalism, remarkable statement was made by Iceland (2011, 16-17R) that requested gender-sensitive solution to climate change:

> "The Council must ensure that any response to climate change takes the gender perspective into account and that both women and men are included in the debate, decision-making and implementation with regard to all aspects of climate change. This will make the response to climate change more effective and appropriately contribute to greater gender equality worldwide."

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[192] It would be hard to confirm the true motivation of states. Their intentions could indeed be genuine, and I admit that this finding is partly hypothetical. Nonetheless, what I want to demonstrate is the similarity of argumentation of the developed countries with Chandler's concept of empire in denial, where the rhetoric of developed countries displayed exactly the same patterns. At least, we can support this finding with a counter-factual exercise. Let us suppose that the developed states would entirely support the UNSC involvement in climate change solution. They would not consequently subject the UNSC action to further conditions such as expert involvement and they would probably try to suggest a clear-cut division of labour or cooperation streams between the UNSC and other fora. Their statements regarding cooperation and future actions nonetheless remained vague and general.

Another feature of empire in denial is that it rhetorically attempts to remove all sorts of inequality – the empire is denying that it could project power or build on power-related hierarchies of inequality.

Finally, interesting statement was provided by the representative of the US, who used the issue to of climate change in order to export domestic values abroad. The statement attempts to function as a beacon projecting the matrix of a world where the US had a dominant and core position:

> "The most effective way to bolster security and stability is to increase the capacity of States to govern effectively. States that can govern effectively can better anticipate and manage change and the challenges that come with change. Successful development strategies must focus on education, rule of law, human freedom and economic opportunity.
>
> Well-governed countries grow and prosper. Economic growth provides the resources, in both developed and developing countries, to address energy and environmental challenges, including challenges associated with climate change. The United States has a long history of extending a helping hand so that people can live in democratic societies with robust economies and strong and stable governance." (USA 2007, 11)

Thus, through governance and "universal" values that can be hardly normatively opposed, the power is being projected, while this projection is constantly denied and disguised as partnership, assistance, governance etc. The responsibility for the results of such power projection is blurred and split between various organs and actors.

In this regard, certain developed countries (e.g. Italy 2007, 5 or Netherlands 2018, 9) called for establishing a new organ which would coordinate the efforts of others and represent "a knowledge hub on that subject" of climate change and security. This step could nevertheless add one more piece to already complicated institutional mosaic and further contribute to the blurring of responsibility.

Further aspect present in the statements of the developed states was the call for more scientific inputs and expertise. On the one hand, the developed states reassured that the UNSC had mandate to address the discussed issue, on the other hand, some of them repeatedly requested that the Council gained more expertise or scientific knowledge in order to deal with the issue further.

This rhetoric is also typical for the "empire in denial" – the actors try to maintain power to cast the final decision, but they outsource the responsibility for this on scientists and experts. Should the solution fail, the experts or scientists would be to blame. Furthermore, scientifically underpinned solutions are presented as apolitical and unbiased. Therefore, they cannot be challenged easily. In total, there were 13 statements of the developed states reaffirming the UNSC mandate but requiring more expertise or scientific inputs to enable an action of the Council. The details per year are contained in the Table 5.XII below.[193] This argumentation appeared in 20 % of the statements of developed countries, with a total drop in 2015. The intensity of this argumentation is low, nonetheless, it needs to be interpreted together with the 80 % of statements that reified the UNSC mandate, while conditioning it by cooperation with other organs.

Table 5.XII: Numbers of developed states requesting scientific/expert inputs for the UNSC action

Scientific inputs needed for tackling the case by the UNSC:					
Year:	**2007**	**2011**	**2015**	**2018**	**Total:**
Cases:	**5** out of 19	**4**/24	**0**/18	**4**/7	**13**/68

To state some of the examples, Norway (2007, 24R) called for "specific knowledge" and filling "current knowledge gap." Similarly, Switzerland (2007, 26) required to "recourse to environmental expertise" and the UK (2011, 12) "to build up a deeper understanding of the interface between the impacts of climate change on the one hand and conflict drivers". France (2018, 15) demanded the development of "a robust analytical capacity in this area" for the whole UN.

Last but not least, the developed states in their statements quite frequently (43 % of statements) pronounced "climatization of security". As already mentioned in the section 2.3.4 of this dissertation, climatization of security is an opposite process to

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[193] The drop of numbers in 2015 was probably caused by the fact that the UNSC discussed also other challenges that SIDS face, e.g. drugs and people trafficking etc. This changed the overall structure of the countries argumentation and they did not refer to the need of scientific and specific expert inputs.

securitization of climate change. During the securitization of climate change, climate change is proclaimed to be security threat deserving a mobilisation of extraordinary resources to address it. But during the climatization of security, an actor is claiming that security is specifically influenced by climate change, security is "climatized". It often contains a deconstruction of the process how climate change translates into insecurity. E.g. an actor may claim that security is affected by climate change through migration, through terrorist recruitment or struggle for resources, all of which are caused by the degradation of the environment.

The actors claim that the climate change brings "new dimension" to security or changes the perception of security which is thus "climatized". Climate change is not proclaimed a security issue itself, but a "threat multiplier", a cause of significant security effects and severe implications for security (e.g. Luxembourg 2011, 3 – 4R; Italy 2011, 40R; Singapore 2015, 54). Those arguments are supposed to advocate a special approach: "climate change is transforming the way that we think about security... Certainly for the United Kingdom, climate change is a security issue, but it is not a matter of narrow national security. It has a new dimension. It is about our collective security in a fragile and increasingly interdependent world" (UK 2007, 18).

While climatization of security represents and interesting difference from "securitization of climate change", it can be to certain extent used to support diverging arguments similarly to "securitization". The developed states used climatization of security to prove that the UNSC had sufficient mandate, but the Council needed to reflect new dimensions of the new threat. The rapidly developing states also resorted to climatization of security, but they demanded that climate change cannot be addressed by the UNSC at all, just because of the specificity of such issue. The climatization of security played an unambiguous role during the negotiations, although the developed states resorted to this rhetoric most frequently. The numbers of all countries that included climatization of security in their speeches are displayed in the table 5.XIII below.

Table 5.XIII: Numbers of states pronouncing "climatization" of security

Climatization of security:					
Year:	**2007**	**2011**	**2015**	**2018**	**Total:**
SIDS:	0 out of10	0/4	3/22	0/3	3/39
Rapidly developing states :	2/23	1/29	1/25	0/9	4/86
Developed states:	14/19	13/24	1/18	1/7	29/68

To conclude this section, we may address the questions: What consequences was the position of the developed states supposed to have on space and power? The developed states aimed at retaining the power over decision, and thus to keeping a privileged legal position, where the permanent UNSC members would have legitimate legal basis to decide on climate change on the ground of the UNSC, whenever this would be convenient. At the same time, any opposition to their proposals would be silenced by "scientific arguments" and "universal values" which leave very little space for disagreement. Finally, the countries themselves would not be directly accountable for any action or failure to act, because the responsibility would be unclearly divided between a plethora of organs, experts and managers. This would bolster the global hierarchy, where the developed states would effectively reaffirm their strong position and possibility to influence others, with effectively denying and hiding all their privileges.

Table 5.XI – Summary of findings interconnecting conceptual and empirical part

Key process:	Explanation of the process:	In case of SIDS:
Space determines law	"The concept of legal spatiality can readily be generalized: The scope and reach of the law is connected to territory, and therefore, spatial location determines the operative legal regime." (Raustiala 2005, 2506)	SIDS tried to address the UNSC, because their spatial conditions, namely sea level rise, forced them to act and get their concerns to the UNSC. Empirical description contained in **section 5.1**.
	Moment between commutative and distributive justice: Butler (2017) described spatial justice as a moment where the right to occupy the space is materialized and individual possibilities how to materialize it clash. Within the moment of spatial justice, various forms of spatial justice may clash. Two types of justice that can be juxtaposed within such moment of justice and have very specific consequences for spatial organization are distributive and commutative justice.	Meetings of the UNSC where SIDS reported their plight were the *moment* of justice. SIDS tried to base their claims on the concept of distributive justice. Rapidly developing states refused that and implicitly emphasized that the mandate of the UNSC was established and should remain on the basis of commutative justice. Empirical description contained in **section 5.1** (SIDS) and **5.2** (rapidly developing).
Law produces space	"[Abstract space in capitalism era] not only nurtures and facilitates the reproduction of capitalist social relations; it actively excludes alternative spatial uses." (Butler 2009, 329)	Developing states tried to ban the SIDS issue from UNSC agenda in order to be free to emit CO_2. Global capitalism needed CO_2 emissions for re-production. Empirical description contained in **section 5.2**.
	Fragmentation is perhaps the most obvious characteristic of the spatial organisation of the contemporary world. It is manifested in the [legal] breaking down of space into discrete units which can be privatised and traded as commodities and is enhanced by the fragmentation of the sciences into separate domains which carve up space according to disciplinary interests (Butler 2009, 331). Fragmentation creates global homogenous units that can be organized in a hierarchy (ibid.).	SIDS situation was supposed to get expert attention and be solved "scientifically", by a separate discipline(s) (fragmentation). Rapidly developing states claimed that the homogeneity of UNSC rules commands not to decide about this case. The hierarchy is being created that SIDS' situation cannot be solved by the UNSC which is hierarchically higher. Empirical description contained in **section 5.2**.
Power determines law	To reiterate, law can be referred to as "frozen politics," the implication being that it represents contingent social constructions as natural and apolitical. The social representations of space can similarly become reified. (Blomley and Bakan 1992, 688)	Countries in front of the UNSC adjusted legal interpretation of the UN Charter to their needs and presented their own political opinion on the UNSC position as the universal and natural meaning of the Charter.

	"The production of allegedly technical formal rules (…) omnipresence of background rules and assumptions that are never discussed, serve as fundamental pillars of the spatial-legal legitimation of inequalities and hierarchies. As a result, 'contingency is portrayed as necessity, the created is portrayed as the found, the constructed as the natural or the political as the nonpolitical'…" (Kedar 2003, 412)	Rapidly developing states referred to the different mandate (lack of jurisdiction) of the UNSC in order to exclude the agenda from the UNSC meetings. The mandate has been presented and perceived as a background rule, which cannot be discussed, and which makes the position of the rapidly developing states natural. Empirical description contained in **section 5.2**.
	Juridical / regulatory engineering – "Jurisdiction is also a discourse, a way of speaking and understanding the social world." (Ford, 1999, p. 855). By a juridical engineering, the actors seek to establish a jurisdiction that is appropriate and suits their interests. By a regulatory engineering, the actors create the regulation or intervene in the creation of legal norm appropriate for them.	By their interpretation of the UNSC mandate and role, the stakeholders tried to establish the jurisdiction of the UNSC in the way that suited their interests.
Law determines power	"Explicit legal rules and background legal regimes shape a landscape of 'social apartheid, inequitable distribution of public resources and political disenfranchisement' While law is implicated in the production and endurance of spatial inequalities, various rhetorical devices divert attention from it and therefore contribute to their legitimization and perpetuation." (Blomley, Delaney and Ford 2001, 52 – 53).	Developing states referred to the different mandate of the UNSC to exclude the agenda from the UNSC meeting. This reference to the mandate made their claim legitimate. Empirical description contained in **section 5.2**.
	Lawfare of ambiguity "Lawfare of ambiguity capitalizes on different existing interpretations and various understandings of law or on gaps in applicable law." (Bruner 2018A)	SIDS tried to re-interpret the unclear mandate of the UNSC in order get their case solved by the UNSC and to establish that the UNSC should act on the basis of distributive justice. Developed states tried to maintain power over the decision while avoiding the responsibility over the decision. Rapidly developing states referred to the strict mandate of the UNSC, requesting adherence to commutative justice model as a prescribed *modus operandi* of the UNSC.

5.4 Aberrations and special cases: Contextualized discussions

This section of this chapter is supposed to discuss special cases and aberrations from the three patterns described above. Those three patterns were generalized by using critical legal geography and by identifying how space, law and power interact within the statements of the three groups of states. Nonetheless, the interplay between space, law and power can similarly create an aberration from the three identified patterns. This aberration does not necessarily falsify CLG assumptions as such. To the contrary, it proves that the interaction of law, space and power can occur also on a micro scale of an individual state as a unit and cause a divergence from common position. Several of such individual examples are described below.[194]

The most striking aberration are certain Caribbean SIDS, namely Barbados and Bahamas. One would expect them to take the position described in the section 5.1, i.e. to keep persuading the Council that its mandate is entirely adequate. However, the attitude of those two countries was rather opposite. Their statements could be readily inserted into the group of the rapidly developing states.

Barbados refused that the UNSC would have the mandate and hoped rather that "this debate in the Security Council should inspire the other principal organs of the United Nations to assume fully their Charter responsibilities in addressing the many dimensions of this problem" (Barbados 2007, 3R). Barbados also maintained "that the negotiations process under the UNFCCC remains the pre-eminent and most appropriate space for discussions on climate change to take place" (Barbados 2015, 34). Finally, Barbados (2011, 28R) emphasized that "the Security Council should refrain from encroaching on the functions and powers that the Charter and tradition have placed within the purview of the General Assembly", while requesting the Council "to construe its mandate strictly and do a small number of things well rather than be more expansive and do a host of

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[194] The purpose of this section is not to describe each and every aberration and special case in detail, because this would require more space and knowledge of all the individual case specifics. This would also not meet the objective of this dissertation to reach certain abstraction. This section thus intends to admit that the aberrations are present and wants to illustrate that those aberrations do not disqualify used theory or overall results of the research as such. To the contrary, they prove that the same research matrix could be applied on the level of individual country, instead of on the generalizing level of groups of countries. Doing this might be especially interesting. However, this dissertation focused on generalization. The analysis of each country's position would be too excessive. Therefore, it may serve as an impetus for future research.

tasks poorly". Moreover, this statement was made on behalf of whole the Caribbean Community (CARICOM), the association of Caribbean states.

Similarly, the Bahamas (2015, 33) objected: "while we see a role for the Security Council in combating such threats and challenges as part of a multifaceted and collaborative global response, it bears repeating that those threats and challenges must be addressed primarily at the multilateral level by bodies that are inclusive, representative and transparent."

There are several reasons for this peculiar position. The Caribbean SIDS such as Barbados or the Bahamas had not been threatened by the sea level rise as severely as the Pacific SIDS at the time when they pronounced those statements. E.g. the Bahamas occupy the land larger than 10.000 km^2 with the coastline 3.542 km. Moreover, the Bahamas have relatively large GDP that exceeded 30.000 USD per capita in 2015. The geographic conditions as well as more rapidly developing economy moved those Caribbean SIDS closer to the position of the rapidly developing states. Moreover, CARICOM shared close ties with certain Latin American countries, which belonged to the group of the rapidly developing states. This might represent an additional reason why the countries such as the Bahamas or Barbados aligned more closely with the rapidly developing states than with the (Pacific) "sinking" SIDS.[195]

Another example of an aberration was Ukraine. With its rather low GDP of 8.300 USD per capita in 2015, large masses of land and developing post-socialistic industry, it could be allegedly joined with the group of rapidly developing states. However, certain statements of Ukraine (2015, 40) reminded rather the position of the developed states (emphasis added):

> "It is not just a formal political matter of combating climate change; it is a matter of the security of 44 small island nations, a matter of their own very existence. They are being threatened not by guns and missiles. They are being threatened by a much worse enemy — a climate-related natural disaster, a rise of ocean levels caused by climate change. That enemy is no less serious than weapons of mass

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[195] As the section 3.2.3 of this dissertation describes, the bargaining about the votes and position is not an uncommon practice in front of the UNSC. Moreover, see the section 3.1.3 describing internal cleavages in SIDS coalition of AOSIS, which might have the same roots as this aberration.

destruction or genocide. It threatens entire communities and nations, entire countries and regions. (…)

As we all know, the people of Kiribati have already started to leave their sinking lands. The same forced displacement and migration is rapidly approaching others — Tuvalu, Vanuatu and the Maldives. **The Security Council should therefore take concrete preventive steps**. In order to avoid possible issues and tensions caused by this forced migration and displacement, which can be quite long-lasting, there is an acute need to address the legal status of the people who are forced to leave their homeland owing to the loss of territory caused by ocean-level rise. Given the serious safety and security implications, we should take into account all **possible legal and human rights aspects** of this phenomenon. Ukraine stands by the side of SIDS and is committed **to the relevant Security Council agenda** and **elsewhere in the framework of the United Nations and its agencies**."

Ukraine thus reaffirmed that the Council had mandate to address the situation of SIDS. Moreover, it called for acting and for considering human rights and legal aspects of SIDS situation. Finally, it did refer also to other agencies and fora within the UN framework which would also assume the shared responsibility for the implemented solution. All those arguments were very close to the arguments of the developed states. It is very likely that this was caused by the fact that the Ukraine wanted to express alignment with the EU countries. Indeed, it directly aligned itself with the position of the EU in 2011 (EU 2011, 29). Thus, normative aspirations and a struggle for closer cooperation[196] with the EU members might have proven more important than actual spatial geographic and economic characteristic.

Similar phenomenon could be observed in case of Singapore. This country on the one hand subscribed to the argumentation of the non-aligned movement highlighting the insufficiency of the UNSC mandate (Singapore 2011, 15R). On the other hand, Singapore often supported UNSC mandate to solve the issue similarly as the developed states did (cf. Singapore 2015, 54).

Also Panama, Equatorial Guinea or Kuwait could be geographically and economically grouped with the rapidly developing states, however, their ties to the Western countries or impacts of climate change on their territories probably caused that their argumentation was closer to the group of developed states (Panama 2007, 15; Equatorial Guinea 2018, 29; Kuwait 2018, 29).

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[196] Also in economic terms.

Finally, highly interesting shift could be observed in case of the Maldives. In 2007, the Maldives (2007, 23) paradoxically aligned themselves with China and the Group 77, which challenged the sufficiency of the UNSC mandate to deal with SIDS situation. But at the same time, they admitted that (emphasis added) the "debate in the Security Council should stress that close cooperation and coordination among *all principal organs*[197] is indispensable in order to enable the United Nations to remain relevant and capable of meeting existing, new and emerging threats and challenges." In 2018, however, the Maldives fully advocated the mandate of the UNSC to deal with SIDS environmental threats: "Should the Security Council discuss climate change? That is the wrong question to ask. A more appropriate question is: Should the Council take appropriate measures when man-made actions result in the destruction of islands, cities, nations or entire livelihoods in some countries?" (Maldives 2018, 26). This shift demonstrates how the degradation of spatial environmental living conditions between 2008 and 2018 gradually influenced the position of a state and caused that it fell to the category of SIDS more neatly.

As mentioned above, those described aberrations do not disqualify CLG as such.[198] To the contrary, they might demonstrate that CLG could be transferred from the level of the UNSC and groups of countries to the level of individual states. Section 2.3.2 of this dissertation discussed Lessig's four determinants of action: space, law, norms and market, emphasizing the importance of their interaction. That section also mentioned that CLG can encompass most of those determinants and their interaction. The aberrations prove that Lessig's determinants and CLG could be applied also on a micro-level, when analysing the position of individual states as special cases.

5.5 A note on 2019 UNSC discussion

The UNSC dealt with the problem of climate change and "sinking islands" once more in 2019.[199] Eighty-two countries expressed their opinion on the issue. The meeting occurred the same year when this dissertation was submitted. Given the scope and time

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[197] The UNSC belongs to the principal organs of the UN.
[198] The general patterns described in sections 5.1, 5.2 and 5.3 still seem comparatively strong and may well justify the generalization into 3 groups.
[199] (2019). UNSC 8451st Meeting Record. S/PV.8451, 25th January 2019, New York.

limitations of the dissertation, this sub-chapter provides just a preliminary note from the analysis of this meeting.[200]

The **rapidly developing states** occupied exactly the same position as described in the section 5.2. They objected to the UNSC involvement in climate change discussions and justified this assertion by the lack of mandate. Iran (2019, 64) highlighted that the UNSC had "neither the legal competence nor the technical capacity to address this issue". Brazil (2019, 62) reaffirmed that "environmental issues do not fall squarely under the authority of the Security Council, the primary organ charged with maintaining international peace and security by the Charter of the United Nations." Pakistan (2019, 39) demanded that "actions on this issue should be undertaken under the confines of the mandates of the relevant bodies." Finally, Russia (2019, 16) summarized:

> "We deem it excessive, and even counterproductive, to consider climate change in the Security Council, whose aim under the Charter of the United Nations is to swiftly respond to serious challenges to international peace and security. We consider that this practice undercuts the current system of division of labour within the United Nations."

In summary, the developing countries again recalled the "mandate" of the UNSC as a background rule, which should safeguard that the climate change shall not be discussed there. This made their statement seem natural, apolitical and simply given. The mandate, implicitly created on commutative justice principle, was deemed insufficient also by India (2019, 43):

> "Secondly, are climate-related disasters amenable to processes and solutions used to tackle threats to international peace and security? To put it another way, can mitigation and adaptation strategies be fulfilled through enforcement action? Can those that cite counter-terrorism and non-proliferation actions by the Council as pathways for punitive measures explain which are "the others" to be held accountable for climate disasters? (…) Can the needs of climate justice be served by shifting climate law-making from the inclusive United Nations Framework Convention on Climate Change (UNFCCC) to decision-making by a structurally unrepresentative organization? The disruptive spillover of such a change, made through a mere decision of the Council, on the UNFCCC processes and the Paris Agreement, as well as on the other multilateral organs

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[200] The provisionally sorted statements are included in the codebook (last sheet named 2019). The proper analysis of this material through the research matrix described in the chapter 4 shall be part of activities following up the defence of this dissertation.

currently engaged in cooperatively tackling climate change, and indeed on multilateral law-making, is real."

By this statement, India referred to justice in terms of improper representation of individual countries in front of the UNSC, but India also suggested that the UNSC does not have appropriate tools and mandate to address the issue. Thus, India implied that the purpose of the UNSC should be different – the one based on commutative justice, while the distributive justice issues should be dealt with by other fora.

The notable difference from the previous negotiations was the fact that the number of rapidly developing countries objecting to UNSC mandate and involvement in similar discussions decreased to 9[201]. Out of those, 3 statements[202], surprisingly including Chinese, were not explicitly militating against the mandate and formulated the objection against the UNSC involvement in indirect, rather diplomatic language.

In regard to the **developed states[203]** and the "**sinking islands**"[204], interesting convergence occurred. Both groups agreed that the UNSC should address the issue. This would be similar to previous meeting. Nonetheless, both groups approached each other with the proposed steps. They suggested that the UNSC should "enhance the understanding about climate change-related security threats and the security implications of climate-related disasters" (Trinidad and Tobago 2019, 62) or "have a more comprehensive understanding of the international peace and security risks arising from climate change and climate-related disasters" (Belize 2019, 79) or help to "increase information-sharing and identify best practices for post-disaster recovery" (USA 2019, 21). They also vividly advocated that the UN should establish new special representative on climate and security who would report to the UNSC and Secretary General.

The allusions of the "sinking" SIDS to the distributive justice principles scarcened, yet they were occasionally present in the statements:

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[201] Algeria, Brazil, China, Colombia, Colombia, Pakistan, Russia, India, Iran.
[202] Algeria, China, Mexico.
[203] Belgium, Canada, France, Germany, USA, and the EU members.
[204] Belize, Dominican Republic, Fiji, the Maldives, Mauritius, Nauru, St. Vincent and Grenadines, Trinidad and Tobago, Tuvalu.

"Hunger and displacement are leading to conflicts, and entire nations are sinking under water. What is a greater security threat than that? We need solutions that are based on the principles of justice and common but differentiated responsibilities, within respective capabilities, and that are achieved through consensus and national ownership." (Maldives 2019, 28)

"In all of that, we must admit that some have far more responsibility for those assaults on our shores than others. As ironic as it is, those least responsible suffer the most, for example, small island developing States and the Sahel. In effect, major emitters that fail to set and honour ambitious mitigation pledges are committing a direct act of hostility against small island developing States, and we ought to resist their recklessness against our interests. (…) We raise our voice in this organ to call on carbon emitters to make deep cuts to stop the causes of climate change, and we echo the call to make the Security Council more aware of, and more sensitive to, the terrible consequences for international peace and security." (St. Vincent and the Grenadines 2019, 58)

"The Security Council is therefore the appropriate platform to address this threat to the security and prosperity of the globe." (Mauritius 2019, 82)

By those statements, SIDS requested the UNSC to safeguard or at least reflect more equal sharing of burdens and benefits, thus shifting from commutative to distributive justice decision-making principles.

There could be following hypothetical reasons for the 2019 development. The decrease of the rapidly developing states challenging the UNSC mandate could have been caused by seriousness of climate change implications. The convergence in argumentation and demands of the SIDS and the developed states could be understood as a compromise. The SIDS could see information sharing through UNSC and appointment of special representative as another step towards their further aims.[205] This would not collide with the position of the developed states, as described in the section 5.3.

Those considerations, however, remain hypothetical. The confirmation or correction of those presuppositions shall be the object of further research that will subject 2019 meeting minutes to proper scrutiny conducted through the matrix suggested in section 4. The meeting of the UNSC in regard to climate change is also likely to repeat and the

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[205] Such as getting a seat at UNSC at regular and consistent basis as suggested by Papua and New Guinea (2019, 52) or mandatory cutting of the emissions through the UNSC as voiced by St. Vincent and the Grenadines (2019, 58).

data from this meeting shall elucidate, whether 2019 trends represent a true development or a continuation of previous patterns with diminishing intensities.

6. Conclusion

This dissertation used critical legal geography to understand the interactions of law, space and power in the negotiations of the UNSC about so called "sinking islands". By thematic analysis utilizing also the features of content analysis the dissertation analysed the records from the UNSC meetings, when the situation of SIDS was discussed in 2007, 2011, 2015, 2018 and partly also 2019. Basing on this review, the dissertation identified three broad groups of states with specific position and argumentation: firstly, the "sinking islands" as the small islandic states facing adverse impacts from sea level rise, secondly, the rapidly developing states, and thirdly, the developed states.

The table attached to this dissertation as an annex contains an overview. For each of those groups, it summarizes spatial and power-related motivations of countries within the group. Furthermore, it enumerates how many times the countries within each group resorted to typical argumentation in comparison to overall number of countries in that particular category. Finally, it summarizes what results this argumentation was supposed to have on space and power. The codebook for each of the group of countries and each individual negotiation in 2007, 2011, 2015, 2018 and (partly) 2019 is contained in the annexed file as well, on individual sheets stating year of UNSC negotiations and group of countries the statements of which are coded in the sheet. The results are also summarized below as the answers to the research questions asked in the introduction.[206]

First group of states were the "sinking islands" themselves – the small island developing states mainly in Pacific Ocean, which faced the impacts of climate change and sea level rise. Due to the sea level rise causing deterioration of their environmental conditions they were forced to request the UNSC to act and aid them. They resorted to the interpretation claiming that the UNSC mandate represented a sufficient basis for the Council to address their situation in particular and solve climate change in general. This argumentation resembles lawfare – an attempt to use international law to gain an

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[206] First question: How can spatially determined interpretations of law and perceptions of justice influence the functioning of a United Nations Security Council in relation to "sinking islands"? Second question: How do different states define the role of the UNSC in relation to the "sinking islands"?

advantage that would be otherwise hardly attainable. Moreover, the argumentation implicitly built on the assumption that the UNSC would start deciding on distributive justice principles, i.e. the Council would be supposed to safeguard more equal sharing of environmental burdens among countries. If SIDS succeeded and the Council dealt with their situation, current imbalance of power would be partly removed. Through legal argumentation, "sinking" SIDS would gain quite powerful forum where to pursue their aims. However, the rapidly developing states objected that the UNSC would be an inappropriate platform to tackle SIDS situation.

Those rapidly developing states, as the second group, kept reiterating that the UNSC lacks mandate to solve the issue. They were motivated by their industrial interests and needed a space where they could multiply their wealth through industrial production. Such a space could be affected – restricted – by an action of the UNSC. The danger of such action could force the rapidly developing permanent UNSC members to cast a veto and face consequent risk of naming and shaming. For non-permanent rapidly developing members, the decision on such action could take place without their participation. Therefore, the rapidly developing states opted for the interpretation of the UN Charter which would prevent the UNSC from solving this issue.

Rapidly developing states wanted to exclude this issue of SIDS and climate change from the Council agenda by simple and frequently repeated assertion that the UNSC lacks mandate to address the issue. By those references to "lacking mandate", the rapidly developing states invoked an implicit reference to commutative justice principles as a necessary basis for the UNSC decision-making to support their argumentation. The sections 3.2.1 and 3.2.6 of this dissertation described that historically, the UNSC was perceived as an organ that can resort to strictly given actions (Chapter VI and VII of the UN Charter) in strictly given situations. Therefore, it pursues commutative justice, because its decisions are supposed to redress particular wrong: a violation of peace and rules of international security. For rapidly developing states, climate change and SIDS situation represented an issue of distributive justice. Therefore, those rapidly developing countries deemed the UNSC an inappropriate organ and demanded that the issue would be decided elsewhere, ideally on a platform working

on distributive justice principles and thus ensuring wider participation and a possibility to more effectively reallocate environmental burdens and benefits.

To support their argumentation, the rapidly developing states also insisted that the UNSC lacks expertise and scientific knowledge do tackle climate change.

The argumentation of the rapidly developing states aimed at preserving global hierarchy, where they could pursue their economic interests. The position of those states was presented as natural, objective and apolitical, because it was seemingly established on the UN Charter as a general law and its mandate as a specific rule. Moreover, their legal interpretation of the Charter fixed the use of the space, which nurtures accumulation of capital, while excluding alternative spatial uses, for the detriment of SIDS. This represents a consequence expected by CLG and Butler (2009).

The third group of states, the developed countries, occupied an ambiguous position. They intended to retain the power over final decision on the UNSC platform. However, they did not admit any power-related interests and implicitly aimed at disposing of the responsibility for a final decision. Similar behaviour was described by Chandler (2006) as an approach of "empire in denial" on a different empirical case.

Thus, the developed states claimed that the UNSC had the mandate to deal with SIDS situation as well as with climate change, but it needed to cooperate and coordinate the progress with other organs. Moreover, the Council was supposed to require expert inputs for any eventual action in this regard. This type of argumentation might blur the responsibility between the UNSC and other organs. Moreover, it exported the responsibility on scientists and experts who were supposed to provide adequate inputs for right decision. If this argumentation succeeded, the developed states would have the possibility to issue a decision on the UNSC platform, however, the responsibility for such decision would be split among various experts and other cooperating organs. The developed states would thus maintain current power hierarchy, where they have prominent position, but effectively deny any responsibility connected to such position.

Those three different positions of the countries caused a paralysis. The UNSC did neither unanimously comment on its position in this case nor did it take any other action

except from vague presidential statement in 2011, which was immediately criticized by some of the pleading countries. CLG and delineation of the three groups thus helped to elucidate the causes of this paralysis and Council's indecisiveness.

When summarizing the general observations, it is also important to mention that the countries from all the three groups included securitization statements in their speeches. Nevertheless, each group of countries used securitization to support different arguments and proposals. This corresponds with the presuppositions of the section 2.3.4 of this dissertation that securitization itself is insufficient theoretical framework to address the case. It is necessary to go beyond securitization and conduct deeper analysis.

When identifying and assessing the position of the three groups of countries, this dissertation also discussed aberrations, i.e. the situations when certain country did not act according to its spatial or power-related characteristics. Those aberrations can be also understood by using CLG, or more broadly, by the fact that particular country might have acted under a specific impetus influencing its behaviour differently than in case of other members of that particular group. Thus, the aberrations could be still understood individually by the application of CLG on a micro level, as described by the section 5.4 above.

Finally, the dissertation focused also on the last of the UNSC meetings up to date, 2019 meeting. Because the meeting occurred in the same year when this dissertation was submitted, the meeting minutes were subjected just to a preliminary assessment. Nonetheless this assessment confirmed that the position and arguments of rapidly developing states remained the same, although the number of countries with such argumentation decreased. Moreover, positions of the SIDS and the developed states converged, although the same argumentation patterns partly reoccurred. Further research and future meetings of the UNSC on the topic shall disclose, whether this signified a beginning of a new trend or just a slight difference in intensity of countries' argumentation.

On theoretical level, this dissertation comprehensively introduced critical legal geography to the domain of international relations theories, established its place and position among other theories and demonstrated its applicability on an empirical case.

The theoretical chapter explained that critical legal geography represents a dialogue of critical legal studies and legal geography rather than an absolute merger of the two approaches. The dissertation slightly prioritized critical legal studies but incorporated also inspiration from legal geography, to tackle the phenomenon comprehensively.[207]

As has been already mentioned, this wide transdisciplinary focus of critical legal geography is an answer requested by a studied phenomenon itself – the indecisiveness of the UNSC, caused by interactions of space, power and law. The dissertation elucidated how law and its interpretation were determined by the spatial and power related conditions and how the law was supposed to alter or preserve those spatial and power related conditions: SIDS tried to compensate their rather powerless position and degradation of their environmental living conditions by a legal interpretation that would enable the UNSC to address their situation. Thus, the UNSC aiding SIDS could balance this power inequality. For that purpose, they attempted to inject the rules of distributive justice decision making in the Council's role.

Rapidly developing states disagreed with such step, because they needed physical space without important restrictions for their economies. Therefore, they insisted that the UNSC lacked the mandate to address the issue. They implicitly expected that the mandate must be based on commutative justice principles. Finally, the developed states wanted to retain power over the decision but avoid responsibility for projecting this power, therefore they advocated sufficiency of the UNSC mandate, but referred to joint responsibility of the UNSC with other organs and the need for expert inputs.

In comparison to other theoretical approaches, CLG enabled the analysis of the role of law and legal interpretation. What deserves to be highlighted is the importance of "background rules" that create specific power-structure and hierarchy and significantly shape the discussion and spatial ordering, although those background rules are supposed not to be discussed. In given case, rapidly developing countries were trying to exploit such "background rule" without allowing any discussion by claiming that the UNSC

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[207] Pleadings of the countries in front of the UNSC and interaction between law and power within them were of the primary importance. However, without including the discussion on spatial determination and spatial consequences, the drawn picture would be importantly incomplete.

simply lacked the mandate to assist SIDS. By invoking the legal argument about the missing mandate of the UNSC, the rapidly developing states made their claim to look natural, apolitical and "simply given". The SIDS on the other hand were trying to re-interpret the UNSC mandate. For achieving their goal, they attempted to establish that the UNSC should contribute to equal sharing of burdens and benefits, which would get the UNSC closer to the model of distributive justice decision making. Finally, the developed states occupied specific position, which was supposed to preserve their power to decide about the case but allocate the responsibility for such decision elsewhere. These findings would be neither *a priory* estimated a nor *a posteriori* identified by other theories such as realism, green theory, securitization theory or rationalist institutionalism.

CLG enables the use of other concepts, which contribute to the understanding of the case. The concepts of commutative and distributive justice are relevant, because they allow to grasp possible change in the UNSC decision making. One would not be able to understand, why the rapidly developing states reiterated that the UNSC missed the mandate and why the "sinking islands" referred to equal sharing of burdens and benefits. The very notion "mandate" contains a previously given meaning, it refers to the set of background rules that constrain the debate and spatial ordering, as suggested in the paragraph above. This set of background rules is usually seldomly discussed and usually just shapes the debate in a discreet and inconspicuous way. In given case of SIDS in front of the UNSC, we have a unique possibility to observe, how the countries try to exploit or alter this set of background rules. Without amending a letter in the UN Charter. Concepts of "commutative" and "distributive" justice are important, because thanks to them, we can better understand the set of background rules or their suggested changes. The introduction to this dissertation mentioned that SIDS' case is a non-case. Those concepts allow us to better understand how was this possible. The fact that actors opt for a legal interpretation most favourable for them and their interests is neither new, nor surprising. In this regard, I acknowledge the limitations of CLG expressed in the section 2.3.4 that CLG may sometimes be too broad, vague and without explanatory power, which leads it to trivial, self-evident conclusions. Nevertheless, I still believe that the above described conclusions are innovative and could not be achieved by using other theories. And at least, the case also demonstrates the key idea of critical legal

studies that law might not always be universally accepted, objective and apolitical abstraction. It can rather appear as a result of struggles creating power hierarchy that is being constantly challenged, or it can also work as an instrument for power acquisition or preservation. The fact that the UNSC might shift from the commutative justice to the distributive justice principles of decision-making to suit the actor's power-related interests without changing a single letter in the UN Charter speaks for itself.

Likewise, especially significant are the spatial divisions and hierarchies that could be possibly created, should the legal argumentation of one of the three groups of countries succeed. Most significant seems the division that would be caused by the argumentation of rapidly developing states. If their argumentation succeeded, the "sinking islands" would have no possibility to address the UNSC. This would create a specific hierarchy based on an exclusion; a "landscape of social apartheid" (Blomley, Delaney and Ford 2001, 52 – 53). Moreover, the argumentation of the rapidly developing states that SIDS need "scientific" and "expert" solution would create another division– SIDS space would be appropriated by the experts and scientists, while the UNSC would deal with the militarized spaced, where the security and peace in narrow sense is at stake.[208] Similarly interesting would be also the hierarchy drawn by the developed states; a hierarchy where those developed states would retain power over the decision, but deny that they have such a power or related responsibility.

The CLG tools utilized by this dissertation can be applied on other areas and sets of empirical material. They can be and used to decipher complex relations typical for current politics (cf. discussions on the Anthropocene in section 2.3.4 of this dissertation).

On empirical level, this dissertation mapped the meetings of the UNSC dedicated to climate change and SIDS. It identified key attitudes of the three groups of countries towards this topic and concluded that those are exactly these conflicting attitudes that caused the indecisiveness of the Council. The resulting paralysis lasting from the very

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[208] Cf. the argumentation of Russia in 2018 and the arguments of some others rapidly developing states asserting that the UNSC should solve military issues and could not waste its attention on other areas unless those military issues are resolved (military interventions cause damage to the environment too). "The political" and "the military" should therefore appropriate the Council's space.

first UNSC meeting on the topic in 2007 could be extremely dangerous. It might contribute to overall decline in trust in the UN. It might also contribute to certain "bystander effect", meaning that the countries and international platforms will rely on a solution coming from the others. It might also consume a significant amount of energy of actors that could be otherwise dedicated to finding the solution elsewhere. Finally, it might effectively continue to further obscure responsibility. The decision whether the UNSC should get involved or not, is indeed a political and a moral one and as such must be accompanied with related responsibility. If the UNSC decides that it is (in)competent to act, the countries that made the decision must also assume respective responsibility. If the UNSC declares preparedness to action, it should be ready to justify this action as its own, without splitting the responsibility between other fora, experts or scientists.

Annex

Annex 1.: Coding overview and codebook (attached to printed version on a CD)

Resources:

Primary resources:

Meeting minutes (records):

(2007). UNSC 5663rd Meeting Record. S/PV.5663. 17th April 2007, New York.

(2011). UNSC 6587th Meeting Record. S/PV.6587. 20th July 2011, New York.

(2015). UNSC 7499th Meeting Record. S/PV.7499. 30th July 2015, New York.

(2018). UNSC 8307th Meeting Record. S/PV.8307, 11th July 2011, New York.

(2019). UNSC 8451st Meeting Record. S/PV.8451, 25th January 2019, New York.

Miscellaneous:

Budayeva et al v Russia (complaint 15339/02, 21166/02, 20058/02, 11673/02, 15343/02) judgement of ECHR as of 20th March 2008.

BBC. (2009). Maldives Cabinet Makes a Splash. Available online [2. 10. 2019] < http://news.bbc.co.uk/2/hi/8311838.stm >

Charter of the United Nations. Adopted on 26th June 1945. Available online [26. 10. 2018]: < http://www.un.org/en/charter-united-nations/ >

CIA. World Factbook. Available online [10. 2. 2019] < https://www.cia.gov/library/publications/the-world-factbook/ >

Decision of the High Court of New Zealand as of 26th November 2013. CIV-2013-404-3528 [2013]. NZHC 3125, para 51.

ICJ. (1962). Expenses Case, ICJ Reports (1962).

ILA (2018A). Resolution 5/2018. Adopted on 78th Conference of the International Law Association, held in Sydney, Australia, 19–24 August 2018. Available online [2. 10. 2019] < http://www.ila-hq.org/images/ILA/Resolutions/ILAResolution_5_2018_SeaLevelRise.pdf >

ILA (2018B). Report. International Law and Sea Level Rise. Sydney 2018. Available online [2. 10. 2019] < http://www.ila-hq.org/images/ILA/DraftReports/DraftReport_SeaLevelRise.pdf >

ILA (2018C). Resolution 6/2018. Adopted on 78th Conference of the International Law Association, held in Sydney, Australia, 19–24 August 2018. Available online [2. 10. 2019] < http://www.ila-hq.org/images/ILA/Resolutions/ILAResolution_6_2018_SeaLevelRise_SydneyDeclaration.pdf >

FFA. 2018. Transboundary Diagnostic Analysis. Available online [2. 10. 2019] < https://www.ffa.int/system/files/FFA%20OFMP%20II%20ransboundary%20Diagnostic%20Analysis%20Report%20FINAL%20WEB%20%282%29.pdf >

Fitzmaurice, G. (1971). Dissenting opinion in Namibia case. ICJ Reports.

Nansen Initiative on Disaster-Induced Cross-Border Displacement. Available online [26. 10. 2018]: < www.nanseninitiative.org >

Oneryildiz v. Turkey. Judegment as of 30th November 2004, Application no. 48939/99.

UN (2014). Secretary-General's remarks at the opening session of the Third International Conference on Small Island Developing States. August 31, 2014. Apia, Samoa.

UN International Law Commission (2016). Draft Articles on the protection of persons in the event of disasters. A/71/10.

UN International Law Commission (2018). Syllabus of the recommendation of the Working-Group on the long-term programme of work. A/73/10.

UN GA. A/Res/59/311. International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States. Resolution adopted by the General Assembly on 14th July 2005 during 113th plenary meeting.

UN GA. A/Res/47/189. Convening of a global conference on the sustainable development of small island developing States. Resolution adopted by the General Assembly on 22nd December 1992.

UNCED. *Agenda 21*. United Nations Conference on Environment and Development Rio de Janeiro, Brazil, 3rd to 14th June 1992.

UNFCCC. (2006) Report of the Conference of the Parties on its twelfth session, held at Nairobi from 6 to 17 November 2006. FCCC/CP/2006/ 5 and FCCC/CP/2006/5/Add.1, 26th January 2007.

UNFCCC. (2019). Party Groupings. Available online [7. 7. 2019]: < https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/parties/party-groupings >

UNSC. (2000). Resolution 1308/2000. Resolution on HIV and International Peace-keeping operations. Adopted on 17th of July 2000.

UNSC. (2014). Resolution 2177/2014. Adopted on 18th September 2014.

UNSC. (2017). Resolution 2349 (2017). Adopted on 31st March 2017.

UNSC (2016). Meeting on 22nd November 2016. Maintenance of International Peace and Security. *UN Doc. S/PV.7818*.

UNSC. (2018). Resolution 2308 (2018). Adopted on 27th March 2018.

UNSC. (2019). Relations with Other UN Organs. Available online [7. 7. 2019]: < https://www.un.org/securitycouncil/content/repertoire/relations-other-un-organs >

UN Secretary General. *An Agenda for Peace. Preventive diplomacy, peacemaking and peace-keeping*. Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992. UN Doc. A/47/277. 17th June 1992. Available online [26. 10. 2018]: < http://www.un-documents.net/a47-277.htm >.

Teitiota v Chief Executive of Ministry of Business, Innovation and Employment [2014] NZCA 173 at [41].

Bibliography:

A

Abbott, K. W., Snidal, D. (1998). Why States Act Through Formal International Organizations? *The Journal of Conflict Resolution*, Vol. 42, No. 1, pp. 3-32.

Acuto, M., Curtis, S. (2014). *Reassembling International Theory: Assemblage Thinking and International Relations*. New York: Palgrave Macmillan.

Adler, E. (1997). Imagined (Security) Communities: Cognitive Regions in International Relations. Millenium: Journal of International Studies, Vol. 26, No. 2, pp. 249 – 277.

Adler, E. Haas, P. M. (1992). Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program. *International Organization*, Vol. 46. No. 1, pp. 367-390.

Akade, D. (1997). The International Court of Justice and the Security Council: Is there Room for Judicial Control of Decisions of the Political Organs of the United Nations? *International and Comparative Law Quarterly*, Vol. 46, No. 2, pp. 309 – 343.

Akinwumi, A. (2013). Powers of reach legal mobilization in a post-apartheid redress campaign. *Social & Legal Studies*, Vol. 22, No. 1, pp. 25–41.

Ashe, J. W., Van Lierop, R., & Cherian, A. (1999). The role of the Alliance of Small Island States (AOSIS) in the negotiation of the United Nations Framework Convention

on Climate Change (UNFCCC). *Natural Resources Forum*, Vol. 23, No. 3, pp. 209–220.

Australian Bureau of Meteorology and CSIRO. (2014). Climate Variability, Extremes and Change in the Western Tropical Pacific: New Science and Updated Country Reports. *Pacific-Australia Climate Change Science and Adaptation Planning Program Technical Report*, Melbourne. Available online [3. 10. 2018]: < https://www.pacificclimatechangescience.org/wp-content/uploads/2014/07/PACCSAP_CountryReports2014_WEB_140710.pdf.>.

B

Babbie, E. (1992). The practice of social research. New York: Macmillan.

Bailey, S. Daws, S. (1998). *The Procedure of the UN Security Council*. Oxford: Claredon Press.

Baccarini, M. P. O. (2018) Informal Reform of the United Nations Security Council. *Contexto Internacional*, Vol. 40, No. 1, pp. 97 – 115.

Bakan, J.C., Blomley, N. (1992). Spatial Boundaries, Legal Categories and the Judicial Mapping of the Worker. Environment and Planning, Vol. 24, no. 5, pp. 629 – 644.

Baker-Jones, M., Baker-Jones, M. (2015). Teitiota v The Chief executive of Ministry of Business, Innovation and Emplyments – a Person Displaced. *QUT Law Review*, Vol. 15, No. 2, pp. 102 – 121.

Baldwin, A., Methmann, C., Rothe, D. (2014). Securitizing 'climate refugees': the futurology of climate-induced migration. *Critical Studies on Security*, Vol. 2, No. 2, pp. 121 – 130.

Balzacq, T. (2005) The Three Faces of Securitization: Political Agency, Audience and Context. *European Journal for International Relations*, Vol. 11, No. 2, pp 171-202.

Banketa, N. .(2016). Dangerous Liaisons: The Responsibility to Protect and a Reformo f the U.N. Security Council. *Columbia Journal of Transnational Law*, Vol. 54, No. 2, pp. 382 – 423.

Bauder, H., Engel-Di Mauro, S. (eds.). (2008). *Critical Geographies. A Collection of Readings*. Kelowna: Praxis (e)Press.

Baylis, J. Smith, S. Owens, P. (eds.). (2011) *The Globalisation of World Politics: An Introduction to International Relations*. 5th edition. Oxford: Oxford University Press.

Barnett, J. (2001). *The Meaning of Environmental Security: Ecological Politics and Policy in the New Security Era*. London: Zed Books.

Barnett, J., Adger, W. N., (2003). Climate dangers and atoll countries. *Climate Change*, Vol. 61, pp. 321 – 337.

Barnett, M. N. (1997). Bringing in the New World Order: Liberalism, Legitimacy, and the United Nations. *World Politics*, Vol. 49, No. 4, pp. 526 – 551.

Barnett, M. N., Duvall, R. (2005). Power in International Relations. *International Organizations*, Vol. 59, No. 1, pp 39 – 75.

Bartel, R., Graham, N., Jackson, S., Prior, J. H., Robinson, D., Sherval, M. and Williams, S. (2013). Legal geography: an Australian perspective. *Geographical Research*, Vol. 51, no. 4, pp. 339 - 353.

Basu, S. (2016). Gender as national interest at the UN Security Council. *International Affairs*, Vol. 92, No. 2, pp. 255 – 273.

Behfar, M. Savari, H. (2016). Determination of United Nations Security Council Resolutions by States. *Journal of Politics and Law*, Vol. 9, No. 10, pp. 156 – 162.

Benda-Beckmann, F., Benda-Beckmann K., Griffiths, A. (eds). (2009). Spatializing Law: An Anthropological Geography of Law in Society. Farnham: Ahgate.

Benett, L., Layard, A. (2015). Legal Geography: Becoming Spatial Detectives. Geography Compass, Vol. 9, No. 7, pp. 406 – 422.

Benjamin, W. (1978). Critique of violence. In Jephcott, E. (trans.) *Reflections*. Schocken Books, pp. 277-300.

Bentham, J. (1843). A Plan for a Universal and Perpetual Peace. In Bentham, J. The Principles of International Law. Available online [3. 10. 2018]: < https://www.laits.utexas.edu/poltheory/bentham/pil/pil.e04.html >

Belforado, A. (2010). The Geography of Criminal Law. *Cardozo Law Review*, Vol. 31, No. 3, pp. 823 – 904.

Berenskötter, F. (2017). Deep theorizing in International Relations. *European Journal of International Relations*, Vol. 24, No. 4, December 2018, pp. 814–840.

Beretta, I. (2012). Some Highlights on the Concept of Environmental Justice and its Use. *E-cadernos ces*. Vol. 17. Available online [3. 10. 2018]: < https://journals.openedition.org/eces/1135#tocto1n2 >

Betts, A., Loescher, G. (2011). *Refugees in International Relations*. Oxford: Oxford University Press.

Betzold, C. (2010). Borrowing' power to influence international negotiations: AOSIS in the climate change regime, 1990–1997. *Politics*, Vol. 30, No. 3, pp. 131–148.

Betzold, C., Castro, P., Weiler, F. (2012). AOSIS in the UNFCCC negotiations: from unity to fragmentation? *Climate Policy*, Vol. 12, No. 5, pp. 591 – 613.

Black, R. (2006). Climate Talks a Tricky Business. The BBC: BBC News.

Biermann, F., Boas, I. (2008). Protecting Climate Refugees: A Case of Global Protocol. *Environment: Science and Policy for Sustainable Development*, Vol. 50, No. 6, pp. 8 – 16.

Binder, M., Heupel, M. (2018). Contested legitimacy: The UN Security Council and climate change. In.: Scott, V. S., Ku, C. (eds.). (2018). *Climate Change and the UN Security Council*. Cheltenham: Edwar Elgar Publishing Limited.

Bisharat, G. E. (2013). Violence's Law Israel's Copaign to Transform International Legal Norms. *Journal of Palestine Studies*, Vol. 42, No. 3, pp. 68 – 84.

Blady, S., Sibley, D. (2010). Law, Boundaries and the Production of Space. *Social & Legal Studies*, Vol. 19, No. 3, pp. 275 – 284.

Blomley, N. (1994). *Law, Space and the Geographies of Power*. New York and London: The Guilford Press.

Blomley, N. (1998). Landscapes of Property, *Law and Society Review*, Vol. 32, No. 3, pp. 567 - 612.

Blomley, N. (2003a). From 'What?' to 'So What?': Law and Geography in Retrospect, In Holder J., and Harrison C. (eds) *Law and Geography*. Oxford: Oxford University Press, pp. 17 -34 .

Blomley, N. K. (2003b) Law, Property, and the Geography of Violence: the Frontier, the Survey and the Grid, *Annals of the Association of American Geographers*, Vol. 93, no. 1, pp 121 - 141.

Blomley, N. K. (2005). Flowers in the Bathtub: Boundary Crossings at the Public–Private Divide. *Geoforum*, Vol. 36, pp. 281 – 296.

Blomley, N. (2014). Making Space for Property. *Annals of the Association of American Geographers*, Vol. 104, No. 6, pp. 1291 – 1306.

Blomley, N. Bakan, J. C. (1992) Spacing Out: Towards a Critical Geography of Law. *Osgoode Hall Law Journal*, Vol. 30, No. 3, pp. 661 – 690.

Blomley, N., D. Delaney and R. T. Ford (eds). (2001). *The Legal Geographies Reader: Law, Power and Space*. Malden: Blackwell Publishing.

Bode, I. (2018). Reflective practices at the Security Council: Children and armed conflict and the three United Nations. *European Journal of International Relations*, Vol. 24, No. 2, pp. 293 – 318.

Booth, K. (2005). *Critical Security Studies and World Politics*. London: Lynne Rienner Publishing.

Bosworth, M. (2008). Border Control and the Limits of the Sovereign State. *Social & Legal Studies*, Vol. 17, pp. 199 – 215.

Bourdieu, P. (1987). The Force of Law: Towards a Sociology of the Juridical Field. *The Hastings Law Journal*, Vol. 38, pp. 814 – 53.

Boyatzis, R. E. (1998). *Transforming qualitative information: Thematic analysis and code development*. London: Sage Publications Inc.

Braverman, I., Blomley, N., Delaney, D. and Kedar, A. (eds). (2014). *The expanding spaces of law: a timely legal geography*. Stanford: Stanford University Press.

Bruner, T. (2017A). African Court on Human and Peoples' Rights: Twenty Years from Addis Ababa Protocol. *Czech Yearbook of Public & Private International Law*, Vol. 17.

Bruner, T. (2017B). "Sinking Islands" and the UNSC: Five modalities of mobilising science. *Geoforum*, Vol. 84, pp. 342 - 353.

Bruner, T., Faix, M. (2018A). Attribution Problem as a Tool of Lawfare. *Defense & Strategy*. Vol. 18, No. 1, pp. 79 – 94.

Bruner, T. (2018B). *International Migration Regimes: Understanding Environmental Exemption*. In.: Hynek. N. Ditrych, O. Stritecky, V. Regulating Global Security: Insights from Conventional and Unconventional Regimes. Palgrave MacMillan, pp. 187 – 214.

Buchanan, A., Keohane, R. O. (2006). The Legitimacy of Global Governance Institutions. *Ethics & International Affairs*, Vol. 20, pp. 405 – 437.

Buchanan, K. (2015). Climate Change Refugee" Case Overview. The Law Library of Congress. Global Legal Research Center. Available online [3. 10. 2018]: < https://www.loc.gov/law/help/climate-change-refugee/new-zealand-climate-change-refugee-case.pdf Accessed 28 May 2018 >

Bueno de Mesquita, B., Lalman, D. (1992). War and Reason: The Confrontation Between Domestic and International Imperatives. New Haven CT: Yale University Press.

Buhaug, H. (2010). Climate not to blame for African civil wars. *Proceedings of the National Academy of Sciences of the United States of America*, Vol. 107, No. 38, pp. 16477 – 16482.

Bull, H. (1969). The Twenty Years' Crisis Thirty Years On. *International Journal*, Vol. 42, No. 4, pp. 626 - 638.

Burke, M. et. al. (2009). Warming increases the risk of civil war in Africa. *Proceedings of the National Academy of Sciences of the United States of America*, Vol. 106, No. 49, pp. 20670 – 20674.

Burns, W. C. G. (2000). The impact of climate change on Pacific island developing countries in the 21st century. In: Gillespie, A., Burns, W.C.G. (Eds.). *Climate Change in the South Pacific: Impacts and Responses in Australia, New Zealand, and Small Island States*. Dordrecht: Kluwer Academic, pp. 233–251.

Busch, S. V. (2018). Sea Level Rise and Shifting Maritime Limits: Stable Baselines as a Response to Unstable Coastlines. *Arctic Review on Law and Policy*, Vol. 9, pp. 174 – 194.

Butler, C. (2005). Reading the Production of Suburbia in Post-War Australia. *Law Text Culture*, Vol. 9, pp. 11 - 33.

Butler, C. (2009). Critical Legal Studies and the Politics of Space. *Social & Legal Studies,* Vol. 18, No. 3, pp. 313 - 332.

Butler, C. (2017). *Space, Politics, Justice*. Griffith Law School Research Paper No. 17-13. Available online [3. 10. 2018]: < https://ssrn.com/abstract=2922524 >

Butler, A. (2012). Reform of the United Nations Security Council. Penn State Journal of Law & International Affairs, Vol. 1, No. 1, pp. 23 – 39.

Buzan, B. Waever, O. Wilde J. (1998) *Security Analysis Framework*. Boulder, Colo: Lyenne Rienner.

C

Carr, E.H. (2001). *The Twenty Years' Crisis: An Introduction to the Study of International Relations*. 2nd edition. New York: Palgrave.

Chan, P. C. W. (2013). A Keen Observer of the International Rule of Law? International Law in China's Voting Behaviour and Argumentation in the United Nations Security Council. *Leiden Journal of International Law*, Vol. 26, pp. 875 – 907.

Chandler, D. Hynek, N. (mimeo). Temporality and Epistemes of International Security.

Chandler, D. (2006). *Empire in Denial: The Politics of Statebuilding*. Pluto Press, London.

Chandler, D. (2014). *The Governance of Complexity*. New York: Routledge.

Chandler, D. Reid, J. (2016). *The Neoliberal Subject: Resilience, Adaptation and Vulnerability*. London: Rowman & Littlefield.

Chapman, T. L., Reiter, D. (2004). The United Nations Security Council and the Rally 'Round the Flag Effect. *The Journal of Conflict Resolution*, Vol. 48, No. 6, pp. 886 – 909.

Chapnick, A. (2018) Reforming the United Nations Security Council, Canadian style: the Trudeay era and beyond. *Canadian Foreign Policy Journal*, Vol. 24, No. 3, pp. 260 – 272.

Chasek, P. (2005). Margins of Power: Coalition Building and Coalition Maintenance of the South Pacific Island States and the Alliance of Small Island States. *RECIEL*, Vol. 14, No. 2, pp. 125 – 137.

Chesterman, S. et al. (2008). *Law and Practice of the United Nations*. Oxford: Oxford University Press.

Chevalier, E. (2013). Deciphering the image of "Small sinking islands on the other side of the planet": Distance, alterity and the dynamics of an emerging climate change-induced migrations paradigm in the South Pacific. *COST action 1101 Climate change and migration : knowledge, law and policy, and theory - Workshop " Race, affect and alterity : Rethinking climate change-induced migration and displacement "*, Jun 2013, Durham, United Kingdom.

Chou, C. C. (2012). An Emerging Human Security Threat on Pacific Island States: Analyzing Legal and Political Implications of Territorial Inundation. In Guan, B. T. C. (Ed.). *Human Security. Securing East Asia's Future*. Berlin: Springer, pp. 231 – 248.

Church, J.A. et al. (2006). Sea level rise at tropical Pacific and Indian Ocean islands. *Global Planet. Change,* Vol. 53, pp. 155 – 168.

Clark, P. U. et. al. (2016). Consequences of Twenty-first-century Policy for Multi-millennial Climate and Sea-level Change. Nature Climate Change, Available online [7. 1. 2018]: < http://www.nature.com/nclimate/journal/vaop/ncurrent/full/nclimate2923.html >

Claude, I. L. (1966). Collective Legitimization as a Political Function of the United Nations. *International Organization*, Vol. 20, No. 3, pp. 367-379.

Coase, R. (1937). The Nature of the Firm. *Economica*, Vol. 6, No. 16, pp. 386 – 405.

Cocklin, C. (1999). Islands in the midst: environmental change, vulnerability, and security in the Pacific. In: Lonergan, S. (Ed.), *Environmental Change, Adaptation, and Security*. Dordrecht, Kluwer Academic, pp. 141–159.

Cohen, R. (2006). Developing International System for Internally Displaced Persons. *International Studies Perspectives*, Vol. 7, No. 2.

Cohen, R., Deng, F., M. (1998). *Masses in Flight. The Global Crisis of Internal Displacement*. Washington DC: The Brooking Institution.

Colgan, J. (2013). *Petro-Aggression: When Oil Causes War.* Cambridge, Cambridge University Press.

Collis, C. (2017). Territories beyond possession? Antarctica and Outer Space. *The Polar Journal*, Vol 7, No. 2, pp. 287 – 302.

Conca, K. et al. (2017). Climate Change and the UN Security Council: Bully Pulpit or Bull in a China Shop? *Global Environmental Politics*, Vol. 17, No. 2, pp. 1 – 21.

Connell, J. (1993). Climatic change: a new security challenge for the atoll states of the Pacific. *Journal of Commonwealth Comparative Politics*, Vol. 31, pp. 173–192.

Constantinou, C. (2004). Irregular States or the Semiotices of Knight Errantry. *Revue International de Sémiotique Juridique*, Vol. 17, pp. 229 – 244.

Conway, D. (2010). The United Nations Security Council and climate change: challenges and opportunities. *Climate Law*, Vol. 1, No. 3, pp. 375–407.

Corneloup, I. A. Mol, A. P. J. (2014). Small Island Developing States and International Climate Change Negotiations: the Power of Moral "Leadership". *Environmental Agreements*, vol. 14, pp. 281 – 297.

Corry, O. (2014). From defense to resilience: Environmental security beyond neo-liberalism. *International Political Sociology*, Vol. 8, No. 3, pp. 257–274.

Cousins, S. (2013). UN Security Council: Playing a Role in the International Climate Change Regime? *Global Change: Peace & Security,* Vol. 25, No. 2, pp. 191–210.

Cox, R. (1981). Social Forces, States and World Orders: Beyond International Relations Theory. *Millenium: Journal of International Studies*, Vol. 10, No. 2, pp. 126 – 138.

Craig, J. A., Smith, M. D. (2015). War/Law/Space. Notes toward a legal geography of war. *Environment and Planning D*, Vol. 33, p. 581 – 591.

Crump, D. (2017). Litigation Rules, Clausewitz, and the Strategies of War. *Elon Law Review*, Vol. 9, no. 3, pp. 1 – 22.

Čepelka, Čestmír, Šturma, Pavel. *Mezinárodní právo veřejné*. Prague: CH Beck, 2008.

D

Dahl, R. (1957). The Concept of Power. *Behavioural Science*, Vol. 2, pp. 201 – 215.

Dalby, S. (2014). Rethinking Geopolitics: Climate Security in the Anthropocene. *Global Policy*, Vol. 5, No. 1, pp. 1–9.

Dalby, S. (2015). Climate Geopolitics: Securing the Global Economy. *International Politics*, Vol. 52, No. 4, pp. 426–44.

Dalby, S. (2018). Peace, Violence and Inequality in a Climate Disrupted World. Paper for a University of Maryland conference on "The Future of Humanity: The Challenge of Global Peace and Security."

Daly, H. E. (1990). Toward Some Operational Principles of Sustainable Development. *Ecological Economics*, Vol. 2, No. 1, pp. 1 – 6.

David, R. (1950). Traité élémentaire de droit civil comparé. Paris.

Davies, H. and Holdcroft, D. (1991). *Jurisprudence: Texts and Commentary*. London: Butterworths.

de Wet, E. (2004). *The Chapter VII Powers of the United Nations Security Council*. Oxford / Portland: Hart Publishing.

Deitelhoff, N., Wallbott, L. (2012). Beyond soft balancing: Small states ad coalition-building in the ICC and climate negotiations. *Cambridge Review of International Affairs*, Vol. 25, No. 3, pp. 345–366.

Delaney, D., Ford, R. T. and Blomley, N. (2001). Preface: Where Is Law? In Blomley, N. Delaney, D. and Ford, R. T. (eds). *The Legal Geographies Reader*. Malden: Blackwell Publishing. pp. xiii–xxii.

Delaney, D. (2001). Running With the Land: Legal-Historical Imagination and the Spaces of Modernity. *Journal of Historical Geography*, Vol. 27, No. 4, pp. 493-506.

Delaney, D. (2003). Beyond the Word: Law as a Thing of This World, In Holder, J. and Harrison C. (eds). *Law and Geography*, Oxford: Oxford University Press, pp. 67-83.

Delaney, D. (2004). Tracing Displacements: or Evictions in the Nomosphere, *Environment and Planning: Society and Space*, Vol. 22, pp. 847-60.

Delaney D. (2016) Legal geography II: discerning injustice. *Progress in Human Geography*, Vol. 40, no. 2, pp. 267 – 274.

Detraz, N. Betsill, M. (2009). Climate Change and Environmental Security. *International Studies Perspectives*, Vol. 10, No. 3, pp 303 – 320.

Deudney D. (1990). The case against linking environmental degradation and national security. *Millennium,* Vol. 19, No. 3, pp. 461 – 476.

Dikeç, M. (2001). Justice and the spatial imagination. *Environment and Planning A*, Vol. 33, No. 10, pp. 1785 – 1805.

Dikeç, M. (2009). Space, politics and (in)justice. *Justice spatiale Spatial Justice*, No. 1, pp. 1 – 8.

Dillon, P., Ilgen, T. Willett, T. (1991). Approaches to the Study of International Organizations: Major Paradigms in Economics and Political Science. In Vaubel. R., Willett, T. (eds.). *The Political Economy of International Organizations: A Public Choice Approach*, Boulder, Colorado: Westview Press, pp. 79 – 99.

Dolan, A. H., Walker, I. J. (2006). Understanding vulnerability of coastal communities to climate change related risks. *Coastal Research*, Vol. 39, pp. 1317 – 1324.

Dorsett, S., McVeigh, S. (2012). *Jurisdiction*. New York: Routledge.

Douzinas, C. (2007). *Human rights and empire: The Political Philosophy of Cosmopolitanism*. New York: Routledge.

Doyle, T., Chaturvedy, S. (2011). Climate Refugees and Security: Conceptualization, Categories and Contestations. In Dryzek, J. S.; Norgaard, R. B., Schlossberg, D. (Eds.). *The Oxford Handbook of Climate Change and Society*. Oxford: Oxford University Press.

Dreher, A. et al. (2014). The determinants of election to the United Nations Security Council. *Public Choice*, Vol. 158, No. 1/2, pp. 51 – 83.

Dreher, A., Sturm, J.-E., Vreeland, J. R. (2009). Global horse trading: IMF loans for votes in the United Nations Security Council. *European Economic Review*, Vol. 53, No. 7, pp. 742 – 757.

Dunlap, C. J., Jr. (2008). Lawfare Today: A Perspective. *Yale Journal of International Affairs*. p. 146. ISSN 1936 - 2633.

Dunlap, C. J. (2009.) Lawfare. A Decisive Element of 21st Century Conflicts? *JFQ*, No. 54, pp. 34 – 39.

Duong, T., T., V. (2010). When Islands Drawn: The Plight of "Climate Change Refugees" and Recourse to International Human Rights Law. *University of Pennsylvania Journal of International Law*, Vol. 31, No. 4, pp. 1239 – 1258.

E

Easterly, E. S. (1977). Global patterns of legal systems: notes toward a new geojurisprudence. *Geographical Revivew*, Vol. 67, No. 2, pp. 209 – 220.

Eckersley, R. (1992) *Environmentalism and Political Theory: Towards an Ecocentric Approach*. London: SUNY Press.

Eckersley, R. (2004). *The Green State: Rethinking Democracy and Sovereignty*. Massachusetts: The MIT Press.

Economides, K. (2005). Book Review. Law and Geography: Current Legal Issues. *International Journal of Law in Context*, pp. 207 – 209.

Economides , K., Blacksell, M. (1987). Access to Justice in Rural Britain: Final Report. *Anglo-American Law Review*, Vol. 16, pp. 353 – 380.

Economides, K., Blacksell, M., Watkins, C. (1986a). The Spatial Analysis of Legal Systems: Towards a Geography of Law? *Journal of Law and Society*, Vol. 13, No. 2, pp. 161 – 181.

Economides, K., Blacksell, M., Watkins, C. (1986b) Human Geography and Law: A Case of Separate Development in Social Science. *Progress in Human Geography*, Vol. 10, pp. 371 – 396.

Economides, K. Blacksell, M. and Watkins, C. (1991) *Justice Outside the City: Access to Legal Services in Rural Areas*. London: Longman.

Edwards, M. J. (1999). Security implications of a worst-case scenario of climate change in the south-west Pacific. *Australian Geographer*, Vol. 30, pp. 311–330.

Ekins, P. (1983). Making Development Sustainable. In Sachs W. (ed.). *Global Ecology.* London: Zed Books.

Elbe, S. (2006). Should HIV/AIDS be securitized? The ethical dilemmas of linking HIV/AIDS and security. *International Studies Quarterly*, Vol. 50 No. 1, pp. 119–144.

Elden, S. (2005) Missing the Point: Globalization, Deterritorialization and the Space of the World. *Transactions of the Institute of British Geographers,* Vol. 30, No. 1, pp. 8–19.

Ellickson, R. D. (1991). *Order Without Law*. Cambridge: Harward University Press.

Elman, C. (2008). Realism. In.: Williams, P. D. (ed.). *Security Studies: An Introduction*. New York: Routledge, pp. 15 – 28.

Esteban, M., et. al. (2019). Adaptation to sea level rise on low coral islands: Lessons from recent events. *Ocean & Coastal Management*, Vol. 168, pp. 35 – 40.

Esteban, M. et al (2014). Climate Change Adaptation in Tokyo Bay: The Case for a Storm Surge Barrier. *Coastal Engineering Proceedings*, Vol. 34, pp. 1 – 12.

F

Fagan, M. (2017) Security in the anthropocene: Environment, ecology, escape. *European Journal of International Relations*, Vol. 23, No. 2, pp. 292 – 314.

Farbotko, Carol. 2004. Sinking Islands? *Tuwalu and Climate Change in Sidney Morning Herald*. Islands of the World VIII International Conferenece Paper.

Farbotko, C., (2010). Wishful Sinking: Disappearing Islands, Climate Refugees and Cosmopolitan Experimentation. *Asia Pacific Viewpoint*, Vol. 51, No. 1, pp. 47 – 60.

Farbotko, C., Lazrus, H. (2012). *The First Climate Refugees? Contesting Global Narratives of climate change in Tuvalu*. University of Wollongong Research Paper.

Farrall, J., Prantl, J. (2016). Leveraging diplomatic power and influence on the UN Security Council: the case of Australia. *Australian Journal of International Affairs*, Vol. 70, No. 6, pp. 601 – 612.

Fearon, J. (1995). Rationalist Explanation of War. *International Organization*, Vol. 49, No. 3, pp. 379 – 414.

Felli, R. (2012). Managing Climate Insecurity by Ensuring Continuous Capital Accumulation: 'Climate Refugees' and 'Climate Migrants'. *New Political Economy*, Vol. 18, No. 3, pp. 337 – 363.

Finucane, Mellisa L. 2009. Why Science Alone Won't Solve the Climate Crisis? Managing Climate Risks in the Pacific. *Asia Pacific Issues*, No. 89, pp. 1 – 8.

Floyd, R. (2010). *Security and the Environment: Securitisation Theory and US Environmental Security Policy*. Cambridge: Cambridge University Press.

Ford, R. T. (1999). Law's territory (a history of jurisdiction). *Michigan Law Review*, Vol. 97, No. 4, pp. 843– 930.

Ford, R. T. (2001). Law's territory (a history of jurisdiction). In Blomley, N., Delaney, D. and Ford, R. T. (eds). *The Legal Geographies Reader: Law, Power and Space*. Malden: Blackwell Publishing, pp. 200 – 217.

Ford, R. T. (2005). *Racial Culture. A Critique*. New Jersey: Princeton University Press.

Foucault, M., (1970). The order of discourse: inaugural lecture at the Collège de France, December 2, 1970. In: Young, R. (Ed.). (1981). *Untying the Text: A Post-structuralist Reader*. Routledge and Kegan Paul, London and Boston.

Foucault, M. (1980). The Question of Geography. In Foucault, M. *Power/Knowledge: Selected Interviews and Other Writings*. New York: Pantheon books.

Friedman, D. (1992). Less Law Than Meets the Eye. Available online [12th of November 2018]. URL: < http://www.daviddfriedman.com/Academic/Less_Law/Less_Law.html >

G

Gagain, M. (2012). Climate Change, Sea Level Rise, and Artificial Islands: Saving the Maldives' Statehood and Maritime Claims Through the 'Constitution of the Oceans'. *Colorado Journal of International Environmental Law and Policy*, Vol 23, No, 1, pp. 77 – 119.

Genser, J. (2018). The United Nations Security Council's Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement. *Chicago Journal on International Law*, Vol. 18, No. 2, pp. 420 – 501.

Genyushkina, E. (2016). Summing Up 70 Years of the United Nations: Differences on Whether the UN Security Council Has Legislative Powers. *International Organizations Research Journal*, Vol. 11, No. 3, pp. 169 – 190.

Gerloch, A. (2017). *Teorie práva*. Plzeň: Aleš Čeněk.

Gleditsch, N. P. (1998). Armed Conflict and Environment: A Critique of the Literature. *Journal of Peace Research*, Vol. 35, No. 3, pp. 381 – 400.

Gleditsch, N.P. (ed.). (2012). Special issue: climate change and conflict. *Journal of Peace Research*, Vol. 49, No. 1.

Godard, O. (2017). *Global Climate Justice. Proposals, Arguments and Justification*. Cheltenham: Edwar Elgar Publishing Limited.

Godrich, L. M. (1965). The Maintenance of International Peace and Security. *International Organization*, Vol. 19, No. 3, pp. 429 – 443.

Golden, M. (2017). Could a Code of Conduct Work? The Prospects of the French Proposal Limiting the Veto on the United Nations Security Council. *Columbia Journal of Transnational Law*, Vol. 56, No. 1, pp. 101 – 138.

Goldstein, J. and Keohane, R. (1993): Ideas and Foreign Policy: An Analytical Framework, In Goldstein, J. and Keohane, R. (eds.): *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*. Ithaca: Cornell University Press, pp. 3 – 30.

Goodwill, J., McAdam, J. (2007). *The Refugee in international law*. New York, Oxford University Press.

Gordon, F. (2013). *Smart Security Council? Analyzing the effectiveness of targeted sanctions*. Hamburg: Anchor Academic Publishing.

Gould, M., Rablen, M. (2017). Reformo of the United Nations Security Council: ekvity and efficiency. *Public Choice*, Vol. 173, No 1/2, pp. 145 – 168.

Gowan, R. (2017). U.N. Security Council Reform Is Dead. That's Still a Problem. *World Politics Review* (Selective Content), issue on November 27, 2017.

Gowlland-Debbas, V. (1994). The Relationship Between the International Court of Justice and the Security Council in the Light of the Lockerbie Case. *The American Journal of International Law*, Vol. 88, No. 4, pp. 643 – 677.

Graham, N. (2010). *Lawscape: property, environment, law*. Abingdon: Routledge.

Graham, S., Healey, P. (1999). Relational concepts of space and place: Issues for planning theory and practice. *European Planning Studies,* Vol. 7, No. 5, pp. 623 – 646.

Gregory, D. (2006). The black flag: Guantanamo Bay and the space of exception. *Geografiska Annaler: Series B, Human Geography,* Vol. 88, No. 4, pp. 405–427.

Gregory, D. (2007) Vanishing points: law, violence, and exception in the global war prison. In Gregory, D. and Pred, A. (Eds). *Violent Geographies: Fear, Terror, and Political Violence.* Ney York: Routledge, pp. 205–236.

Grossfeld, B. (1984). Geography and Law. *Michigan Law Review*, Vol. 82, pp. 1510 – 1519.

Grove, J. (2014). Ecology as a Critical Security Method. *Critical Studies on Security, Vol.* 2, No. 3, pp. 366 – 9.

Guest, G., MacQueen, K. M., Namey, E. E. (2012). Applied Thematic Analysis. London: Sage Publications Inc.

Gupta, S. (2009). Environmental Law and Policy: Climate Change as a Threat to International Peace and Security. *Perspectives on Global Issues*, Vol. 4, No. 1, pp. 7–17.

H

Haass, R. (1994). Military Force: A User's Guide. *Foreign Policy*, Vol. 96, pp. 21 – 37.

Hamilton, S. (2017). Securing ourselves from ourselves? The paradox of "entanglement" in the Anthropocene. *Crime, Law and Social Change Journal*, published online 29 July 2017, available online [21th November 2018]. DOI: < 10.1007/s10611-017-9704-4 >.

Hampson, F. O., Hart, M. (1995). *Multilateral negotiations: lessons from arms control, trade and the environment*. Baltimore: Johns Hopkins University Press.Harper, K. (1994). Does the United Nations Security Council have the Competence to Act as Court and Legislature? *New York University Journal of International Law & Politics*, Vol. 103, pp. 103 – 159.

Hart, H. L. A. (1958). Positivism and the Separation of Law and Morals. *Harvard Law Review*, Vol. 71, No. 4, pp. 593 – 629.

Harvey, D. (1973). *Social justice and the city*. Arnold: London.

Harvey, D. (1996). *Justice, Nature and the Geography of Difference*. Oxford: Blackwell.

Harrington, C. (2014). Toward a Critical Water Security: Hydrosolidarity and Emancipation. *Canadian Foreign Policy Journal,* Vol. 21, No. 1, pp 28–44.

Harrington, C. (2016). The Ends of the World: International Relations and the Anthropocene. *Millenium: Journal of International Studies*, Vol. 44, No. 3, pp. 478 – 498.

Harrington, J. (2018). The Working Methods of the United Nations Security Council: Maintaining the Implementation of Change. *International & Comparative Law Quarterly*, Vol. 66, No. 1., pp. 39 – 77.

Harrison, N. E. (ed.). (2006). *Complexity in World Politics: Concepts and Methods of a New Paradigm.* Albany: SUNY Press.

Harrison, K., Sundstrom, L. M. (2007). Introduction: The Comparative Politics of Climate Change. *Global Environmental Politics*, Vol. 7, No. 4, pp. 1 – 18.

Hassler, S. (2013). *Reforming the UN Security Council membership: the illusion of representativeness*. London: Routledge.

Heathcote, G. (2018). Security Council Resolution 2242 on Women, Peace and Security: Progressive Gains or Dangerous Development? *Global Society: Journal of Interdisciplinary International Relations*, Vol. 32, No. 4, pp. 374 – 394.

Heimburger, R. W. (2018) *God and the Illegal Alien*. Cambridge: Cambridge University Press.

Holder, J. and C. Harrison (eds). (2003). *Law and Geography: Current Legal Issues*. Oxford: Oxford University Press.

Hom, A. et al. (2016). Time, Temporality and Global Politics. Bristor: E-International Relations Publishing. Available online [12th of November 2018]. URL: < https://www.e-ir.info/wp-content/uploads/2016/07/Time-Temporality-and-Global-Politics-E-IR.pdf >

Homer-Dixon, T. (1999). *Environmental Scarcity and Violence*. Princeton: Princeton University Press.

Horton, S. (2010). The Dangers of Lawfare. *Case Western Reserve Journal of International Law*, Vol. 43, No. 1, pp. 163 – 179.

Holsti, O. R. (1969). Content analysis for the social sciences and humanities. Reading MS: Addison-Wesley.

Hosli, M. O. and Dörfler, T. (2017). Why is change so slow? Assessing prospects for United Nations Security Council reform. *Journal of Economic Policy Reform*, Vol. 22, No. 1, Pp. 1 – 16.

House, J. (1984). War, Peace and Conflict Resolution: Towards an Indian Ocean Model. *Transaction of the Institute of British Geographers, New Series*, Vol. 9, No. 1, pp. 3 – 21.

Hsieh, H.-F. (2005). Three Approaches to Qualitative Content Analysis. Qualitative Health Research, Vol. 15, No. 9, pp. 1277 – 1288.

Hunt, A. (1986) The Theory of Critical Legal Studies. *Oxford Journal of Legal Studies*, Vol. 6, No. 1, pp. 1 – 45.

Hurd, I. (2002). Legitimacy, Power, and the Symbolic Life of the UN Security Council. *Global Governance*, Vol. 8, No. 1, pp. 35 – 51.

Hurd, I. (2007). *After Anarchy. Legitimacy and Power in the United Nations Security Council.* Princeton: Princeton University Press.

Hynek, N. Chandler, D. (2013). No emancipatory alternative, no critical security studies. *Critical Studies on Security*, Vol. 1, No. 1, pp. 46-63.

I

Ikenberry, J. (2001). *After Victory: Institutions, Strategic Restraint, And The Rebuilding Of Order After Major Wars*. Princeton: Princeton University Press.

Internal Displacement Monitoring Centre. (2014). *Global Estimates 2014*. Available online [1. 9. 2018] < http://www.internal-displacement.org/sites/default/files/inline-files/201409-global-estimates2.pdf Accessed 6 July 2018 >

J

Jackson, P. T. Nexon, Daniel H. (2009) Paradigmatic Faults in International-Relations Theory. International Studies Quarterly. Vol. 53 No 4, pp. 907 - 930.

Jacobs, R. E. (2005) Treading Deep Waters: Substantive Law Issues in Tuvalu's Threat to Sue the United States in the International Court of Justice. Pacific Rim Law & Policy Journal, Vol. 14, No. 1, pp. 103 – 128.

Jäger, S., Maier, F. (2009). Theoretical and methodological aspects of Foucaldian critical discourse analysis and dispositive analysis. In: Wodak, R., Meier, M. (Eds.), *Critical Discourse Analysis*. Sage, London, pp. 32 – 57.

Jamieson, D. (2013). Some whats, whys and worries about geoengineering. *Climatic Change*, Vol. 121, No. 3, pp. 527 – 537.

Jepson W. (2012) Claiming Space, Claiming Water: Contested Legal Geographies of Water in South Texas, *Annals of the Association of American Geographers*, Vol. 102, No. 3, pp. 614 - 631.

Johnson, D. R., Post, D. (1996). Law and Borders – The Rise of Law in Cyberspace. *Standford Law Review*, Vol. 48, pp. 1367 – 1404.

K

Kamal, B. (2017). Climate Migrants Might Reach One Billion by 2050. Inter Press Service. Available online [1. 9. 2018] < https://reliefweb.int/report/world/climate-migrants-might-reach-one-billion-2050 >

Kairys, D. (1998). Introduction. In Kairys, D. (ed.). *The Politics of Law: A Progressive Critique*. 3rd ed. New York: Basic Books.

Kaplan, A. (2005). Where is Guantánamo? *American Quarterly,* Vol. 57, pp. 831 – 858.

Kaplan R. (1994). The coming anarchy. *The Atlantic Quarterly February*.

Kedar, A. S. (2003). On the Legal Geography of Ehnocratic Settler States: Notes Towards a Research Agenda. *Current Legal Issues*, Vol. 5, pp. 401 – 441.

Kelsen, H. (1964). *The Law of the United Nations*. New York: Frederick A. Praeger.

Kennedy, D. (1981). Critical Labour Law Theory: A Comment. *Berkeley Journal of Employment & Labour*, Vol. 4, No. 3, pp. 503 – 506.

Kennedy, D. (1997). *A Critique of Adjudication: Fin de Siécle*. Cambridge: Mass.

Keohane, R. O. (2012). Twenty Years of Institutional Liberalism. *International Relations*, Vol. 26, No. 2, pp. 125 – 138.

Kerr, S. A. (2005). What is small island sustainable development about? *Ocean Coastal Management,* Vol. 48, pp. 503 – 524.

Kim, S. Y., Russet, B. (2009). The new politics of voting alignments in the United Nations General Assembly. *International Organizations*, Vol. 50, No. 4, pp. 629 – 652.

Kirgis, F. L. Jr. (1995). The Security Council's First Fifty Years, American Journal of International Law, Vol. 89, pp. 506 – 539.

Kirschner, A. J. (2010). Security Council Resolution 1904 (2009): A Significant Step in the Evolution of the Al Qaida and Taliban sanction regime? *ZaöRV*, Vol.70, pp. 585 – 607.

Klare, M. (2001). *Resource Wars*. New York, NY: Henry Holt.

Koch, T., Denike, K. Geography: The Problem of Scale, and Process of Allocation: The US National Organ Transplantation Act of 1986, amended 1990. In Holder, J., Harrison C. (eds). (2003). *Law and Geography: Current Legal Issues*, Vol. 5. Oxford: Oxford University Press, pp. 109 – 133.

Kolers, A. (2012). Floating Provisos and Sinking Islands. *Journal of Applied Philosophy*, Vol. 29, No. 4, pp. 333 – 343.

Koremenos, B., Lipson, C. Snidal, D. (2001). The Rational Design of International Institutions. *International Organizations*, Vol. 55, No. 4, pp. 761 – 799.

Koskenniemi, M. (1995). The Police in the Temple: Order, Justice and the UN: A Dialectical View, European Journal of International Law. Vol. 6, pp. 325 – 348.

Koskenniemi, M. (1996). The Place of Law in Collective Security. *Michigan Journal of International Law*, Vol. 17, pp. 455 – 490.

Krasner, S. D. (1991). Global Communications and National Power: Life on the Pareto Frontier. *World Politics,* Vol. 43, No. 3, pp. 336 – 66.

Krippendorf, K. (2004). *Content Analysis: an introduction to its methodology*. London: Sage Publications Inc.

Kuchařová, A. (2018). Reforma Rady bezpečnosti OSN prostřednictvím rozšíření jejích členů. *Thesis*. Charles University Prague, Faculty of law. Consultant: doc. JUDr. Vladimír Balaš, CSc.

Kuziemko, I. Werker, E. (2006). How Much Is a Seat on the Security Council Worth? Foreign Aid and Bribery at the United Nations. *Journal of Political Economy*, Vol. 114, No. 5, pp. 905 – 930.

L

Lal, M., 2004. Climate change and small island developing countries of the South Pacific. *Fijian Stud.*, Vol. 2, pp. 15–31.

Lange, H., D. (2010). Climate Refugees Require Relocation Assistance: Guaranteeing Adequate Land Assets through treaties based on the national adaptation programs of action. *Pacific Rim Law and Policy Journal*, Vol. 19, No. 3, pp. 613 - 619.

Lebowitz, M. J. (2010). The value of claiming torture: An analysis of Al-Qaeda's tactical lawfare strategy and efforts to fight back. *Case Western Reserve Journal of International Law*, Vol. 43, No. 1, pp. 357–392.

Lefebvre, H. (1991). *The Production of Space*. Oxford: Blackwell.

Lefebvre, H. (1996). *Writings on Cities.* Oxford: Blackwell.

Lefebvre, H. (2003). *Key Writings*. London: A&C Black.

Legro, J. W., Moravcsik, A. (1999). Is Anybody Still a Realist? *International Security*, Vol. 24, No. 2, pp. 5 – 55.

Leonard, A., et al. (2014). Small Islands. In Vicente R Barros et al. (Ed.) *Climate Change 2014: Impacts, Adaptation, And Vulnerability.* Part B: Regional Aspects. Contribution Of Working Group II To The Fifth Assessment Report Of The Intergovernmental Panel On Climate Change. Cambridge: Cambridge University Press.

Lessig, L. (1999). The Law of the Horse: What Cyberlaw Might Teach. *Harward Law Review*, No. 113, pp. 501 – 549.

Lowe, W. et al. (eds.). (2010). *The United Nations Security Council and War: The Evolution of Thought and Practice since 1945*. Oxford: Oxford University Press.

Luban, D., (2008). Lawfare and Legal Ethics in Guantánamo. *Stanford Law Review*, 2008, Vol. 60, pp. 1981 – 2026.

Luck, E. C. (2006). *UN Security Council: Promise and Practice*. London: Routledge.

Lyster, R. (2015). Protecting the Human Rights of Climate Displaced Persons: The Promise and Limits of the United Nations Framework Convention on Climate Change. In Grear, A., Kotze, L. *Research Handbook on Human Rights and the Environment*. Cheltenham: Edwar Elgar Publishing Limited.

M

Maertens, L. (2018). The United Nations and the Threat of Climate Change. Available online [1. 9. 2018]: < http://www.munplanet.com/articles/fridays-with-munplanet/the-united-nations-and-the-threat-of-climate-change >

Majeed, A., Abdulla, A. (2004). Economic and environmental vulnerabilities of the Maldives and graduation from LDC status. I: Briguglio, L., Kisanga, E. (Eds.)

Economic Vulnerability and Resilience of Small States. Commonwealth Secretariat and the University of Malta, Valeta, pp. 243 – 255.

Mallin, M.-A. F. (2018). From sea-level rise to seabed grabbing: The political economy of climate change in Kiribati. Marine Policy, Vol. 97, pp. 244 – 252.

Malone, D. M. (ed.). (2004). *The UN Security Council: From the Cold War to the 21 Century*. Boulder: Lynne Reiner publishing.

Manderson, D. (1996). Beyond the Provincial: Space, Aesthetics, and Modernist Legal Theory, *Melbourne Law Review*, Vol. 20, pp. 1048 - 71.

Manderson, D.(ed). (2005). Legal Spaces. *Law Text Culture*, Vol. 9, pp. 1 – 249.

Martenczuk, B. (1999). The Security Council, the International Court and Judicial Review: What Lessons from Lockerbie? *European Journal of International Law*, Vol. 10, pp. 517 – 547.

Maryam, J. et al. (2017). CO2 Emissions, Energy Consumption and Economic Growth in BRICS: An Empirical Analysis. *IOSR Journal of Humanities and Social Science*, Vol. 22, No. 2, pp. 53 – 58.

Massey, D. (ed.). (1984). *Geography matters! A reader*. Cambridge: Press Syndicate of the University of Cambridge.

Massey, D. (1992). Politics and space/time. *New Left Review*, Vol. I, No. 196, pp. 65 – 84.

McAdam, J. (2010). Disappearing states, statelessness and the boundaries of international law. *UNSW Law Research Paper No. 2010-2,.* Available online [2. 1. 2019] < *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1539766* >

McAdam, J. (2011a). Swimming against the Tide: Why a Climate Change Displacement Treaty is Not *the* Answer. *International Journal of Refugee Law*, Vol. 23, No. 1, pp. 2 – 27.

McAdam, J. (2011b). Refusing 'Refuge' in the Pacific: (de)constructing climate induced displacement in international law. In Piguet, É., Pécoud, A., De Guchteneire, P. (eds). *Migration and Climate Change*. Cambridge: Cambridge University Press.

McAdam, J. (2012). *Climate Change, Forced Migration and International Law*. New York: Oxford University Press.

McAdam, J. (2015). The emerging New Zealand jurisprudence on climate change, disasters and displacement. *Migration studies*, Vol. 3, No. 1, pp. 131 – 142.

McAnaney, S. (2012). Sinking Islands? Formulating a realistic solution to climate change displacement. *New York University Law Review*, Vol. 87, pp. 1174 – 1209.

McDonald, M. (2008). Constructivism. In.: Williams, P. D. (ed.). *Security Studies: An Introduction*. New York: Routledge, pp. 59 – 72.

McDonald, M. (2011). *Security, the Environment and Emancipation: Contestation over Environmental Change*. London: Routledge.

McDonald, M. (2012). The failed securitization of climate change in Australia. *Austr. J. Polit. Sci*, Vol. 47, No. 4, pp. 579 – 592.

McDonald, M. (2013). Discourses of climate security. *Political Geography*, Vol. 33, pp. 42 – 51.

McNamara, K., E., Gibson, C. (2009). We do not want to leave our land': Pacific ambassadors at the United Nations resist the category of 'climate refugees. *Geoforum*, Vol. 40, No. 3, pp. 475 – 483.

Mead, L. (2018). UN Security Council Addresses Climate Change as a Security Risk. IISD. Available online [3. 10. 2018]: < http://sdg.iisd.org/news/un-security-council-addresses-climate-change-as-a-security-risk/ >

Mearsheimer, J. J. (1994/1995). The False Promise of International Institutions. *International Security*, Vol. 19, no. 3, pp. 5 – 49.

Mearsheimer, J. J. (2001). *The Tragedy of Great Power Politics*. London: W. W. Norton.

Mearsheimer, J. J. (2005). E.H.Carr vs. Idealism: The Battle Rages On. *International Relations*, Vol. 19, no. 2, pp. 139 – 152.

Mégret, F., (2011). War and the vanishing battlefield. *Loyola University Chicago International Law Review,* Vol. 9, pp. 131–155.

Mitchell, D. (2003). *The right to the city: social justice and the fight for public space*. Guilford Press: Abingdon.

Montesquieu, C. (1777). *The Spirit of Laws*. London: T. Evans. Available online [1. 9. 2018]. URL: < http://oll.libertyfund.org/titles/837 >

Monteleone, C. (2014). Coalition building in the UN Security Council. *International Relations*, Vol. 29, No. 1, pp. 45 – 68.

Moravscik, A. (2001). *Liberal International Relations Theory: A Social Scientific Assessment*. Cambridge, MA: Harvard University Press.

Moritaka, H. (2013). Island's Sea Areas: Effects of A Rising Sea Level. Review of Island Studies. Available online [1. 9. 2018]. < https://www.spf.org/islandstudies/research/a00003.html >

Morrissey, J., (2011). Liberal lawfare and biopolitics: US juridical warfare in the war on terror. *Geopolitics*, Vol. 16, pp. 280–305.

Mosquera, A. B. M.; Bachmann, S. D. (2016). Lawfare in Hybrid Wars: The 21st Century Warfare. *Journal on International Humanitarian Legal Studies*, Vol. 7, pp. 63 – 86.

Murdoch, J. 2006. *Post-Structuralist Geography: A Guide to Relational Space*. London: Sage.

N

Navari, C. (2008). Liberalism. In.: Williams, P. D. (ed.). *Security Studies: An Introduction*. New York: Routledge, pp. 29 – 43.

Nash, J. (1951). Non-cooperative games. *Annals of Mathematics*, Vol. 54, no. 2, pp. 286 – 295.

National Snow and Ice Data Center. (2015). *Contribution of the Cryosphere to Changes in Sea Level*. Available online [3. 10. 2018]: < https://nsidc.org/cryosphere/sotc/sea_level.html >.

Neuendorf, K. A. (2002). *The Content Analysis Guidebook*. London: Sage Publications Inc.

Nielsen, J., Reenberg, A. (2012). Exploring causal relations: the societal effects of climate change. *Danish Journal of Geography*, Vol. 112, No. 2, pp. 89–92.

Noone, G., P. (2010). Lawfare or Strategic Communications? *Case Western Reserve Journal of International Law*, Vol. 43, No. 1, pp. 73 – 85.

North, D. (1990). *Institutions, Institutional Change, and Economic Performance*. New York: Cambridge University Press.

Nurse, L. et al. (2001). Small island states. Climate Change 2001: Impacts, Adaptation, and Vulnerability. In McCarthy, J. J. (Ed). *Contribution of Working Group II to the*

Third Assessment Report of the Intergovernmental Panel on Climate Change. Cambridge University Press, Cambridge, pp. 842 – 975.

Nurse, L., Moore, R. (2005). Adaptation to global climate change: an urgent requirement for Small Island Developing States. *Rev. Eur. Commun. Int. Environ. Law*, Vol. 14, pp. 100–107.

Nye, J. (2005). *Soft Power: The Means to Success in World Politics*. New York: PublicAffairs.

Nyman, J. (2018). *Climate and security – time for the UN Security Council to take the next step*. Institute for European Environmental Policy. Available online [3. 10. 2018]: < https://ieep.eu/news/climate-and-security-time-for-the-un-security-council-to-take-the-next-step >

O

O'Neil, B. (1996). Power and Satisfaction in the United Nations Security Council. *The Journal of Conflict Resolution*, Vol. 40, No. 2, pp. 219 – 237.

Ödalen, J. (2014). Underwater self-determination: Sea-level rise and deterritorialized Small Island States. *Ethics, Policy & Environment*, Vol. 17, No. 2, pp. 225-237.

Oels, A. (2012). From 'securitization' of climate change to 'climatization' of the security field: comparing three theoretical perspectives. In: Scheffran (Ed.). *Climate Change, Human Security and Violent Conflict*. Berlin: Springer, pp. 185–205.

Osman, M. A. (2002). *The United Nations and the Peace Enforcement*. Hampshire: Ashgate Publishing Limited.

P

Page, E. (2000). Theorizing the Link Between Environmental Change and Security. *Review of European Community and International Environmental Law*, Vol. 9, No. 1, pp. 33 – 43.

Paterson, M. (2005). Green Politics. In. Burchill S. (ed.). *Theories of International Relations*. New York: Palgrave McMillan, pp. 188 – 212.

Parsons, C. (2009). Small islands win U.N. vote on climate change security. Reuters. Available online [3. 10. 2018]: < https://www.reuters.com/article/us-un-security-idUSTRE5525W920090603 >

Pearson, Z. (2008). Spaces of International Law. *Griffith Law Review*, Vol. 17, No. 2, pp. 489 – 514.

Pellow, D. N., Brulle,, R. J. (2005). *Power Justice, and Environment: A Critical Appraisal of the Environmental Justice Movement*. Cambridge, MIT Press.

Persson, T., Tabellini, G. (2000). *Political Economics*. Cambridge, MIT Press.

Peters, K., Mayhew L. (2016). The securitization of climate change: a development perspective. In Brown S., Gravingholt, J. (eds.). *The Securitization of Foreign Aid*. Palgrave Macmillan: Basingstoke, pp. 212–236.

Petersen, S. K. (1965). The Business of the United Nations Security Council: History (1946-1963) and Prospects. *The Journal of Politics*, Vol. 27, No. 4, pp. 818 – 838.

Petersen, K. (2018). Disasters, climate change, and securitization: the United Nations Security Council and the United Kingdom's security policy. *Disasters*, Vol. 24, pp. S196 – S214.

Phelan, M., Gillespie, J. (2003). *Immigration Law Handbook*. 3rd Edition. New York: Oxford University Press.

Phillips, N., Hardy, C. (2002). *Discourse Analysis: Investigating Process of Social Construction*. Sage, London.

Philippopoulos-Mihalopoulos, A. (2007). Introduction: in the lawscape. In: Philippopoulos-Mihalopoulos, A. (ed). *Law and the city*. Abingdon: Routledge-Cavendish, pp.1 – 20.

Philippopoulos-Mihalopoulos, A. (2010). Spatial justice: Law and the geography of withdrawal. *International Journal of Law in Context,* Vol. 6, No. 3, pp. 201‑216.

Philippopoulos-Mihalopoulos, A. (2011). Law's spatial turn: Geography, justice and a certain fear of space. *Law, Culture and the Humanities,* Vol. 7, No. 2, pp. 187–202.

Picciotto, S. (1984). Jurisdictional conflicts, international law and the international state system. In Massey, D. (ed.). Geography matters! A reader. Cambridge: Press Syndicate of the University of Cambridge.

Piguet, T. (2013). From "Primitive Migration" to "Climate Refugees": The Curious Fate of the Natural Environment in Migration Studies. *Annals of the Association of American Geographers*, Vol. 103, No. 1, pp. 148 – 162.

Pirie, G. H. (1983). On Spatial Justice. *Environment and Planning*, Vol. 15, pp. 465 - 502.

Powell, R. (1991). Absolute and Relative Gains in International Relations Theory. *American Political Science Review*, Vol. 85, No. 4, pp. 1303 – 1320.

Prandler, Á. (1974). *The United Nations Security Council*. Budapest: Közgadasági és Jogi Könyvkiadó.

Prasad, N. (2003). Small Islands' quest for economic development. *Asia Pacific Development Journal,* Vol. 10, No. 47 - 66.

Pue, W. W. (1990). Wrestling with law: (geographical) specificity vs. (legal) abstraction. *Urban Geography*, Vol. 11, no. 6. pp. 566 - 585.

Pue, W. W. (1991). Towards Geo-Jurisprudence? – Formulating Research Agendas in Law and Geography. *The Windsor Review of Legal and Social Issues*, Vol. 3, pp. 71 – 93.

R

Rachel, J. et al (2015). Characterizing loss and damage from climate change. *Nature Climate Change*. Vol. 4, pp. 938 – 939.

Raustiala, K. (2005). The Geography of Justice. Fordham Law Review, Vol. 73, pp. 2501 – 2560.

Rawls, J. (1971). *A Theory of Justice*. Reprinted 1999. Harvard University Press.

Rayfuse, R. (2009). W(h)ither Tuvalu? International Law and Disappearing States. *University of New South Wales Faculty of Law Research Series*, Paper 9.

Rayfuse, R. (2010). International Law and Disappearing States; Utilising Maritime Entitlements to Overcome the Statehood Dilemma. *University of New South Wales Faculty of Law Research Series*. No. 52. Available online [3. 10. 2018]: < http://classic.austlii.edu.au/au/journals/UNSWLRS/2010/52.html >

Rayfuse, R (2011). International Law and Disappearing States: Maritime Zones and the Criteria for Statehood. *Environmental Policy and Law*, Vol. 41, pp. 281–287.

Redclift, M. (2000). Addressing the Causes of Conflict: Human Security and Environmental Responsibilities. *Review of European Community and International Environmental Law*, Vol. 9, pp. 44 - 59.

Reiz, N., O'Lear, S. (2016). Spaces of Violence and (In)justice in Haiti: A Critical Legal Geography Perspective on Rape, UN Peacekeeping, and the United Nations Status of Forces Agreement, *Territory, Politics, Governance*, Vol. 4, No. 4, pp. 453 - 471.

Reus-Smit, C. (2005). Constructivism. In Burchill, S. (ed.). *Theories of International Relations*. New York: Palgrave McMillan, pp. 235 – 257.

Richter-Montpetit, M. (2014). Beyond the erotics of Orientalism: Lawfare, torture and the racial-sexual grammars of legitimate suffering. *Security Dialogue*. Vol 45, No. I, pp. 43 – 59.

Riker, W. (1980). Implications from the disequilibrium of majority rule for the study of institutions. *American Political Science Review*, Vol. 75, pp. 432 – 446.

Risse, M. (2009). The Right to Relocation: Disappearing Island Nations and Common Ownership of the Earth. *Ethics and International Affairs,* Vol. 23, No. 3, pp. 281 - 300.

Roden, D. (2014). Pacific Islanders Call for Climate Justice. Green Left Weekly. Available online [3. 10. 2018]: < https://www.greenleft.org.au/content/pacific-islanders-call-climate-justice >

Roele, I. (2016). Sidelining subsidiarity: United Nations Security Council "Legislation" and its infra-law. *Law & Contemporary Problems*, Vol. 79, No. 2, pp. 189 – 214.

Rothe, D., 2015. *Securitizing Global Warming: A Climate of Complexity* (Routledge Studies in Resilience). Routledge, London.

Rowell, D. (2011*). The Power of Ideas: A Political Social-Psychological Theory of Democracy, Political Development and Political Communication*. Boca Raton: Dissertation.com.

Rudiak-Gould, P. (2013). *Climate Change and Tradition in a Small Island State. The Rising Tide*. London: Routledge.

Runjic, L. (2017). Reform of the United Nations Security Council: The Emperor Has No Clothes. *Brazilian Journal of International Law*, Vol. 14, No. 2, pp. 268 – 285.

Russel, B. (1958). *A History of the United Nations Charter: The Role of the United States 1940–1945*. Washington, DC: Brookings Institution.

Rüttinger, L. et al. (2015). A New Climate for Peace: Taking Action on Climate and Fragility Risks. Available online [3. 10. 2018]: < https://www.newclimateforpeace.org/#report-top >

S

Sadat, L. N., Geng, J. (2010). On Legal Subterfuge and the So-Called „Lawfare". *Case Western Reserve Journal of International Law*, Vol. 43, No. 1, p. 153 – 161.

Salehyan, I. (ed.). (2014). Special issue: climate change and conflict'. *Political Geography*, Vol. 43, pp. 1 – 90.

Saroosi, D. (1999). *The United Nations and the development of collective security: the delegation by the UN Security Council of its Chapter VII powers*. Oxford: Clarendon Press.

Sand, P. H. (1971). Current trends in African legal geography: the interfusion of legal systems. *The Journal of Legal Pluralism and Unofficial Law,* Vol. 3, No. 5, pp. 1–27.

Sari, A. (2018). Legal aspects of hybrid warfare. Lawfare institute. Available online [3. 10. 2018]: < https://www.lawfareblog.com/legal-aspects-hybrid-warfare >

Schachter, O. (1964). The Quasi-Judicial Role of the Security Council and the General Assembly. *American Journal of International Law*, Vol. 58, No. 4, pp. 960 – 965.

Schneider, G., Ershova, A. Rational Choice Institutionalism and European Integration. In: THOMPSON, William R., ed.. Oxford Research Encyclopedia of Politics. Oxford:Oxford University Press. Available under: doi: 10.1093/acrefore/9780190228637.013.501

Scheu, Ch. H. (2007). Sankce Rady bezpečnosti OSN proti jednotlivcům a jejich provedení v evropském právu. In *K odkazu Jaroslava Kallaba*. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk.

Schlag, P. (1999) U.S. CLS. Law and Critique, Vol. 10, No. 3, pp. 199 - 210.

Schofield, C. H. (2009). Against a Rising Tide: Ambulantory Baselines and Shifting Maritime Limits in the Face of Sea Level Rise. University of Wollongong Research Online. Faculty of Law, Humanities and the Arts – Papers. Available online [3. 10. 2018]: < https://ro.uow.edu.au/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1321&context=lhapapers >

Schreurs, M. A. (2016). The Paris Climate Agreement and the Three Largest Emitters: China, the United States, and the European Union. *Politics and Governance*, Vol. 4, No. 3, pp. 219 – 223.

Scott, K. (2018). Rising Sea and Pacific Maritime Boundaries. Available online [3. 10. 2018]: < http://www.internationalaffairs.org.au/australianoutlook/rising-seas-and-pacific-maritime-boundaries/ >

Scott, V. S. (2008). Climate Change and Peak Oil as Threats to International Peace and Security: Is it Time for the Security Council to Legislate? *Melbourne Journal of International Law,* Vol. 9, No. 2, pp. 495 – 515.

Scott, V. S. (2012). The Securitization of Climate Change in World Politics. *Review of European Community and International Environmental Law,* Vol. 21, No. 3, pp. 220 – 230.

Scott, V. S. (2015). Implications of climate change for the UN Security Council: mapping the range of potential policy responses. *International Affairs*, Vol. 91, No. 5, 1317 – 1333.

Scott, V. S., d'Andrade, R. (2012). The global response to climate change: can the Security Council assume a lead role? *Brown Journal of World Affairs*, Vol. 18, No. 2, pp. 215 – 26.

Scott, V. S., Ku, C. (eds.). (2018). *Climate Change and the UN Security Council*. Cheltenham: Edwar Elgar Publishing Limited.

Security Council Report. (2016). In Hindsight: The Security Council and the International Court of Justice. Available online [3. 7. 2019]: < https://www.securitycouncilreport.org/monthly-forecast/2017-01/in_hindsight_the_security_council_and_the_international_court_of_justice.php >

Selby, J., Hoffman, C. (2014). Rethinking climate change, conflict and security. *Geopolitics*, Vol. 19, No. 4, pp. 747 – 756.

Shepherd, L. J. (2008). Power and Authority in the Production of United Nations Security Council Resolution 1325. *International Studies Quarterly*, Vol. 52, No. 2, pp. 383 – 404.

Sheppard, E. 2008. Geographic dialectics. *Environment and Planning A.* Vol. 40, pp. 2603 - 2612.

Shepsle, K. A. (2006). Rational Choice Institutionalism. In Rodes, R. A. W., Binder, S., and Rockman B. A. *The Oxford Handbook of Political Institutions*. Oxford: Oxford University Press, pp. 23 – 38.

Sherwood, S. C. et al. (2014). Spread in Model Climate Sensitivity Traced to Atmospheric Convective Mixing. *Nature,* Vol. 505, pp. 37–42.

Shibuya, E. (1996). "Roaring Mice Against the Tide": The South Pacific Islands and Agenda-Building on Global Warming. *Pacific Affairs*, Vol. 69, No. 4, pp. 541–555.

Shibuya, E. (2009). The problems and potential of the Pacific islands forum. In J. Rolf (Ed.), *The Asia-Pacific: A region in transition*. Honolulu: Asia-Pacific Centre for Security Studies, pp. 102–115.

Simma, B. et al. (eds.). (2002). *The Charter of the United Nations. A Commentary*. Second Edition. Vol. I. Oxford: Oxford University Press.

Sindico, F. (2007). Climate Change: A Security (Council) Issue? *Carbon & Climate Law Review*, Vol. 1, No. 1, pp. 29 – 34.

Smith, A. (1790). *The Theory of Moral Sentiments*. Reprinted 2011. Gutenberg Publishers.

Smith, M., (2014). States that come and go: mapping the geolegalities of the Afghanistan intervention. In Braverman, I., Blomley, N., Delaney, D. and Kedar, A. (eds). (2014). *The expanding spaces of law: a timely legal geography*. Stanford: Stanford University Press, pp. 142–166.

Šmuclerová, M. (2006). *Reform of the United Nations Security Council: an international law perspective*. Prague: Czech United Nations Association.

Snukal, K. Gilbert, E. (2015). War, law, jurisdiction, and juridical othering: private military security contractors and the Nisour Square massacre. *Environment and Planning D: Society and Space*, Vol. 33, pp. 660 – 675.

Soderberg, N. (2015). Time to Bring the United Nations Security Council into the 21st Century. *Georgetown Journal of International Affairs*, Vol. 16, No. 2, pp. 39 – 46.

Soja, E. (1996). Afterword. In Symposium: Surveying Law and Borders. *Stanford Law Review*, Vol. 48, no. 5, 1421 – 1435.

Soja, E. (2010). *Seeking Spatial Justice*. University of Minnesota Press.

Souza, D. Democracy and legitimacy in Security Council reform: the current debate. Sixth Pan-European International Relations Conference, Torino 12th – 15th September 2007. Available online [3. 10. 2018]: < http://www.eisa-net.org/eisa-net.org/be-bruga/eisa/files/events/turin/Marcondes%20de%20Souza-DaniloSouzaPaperSGIRSection22Turin.pdf >

Stampnitzky, L. (2015) The Lawyers' war: states and human rights in a transnational field. *The Sociological Review*, Vol. 64, pp. 170 – 193.

Stark, J. (2014). *Climate Change and Conflict: Findings and Lessons Learned from Five Case Studies in Seven Countries*. Washington, DC: United States Agency for International Development.

Stephen, M. (2018). Legitimacy Deficit of the International Organizations: design, drift, and decoupling at the UN Security Council. *Cambridge Review of International Affairs*, Vol. 31, No. 1, pp. 96 – 121.

Sternberg, S. (2002). Former Diplomat Holbrooke Takes on Global AIDS. *USA Today*. June 10.

Stigen, J., Fauchald, O. K. (2009). Chapter 13. Environmental Security And The UN Security Council. In Bailliet, C. (ed.). *Security: A Multidisciplinary Normative Approach*. Leiden: Brill Nijhoff.

Stoutenburg, J. G. (2011). Implementing a New Regime of Stable Maritime Zones to Ensure the (Economic) Survival of Small Island States Threatened by Sea-Level Rise. *The International Journal of Marine and Coastal Law,* Vol. 26, No. 2, pp. 263 – 311.

Šturma, P. (2013). Does the Rule of Law also apply to the Security Council? Limiting its powers via the responsibility and accountability of international organizations. *Polish YearBook of International Law*, Vol. 17, pp. 299 - 305

Stychin, C. F. (1996). Book Review: Blomley, N. K. Law, *Space, and the Geographies of Power. Social & Legal Studies*, published September 1 1996, pp. 445 – 447.

Symposium Surveying Law and Borders. (1996). *Stanford Law Review*, Vol. 48, No. 5.

Taylor, W. (ed.). (2006). *The Geography of Law: Landscape, Identity and Regulation*. Oxford: Hart.

T

Talmon, S. (2005). The Security Council as World Legislature. *The American Journal of International Law*, Vol. 99, No. 1, pp. 175 - 193.

Tamtram, J. (2017). *Sustainability context: why the elephant is the room*. Towards 9 Billion initiative, eBook.

Tayyab, M. (2007). Geography and International Law: Towards a Postcolonial Mapping. *Santa Clara Journal of International Law*, Vol. 5, No. 2, pp. 525 – 561.

Tayyab, M. (2010). Law of Geography and the Geography of Law: A Post-Colonial Mapping. *Washington University Jurisprudence Review*, Vol. 3, No. 64, pp. 64 – 106.

Theisen, O., N. et al (2013). Is climate change a driver of armed conflict? *Climatic Change*, Vol. 117, No. 3, pp. 613 – 625.

Thompson, A. (2006). Coercion Through IOs: The Security Council and the Logic of Information Transmission. *International Organization*, Vol. 60, pp. 1 – 34.

Thrift, N. (1985) Flies and Germs: A Geography of Knowledge. In *Social Relations and Spatial Structures.* London: MacMillan.

Timoschenko, A. S. (1992). Ecological security: Response to Global Challenges. In Weiss E. B. (ed). *Environmental Change and international law*. *New challenges and dimensions*. United Nations University, pp. 424 – 431.

Tompkins, E.L. et al. (2005). Surviving Climate Change in Small Islands: A Guidebook. Norwich: Tyndall Centre for Climate Change Research.

Trombetta, M. (2008). Environmental security and climate change: Analysing the discourse. *Cambridge Review of International Affairs*, Vol. 21, No. 4, pp. 585–602.

Tzanakopoulos, A. (2011) *Disobeying the Security Council: countermeasures against wrongful sanctions*. Oxford: Oxford University Press.

U

Ullman, R. H. (1983). Redefining Security. *International Security*, Vol.8, No. 1 pp. 129 – 153.

Unger, R. M. (1983). The Critical Legal Studies Movement. Harward Law Review, Vol. 96, No. 3, pp 561 - 675.

UNFCCC. (2007). Vulnerability and Adaptation to Climate Change in Small Island Developing States. Background Paper for the Expert Meeting on Adaptation for Small Island Developing States. Available online [3. 10. 2018]: < https://unfccc.int/files/adaptation/adverse_effects_and_response_measures_art_48/appli cation/pdf/200702_sids_adaptation_bg.pdf >

UN Inter-Agency Secretariat for the International Strategy for Disaster Reduction, 2002. Living with Risk: A Global Review of Disaster Reduction Initiatives. IDSR, Geneva.

UNIS. (2008). Sixty Years of United Nations Peacekeeping. Available online [3. 10. 2018]: < http://www.unis.unvienna.org/unis/en/60yearsPK/index.html >

Urbanová, P. (2016). Význam Rady bezpečnosti OSN a právní závaznost rezolucí při zajišťování mezinárodního míru a bezpečnosti. *Thesis*. Charles University Prague, Faculty of law. Consultant: doc. JUDr. Jan Ondřej, CSc., DSc.

Urry, J. (2003). *Global Complexity.* Cambridge: Polity Press.

V

Vallat, F. A. (1952). The General Assembly and the Security Council of the United Nations. British Yearbook of International Law, Vol. 29, pp. 63 – 104.

Valverde, M. (1996). "Despotism" and Ethical Liberal Governance. *Economy and Society,* Vol. 25, no. 3, pp. 357 – 72.

Valverde, M. (2009). Jurisdiction and scale: legal technicalities as resources for theory. *Social & Legal Studies*, Vol. 18, No. 2, pp. 139–157.

Varadarajan, L. (2004). Constructivism, identity and neoliberal (in)security. *Review of International Studies*, Vol. 30, pp. 319 – 341.

Vaubel, R. (1991). A Public Choice View of International Organization. In Vaubel, R. and Willett, T. (eds.). *The Political Economy of International Organizations*, Boulder, Colorado: Westview Press, pp. 27 – 45.

Vidas, D. (2014). Sea-Level Rise and International Law: At the Convergence of Two Epochs. *Climate Law*, Vol. 4, pp. 70 – 84.

Viola, E., Franchini, M., Ribeiro, T. L. (2012). Climate governance in an international system under conservative hegemony: the role of major powers *Revista Brasileira de Política Internacional*, Vol. 55, Available online [3. 7. 2019]: < http://www.scielo.br/scielo.php?pid=S0034-73292012000300002&script=sci_arttext&tlng=pt >

Vishman, C. (1997). Starting from Scratch: Concepts of Order in No Man's Land. In Hippauf, B. (ed.). *War, Violence and Modern Conditions*. Berlin, New York: de Gruyter, pp. 46 - 64.

Vitor, G. A. et al. (2018). CO2 emissions: A quantitative analysis among the BRICS nations. *Renewable and Sustainable Energy Reviews*, Vol. 81, No. 1, pp. 107 – 115.

Vnenková, M. (2013). Právna povaha a význam rezolúcií Rady bezpečnosti podľa kapitoly VII Charty OSN. *Thesis*. Charles University Prague, Faculty of law. Consultant: prof. JUDr. Pavel Šturma, DrSc.

Voigt, C. (2009). Security In A "Warming World": Competences Of The Un Security Council For Preventing Dangerous Climate Change. In Bailliet, C. M. *Security: A Multidisciplinary Normative Approach*. International Humanitarian Law Series. Nijhoff: Brill, pp. 291 – 312.

W

White, N. (1990). *The United Nations and the maintenance of international peace and security*. Manchester: Manchester University Press.

Whittle, D. (2015). The Limits of Legality and the United Nations Security Council: Applying the Extra-Legal Measures Model to Chapter VII Action. *European Journal of International Law*, Vol. 26, No. 3, pp. 671 – 698.

Waltz, K. (1979). *Theory of International Politics*. Reprinted 2010. Long Grove: Waveland Press.

Weiler, F. (2012). Determinants of Bargaining Success in the Climate Change Negotiations. Climate Policy, Vol. 12, No. 5, pp. 552–574.

Weingast, B. (1996). Political Institutions: rational choice perspectives. In.: Goodin R., Klingemann H., D. *A New Handbook of Political Science*. Oxford: Oxford University Press, pp. 167 – 190.

Weingast, B. (2002). Rational-choice institutionalism. In Katznelson, I. and Milner, H. (eds.). *Political Science: The State of the Discipline*, New York: W. W. Norton.

Weiss, T. G., Kalbacher, D. Z. (2008). The United Nations. In: Williams, P. D. (ed.). *Security Studies: An Introduction*. New York: Routledge, pp. 325 – 342.

Weizman, E., (2010). Legislative attack. *Theory, Culture and Society,* Vol. 27, pp. 11–32.

Wendt, A. (1987). The agent structure problem in international relations theory. *International Organization*, Vol. 41, No. 3, pp. 335 – 370.

Wendt, A. (2001). *Social Theory of International Politics*. Cambridge: Cambridge University Press.

Widerberg, O., Stenson, D. E. (2013). *Climate Clubs and the UNFCCC*. Stockholm: FORES study.

Williams, R. A. Jr. (1987). Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color. Law & Inequality: A Journal of Theory and Practice. Vol. 5, No. 1, pp. 103 – 134.

Wigmore, J.H. (1928). Panorama World's Legal Systems. *Saint Paul West Publishing Company*.

Williamson, O. (1975). *Markets and Hierarchies, Analysis and Antitrust Implications: A Study in the Economics of Internal Organization*. New York: Free Press.

Williamson, O. (1985). *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*. New York: Free Press.

Wohlforth, W. C. (1995). Realism and the End of the Cold War. *International Security*, Vol. 19, No. 3, pp. 91 – 129.

Wong, D. (2013). Sovereignty Sunk? The Position of "Sinking States" at International Law'. *Melbourne Journal of International Law*, Vol. 14, pp. 346–391.

Woodworth, P.L. (2005). Have there been large recent sea level changes in the Maldive Islands? *Global Planet. Change,* Vol. 49, pp. 1 – 18.

World Bank. (2002). Cities, Seas and Storms Managing Change in Pacific Island Economies: Volume IV Adapting to Climate Change, Available online [3. 10. 2018]: < http://siteresources.worldbank.org/INTPACIFICISLANDS/Resources/4-VolumeIV+Full.pdf >.

Wyett, K. (2013). Escaping a Rising Tide: Sea Level Rise and Migration in Kiribati. *Asian & The Pacific Policy Studies*, Vol. 1, No. 1, pp. 171 – 185.

Y

Yamamoto, L., Esteban, M. (2010). Vanishing Island States and sovereignty. *Ocean & Coastal Management,* Vol. 53, pp. 18-26.

Yamamoto, L., Esteban, M. (2014). *Atoll Island States and International Law -Climate Change Displacement and Sovereignty*. Berlin: Springer.

Z

Zakaria, F. (2001). Don't oversell missile defence: the old theory of nuclear deterrence still makes sense. Just ask the man who invented it. *Newsweek*, 14th May.

Zeitoun, M., Mirumachi, N. (2008) Transboundary Water Interaction I: Reconsidering Conflict and Cooperation. *International Environmental Agreements: Politics, Law and Economics,* Vol. 8, No. 4, pp. 297–316.

Zimmern, A. E. (1936). *The League of nations and the rule of law 1918 – 1935*. London: Macmillan and Co.

Resumé in Czech language:

Vybrané malé rozvíjející se ostrovní státy (dále jen jako „SIDS"), například Tuvalu či Kiribati, bývají často nesprávně nazývány „potápějícími se ostrovy", neboť jejich nejvyšší body leží pouze několik metrů nad hladinou moře. Vzrůst hladiny moří způsobuje, že se jejich teritorium mění na neobyvatelné území pomalu mizející pod mořskou hladinou. Zhoršování životních podmínek způsobuje vnitřní přesidlování, migraci a další problémy. SIDS opakovaně upozornily na svou situaci Radu bezpečnosti OSN, a to mj. při jednáních v letech 2007, 2011, 2015, 2018 a 2019. Požadovaly, aby Rada bezpečnosti jejich situaci řešila jako možné bezpečnostní riziko a zajistila spravedlivější rozdělení environmentálních rizik a nákladů. V průběhu jednání Rady bezpečnosti se různé státy snažily interpretovat a re-interpretovat mandát Rady způsobem, který by vyhovoval jejich zájmům.

Zástupci SIDS navrhovali, aby Rada rozhodovala na základě principů distributivní spravedlnosti, a tudíž zajišťovala rovné sdílení environmentálních rizik, břemen a hrozeb. Rychle se rozvíjející státy takovémuto návrhu oponovaly. Implicitně předpokládaly, že rozhodování Rady bezpečnosti by mělo být postaveno na principech komutativní spravedlnosti, to znamená, že by Rada měla rozhodovat pouze v přesně vymezených situacích, kdy dochází k porušení pravidel mezinárodního míru, přičemž k řešení environmentálních otázek Rada bezpečnosti postrádá mandát stejně jako znalosti a expertízu. Odkaz na principy komutativní spravedlnosti tyto státy koncentrovaly do spojení, že Rada bezpečnosti nemá mandát. A konečně rozvinuté státy požadovaly, aby si Rada bezpečnosti uchovala možnost v takovýchto otázkách rozhodnout, nicméně odpovědnost za toto rozhodnutí přesouvaly na další orgány či organizace, s nimiž by měla Rada spolupracovat, nebo na vědce a specialisty, kteří by měli zajistit pro takovéto rozhodnutí adekvátní podklady. Každá z těchto tří skupin aktérů si vykládala roli Rady bezpečnosti OSN různě, pod vlivem prostorové situace na vlastním teritoriu a vlastních mocenských zájmů. V důsledku se tak utvořily tři různé názory na to, co by v případě „potápějících se ostrovů" a v případech podobných měla Rada bezpečnosti OSN činit.

Tato disertace použila tento případ „potápějících se ostrovů", aby ukázala, jak se státy snaží utvářet a přetvářet fungování důležitého mezinárodního orgánu, aniž by přitom změnily jediné písmeno z jeho zakládajícího dokumentu, Charty Organizace Spojených národů. Navíc tato práce ukázala, jak prostor a mocenské zájmy podmiňují pojetí a výklad práva a spravedlnosti různých aktérů a jak takovýto výklad zpětně dopadá na mocenské a prostorové uspořádání.

Práce prostřednictvím tematické analýzy s prvky obsahové analýzy prozkoumala záznamy z jednání Rady bezpečnosti o environmentálních hrozbách a „potápějících se" ostrovech z let 2007, 2011, 2015 a 2018 částečně 2019. Na základě této analýzy práce dosáhla výše uvedených zjištění a obecně prokázala, že kritická právní geografie, jako základní teoretický přístup, nabízí vhodné nástroje pro rozbor takovéto situace, neboť zkoumá, jak spolu navzájem interagují právo, prostor a mocenské zájmy (síla) a jak se navzájem utvářejí prostřednictvím chování jednotlivých aktérů. Kritická právní geografie tedy v předmětném případě nabízí možnost, jak porozumět chování každé z popsaných skupin aktérů: SIDS, rychle se rozvíjejícím státům i rozvinutým státům. Porozumění v takové míře nenabízejí ostatní teorie jako např. realismus, teorie sekuritizace nebo zelená teorie.

Takovéto porozumění také představuje praktický přínos této práce, neboť případ SIDS se pravděpodobně stane precedentem a může jej následovat několik podobných dalších případů států, jejichž území je ohroženo environmentální degradací. SIDS jsou považovány za první státy, které čelí těm nejzávažnějším důsledkům klimatické změny. Jelikož se v podobné situaci mohou postupně octnout státy další, přístup a strategie jednotlivých aktérů před Radou bezpečnosti se budou velmi pravděpodobně opakovat. Závěry této práce tak mají relevanci pro budoucí vývoj, přičemž teoretické uchopení je plně přenositelné pro další výzkum. Navíc rozlišování pozic, motivace a rétorické praxe jednotlivých aktérů při vyjednávání přispívá k jasnější alokaci odpovědnosti a k dosažitelnosti koncensu ohledně budoucího řešení situace SIDS.

Summary:

Certain Small Island Developing States (hereinafter the "SIDS") such as Kiribati or Tuvalu are often incorrectly called "sinking islands" because their highest points are located just a few meters above the sea level. Sea level rise may turn their territories to uninhabitable land gradually disappearing beneath the tide. Worsening of the environmental conditions causes internal displacement, migration and other problems. SIDS repeatedly brought their plight to the United Nations Security Council (the "UNSC") during its meetings in 2007, 2011, 2015, 2018 and 2019. They demanded that the UNSC should deal with their situation as a potential security issue and safeguard more equal distribution of environmental security risks and costs. During the UNSC negotiations, various states attempted to interpret and re-interpreted the UNSC mandate in order to suit their interests.

The representatives of SIDS suggested that the UNSC should be a body based on the principles of distributive justice decision-making and thus safeguard fairer sharing of threats and burdens, including those of environmental character. The rapidly developing states strongly opposed; they implicitly claimed that the UNSC should be based rather on the principles of commutative justice, i.e. decide in strictly given situations of violations of peace with neither mandate nor expertize to deal with environmental issues. Finally, the developed states wanted the UNSC to retain power over the decision but attempted to transfer the responsibility for such decision on other cooperating organs and organizations as well as on scientists and experts who should provide adequate initial inputs necessary for the decision. Each of this group of actors interpreted the role of the UNSC in a different way, being influenced by its own spatial situation and power interests. As a result, there appeared three different legal understandings of what the UNSC should do in case of SIDS or similar cases.

This dissertation used this example of the "sinking islands" to demonstrate how nation states as individual actors try to shape and re-shape the functioning of crucially important international council without changing a single letter in its founding legal document, the UN Charter. Moreover, it demonstrated that perceptions and

interpretations of law and justice by various actors are significantly determined by spatiality and power.

The dissertation employed critical discourse analysis with certain features of content analysis to examine the meeting records of the UNSC meetings concerning climate change in general and "sinking islands" in particular in the years 2007, 2011, 2015, 2018, and partly also 2019. By this analysis the dissertation brought research results described in the paragraphs above and proved that critical legal geography ("CLG") as its underlying conceptual approach offers valuable tools for dealing with this type of situation, because this theory examines how law, space, and power interact and co-constitute each other within the behaviour of actors. Thus, CLG allowed nuanced understanding of the actions of each of the described group of actors (SIDS, the rapidly developing states and the developed states). Such complex understanding would not be possible when using other IR theories such as realism, securitization or Green Theory.

This understanding represents also a valuable practical contribution of this dissertation because the case of SIDS is very likely to become precedential and might be followed by several other cases of territories and countries endangered by environmental degradation. SIDS are considered as the first to face the most severe consequences of global climate change on the large scale. Therefore, actors' attitudes and strategies demonstrated on this case shall very likely repeat. Moreover, decoding the positions, motivations and rhetorical practices of the actors shall contribute to clearer allocation of responsibility and a feasibility of consensus on eventual future solution of SIDS' situation.