

BRIEFER

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Sea Level Rise, Deterritorialized States and Migration: The Need for a New Framework

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Rising sea levels have been held up as one of climate change's most disruptive, though gradual, threats. Sea level rise (SLR) has consequences for all coastal areas, but represents a unique and possibly existential threat for many low-lying island nations. Rising seas alone increase the danger of coastal flooding, but higher sea levels combined with extreme weather events could translate to a higher likelihood of inundation.¹ Island countries like Kiribati, the Maldives, Tuvalu, and others are the canaries in the coal mine of climate change. Whether it happens or not, there needs to be a plan if the canary dies. While other impacts of climate change, like disastrous effects on sea life, may have a more immediate impact on island nations, their effects on habitability are not as existential. Given the eventual uninhabitability of these countries, establishing a plan for the migration of entire island populations has become a matter of urgency. The mixed motives of cultural attachment to

place, the opportunity of economic improvement, and the complicated nature of navigating international law make this subject a complex one to untangle, but an important one to face.

The world committed itself to limiting global warming to a maximum temperature rise of 2-degrees Celsius by 2100 at COP21 in 2015. However, even if this limit were met, a catastrophic amount of sea level rise is inevitable. One study has estimated that 2-degrees of warming will lead to a 3-meter global average sea level rise at the extreme end by 2100.² Past the 2-degree mark, a warming of 4-degrees could translate to 1.3-meters of sea level rise, which is possible by 2083.³ The IPCC noted in its Fifth Assessment Report that rates of sea level rise in the tropical Pacific have been much higher than the global average.⁴ With the United States' stated intention to withdraw from the Paris Agreement, and the shortfall

in reaching the 2° target that countries' nationally determined contributions indicate, adaptation options need to be more thoroughly explored.

Even before total inundation, rising seas pose a special challenge to many low-lying island states, because many of these countries' populations are squeezed into coastal areas to serve the tourism industry.⁵ Because the population centers of these islands are almost entirely coastal, "it follows that populations, infrastructure, agricultural areas, and fresh groundwater supplies are all vulnerable to extreme tides, wave and surge events, and SLR."⁶ Therefore, a single storm that has the power to degrade all of these fundamental resources could dramatically reduce the standard of living, if not make the islands uninhabitable. Rising sea levels could devastate the GDP output of small island states, making recovery and adaptation substantially more difficult.⁷ This is especially concerning considering that many low-lying island states depend on the climate-sensitive industries of tourism, fisheries, and agriculture.⁸

Migration

The governments of these low-lying island states are fully aware of the existential crisis they face. In a variety of international fora and media, many do all they can to bring attention to the urgent crisis posed to them by rising seas. In 2009, the cabinet of the government of the Maldives held a widely-covered meeting underwater.⁹ Not only have these countries grabbed headlines, they have been intimately involved in international climate negotiations. The government of Kiribati has embraced the concept of 'migrating with dignity,' a plan to facilitate migration now as opposed to when

greater sea level rise gives their citizens no choice.¹⁰ This plan is designed to allow the people of Kiribati to migrate "in a way that preserves the dignity of those being relocated and minimizes the burden on the receiving countries."¹¹ This process is on-going, and climate change is cited as a reason for migrating for 23% of migrants from Kiribati and 8% of migrants from Tuvalu.¹² It seems likely that both the absolute number of migrants and the rate at which they cite climate change as a reason for migrating will increase in the future.

At present, there are no existing international agreements to absorb entire populations of low-lying island states.¹³ Many general migration agreements are in place between these endangered states and their neighbor countries, but these programs are limited to educational and seasonal working opportunities, or are capped at a low number of migrants per year.¹⁴ International migration does present benefits, especially to adaptive capacity; remittances provide a boost to GDP that improves the resource base for implementing adaptation strategies. Those who are able to migrate are often better off; it is those who cannot afford to move that are the most vulnerable.¹⁵ However, most human mobility in the context of climate change occurs within national boundaries.¹⁶ Without adequate planning and preparation, this is likely to lead to an increase in overcrowding in the urbanized areas of these islands, increasing the burdens on existing institutions and infrastructure. Displaced persons forced off of less-developed islands in the island chain will be forced into urban areas to access housing and government services.

Statehood

While the threat of rising seas to low-lying island nations is a recognized impact of climate change, policy responses to the implications of islands becoming uninhabitable are still catching up. The implications for international relations and international law are significant. The possibility of states disappearing entirely, as well as large-scale migration, have the potential to restructure international relations and put a strain on international cooperation. Scholars of international law have examined options to deal with the prospect of population-wide relocations, but policy-wise the issue is still being addressed. Some agreements and initiatives related to resettling climate affected migrants exist, but these only offer guidance on immediate disaster relief, not on long-term implications.¹⁷ The UN Global Compact for Migration currently being negotiated will likely include some provision for migration from SLR-affected states.

The definition of a state in modern international law has four requirements: a permanent population, a government, the ability to interact with other states, and most important for this context, a defined territory.¹⁸ The prospect of rising seas making low-lying island states uninhabitable, or completely submerged, puts the territorial requirement in jeopardy. However, there are historical examples of flexibility in state control of territory.

The first and most unlikely possibility – in a long list of unlikely options – is for the island state to acquire new territory to maintain its statehood.¹⁹ The disappearing state would maintain control over its own previous maritime zone for revenue purposes, while gaining control over territory ceded to it from a donor state. However, the costs to the donor state would likely out-

weigh any feelings of generosity and make this option unrealistic.²⁰ Kiribati has purchased 20 square kilometers of land in Fiji, opening up the possibility of moving the country's population there.²¹ But in an interview during the process, then-President Anote Tong called the notion of moving his people to Fiji, "ludicrous".²² He maintains that the land will be used for agricultural purposes.²³

The next option is for the disappearing state to merge with another state to create a federation with a state willing to absorb the re-locating population. The "host" state would essentially become the new owner of the disappearing state's maritime zones, and thereby its natural resources.²⁴ This solution likely would not please either party, as it is unclear how much power a re-locating state would have in the new federation. Also, receiving states may not be too eager to accept such large numbers of people. Tuvalu attempted to forge a deal in 2001 which resulted in no interest from Australia, and a severely restricted economic migration deal with New Zealand.²⁵

The unwillingness of receiving states to absorb entire populations from these disappearing states seems to also preclude the most likely option; the disbandment of these low-lying countries and the scattering of their populations. The likely destinations for these migrants include the US, Australia, New Zealand, and possibly, Fiji. But if these vulnerable populations have nowhere to legally relocate to, and the living conditions on their islands become increasingly degraded, their human security could be so endangered as to risk loss of life.

Several scholars have suggested another option that they call the de-

territorialized state. Maxine Burkett of the University of Hawaii has suggested a framework that she calls the *Ex-situ* state.²⁶ This status would give these disappearing islands “all the rights and benefits of sovereignty amongst the family of nation-states, in perpetuity.”²⁷ This status would allow for the state’s citizens to relocate to where they please, but would keep the state’s government in place to advocate for its citizens and maintain “...culture, connection amongst its people, and the security and well-being of its citizens.”²⁸ In Burkett’s argument, the international community would decide to recognize these states without territory.²⁹ The transition from a traditional state to a state *ex-situ* would be facilitated by the United Nations, and be financially supported by the international community.³⁰

Burkett offers several examples of ‘de-territorialized states’, but ultimately argues that we need a re-envisioning for what constitutes a state. The idea of a country operating within the confines of another is not a new one and, as Burkett notes, governments in exile have existed regularly in international politics. The difference here is that governments in exile are meant to be temporary, existing only because they were driven out by invasion or domestic politics, not the irreversible changes of the earth’s climate. There exists no precedent for a permanent government in exile.³¹ The Holy See is presented as a ‘de-territorialized state,’ but this seems to be a stretch.³² The Holy See does in fact maintain control over territory; all 109 acres of the Vatican City granted to it by an international agreement.³³

There are more concrete precedents for the ‘de-territorialized state,’ however. The Order of Malta is a much more convincing case for a functioning state without terri-

tory. The Order is a lay Catholic humanitarian organization which holds no territory, but “exercises functions of sovereignty” and maintains diplomatic relations with 106 countries and the European Union and holds observer status at several international organizations.³⁴ The Order lost control of its territory in 1798 to Napoleon, but its recognition has remained.³⁵ This seems to meet all the desired criteria for a ‘de-territorialized state’ that a country being submerged would want. The largest obstacle to a similar status for low-lying island states is that the international community would have to recognize the legitimacy of it. As of now, the Order of Malta is only recognized by 6 of the G20 countries. The Order of Malta is not recognized by the US, UK, or China. This is not a promising precedent for a ‘de-territorialized state’ that would be mostly concerned with administrative duties like issuing passports.

To be clear, Burkett is arguing for a redefinition of what constitutes a state in international relations. This amounts to eliminating one of the four established requirements. What is being proposed is a cosmopolitan citizenship and a re-thinking of the modern nation-state system.³⁶ Citizens of Kiribati, or Tuvalu, or the Maldives, would be living in Australia, or the US and holding their original passports. The government of the Nation *Ex-situ* would likely reside in a capital city in Asia or Oceania, or near to its supporting body in New York City.

The many options and suggestions for dealing with this issue do not make the decision easier, but with cooperation between all major stakeholders in forging a comprehensive and enforceable international climate agreement looking perhaps less likely in the current political climate, this issue

is worth exploring. The best option for contending with uninhabitable countries still is not clear, but it is clear that this issue needs to be present at negotiating tables. The slow pace of international agreements and the quickening pace of the impacts of climate change are working against each other to make the decision-making processes moot. Tensions could also arise from the implications of these changes for the international system. Does a loosening of the definition of the state open the door for other groups to claim a status of ‘de-territorialized state’? Could a Kurdish state claim this status and begin issuing passports?

Dynamics around humanitarian assistance and disaster response also harbor unanswered questions. Anthropogenic climate change is a relatively slow and drawn-out process. However, rising seas make island nations more vulnerable to the destructive power of extreme weather events, which are anything but slow and drawn out. If Malé, the capital of the Maldives, were to face a storm that degraded the city’s infrastructure enough to make it uninhabitable, it is unclear where the residents would go. The slower-paced changes of climate change would rapidly result in a very urgent humanitarian situation. The international community could most likely handle the immediate disaster response, but the question of future habitability of the island would remain unanswered. This situation raises a problem that is beyond the scope of immediate disaster response.

The specifics of how de-territorialized states would be implemented through policy are currently poorly defined. For any new framework for statehood to be

successful, recognition by other states is essential. Returning to the example of the Order of Malta, recognition of sovereignty was based on a commonality between the states, i.e. Catholicism, so the legitimacy given to the Order was a religious, or moral legitimacy. This precedent also dates from a different historical era, as the process began around 1879, after the order was deprived of territory in 1798.³⁷

However, it could easily be argued that the prospect of losing entire states is also a moral issue. If a small group of states, possibly a regional bloc in Oceania, were to feel a moral imperative to recognize de-territorialized states, the new framework could gain a foothold. In the beginning stages, this level of limited recognition may be the best these states could hope for. However, new ideas in international law and politics have a way of building upon themselves, and this new framework for statehood could gain legitimacy.³⁸

This new framework is by no means perfect, and not meant to be definitive. The last time the average global surface temperature was 2°C warmer than pre-industrial levels, sea levels were over 20m higher than they are now. Even an ambitious agreement limiting warming to 1.5°C by 2100 will lead to an inexorable increase in sea levels, inundating many coastal areas and pushing people to relocate.³⁹ Given the inevitable need for people to migrate as a result of sea level rise, this issue should be mulled over, debated, and agreed upon between all relevant parties.

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¹ Leonard Nurse et al., “Small Islands,” *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*, 2014, 1620.

² Jochen Hinkel et al., “Coastal Flood Damage and Adaptation Costs under 21st Century Sea-Level Rise,” *Proceedings of the National Academy of Sciences of the United States of America* 111, no. 9 (2014): 3292–97.

³ *Ibid.*.

⁴ Nurse et al., “Small Islands,” 1619.

⁵ *Ibid.*, 1623.

⁶ *Ibid.*, 1623.

⁷ To offer a silver lining, there is some evidence that Pacific islands are actually growing, or rather reshaping themselves to adapt to changing sea conditions. However, this only applies to undeveloped islands, not to urbanized islands with fixed infrastructure like the capitals of Kiribati, the Maldives, and Tuvalu. Kennedy Warne “Will Pacific Island Nations Disappear as Seas Rise? Maybe Not,” *National Geographic*, February 2015.

<http://news.nationalgeographic.com/2015/02/150213-tuvalu-sopoaga-kench-kiribati-maldives-cyclone-marshall-islands/>

⁸ *Ibid.*, 1625-1626.

⁹ “Maldives Cabinet Makes a Splash,” *BBC News*, October 17, 2009. <http://news.bbc.co.uk/2/hi/8311838.stm>.

¹⁰ Office of the President, Republic of Kiribati. “Relocation,” n.d.

<http://www.climate.gov.ki/category/action/relocation/>.

¹¹ *Ibid.*

¹² United Nations University, “Climate Change and Migration in the Asia and the Pacific,” *In Situ*, 2015.

http://www.preventionweb.net/files/11673%7B_%7DClimateChangeMigration.pdf.

¹³ Holland and Babson, “Atlantis 2.0: How Climate Change Could Make States Disappear – and What That Means for Global Security,” in *Epicenters of Climate and Security: The New Geostrategic Landscape of the Anthropocene*, Edited by Werrell and Femia, The Center for Climate and Security, June 2017.

https://climateandsecurity.files.wordpress.com/2017/06/3_disappearing-islands.pdf

¹⁴ United Nations University, “Climate Change and Migration in the Asia and the Pacific.”

¹⁵ Jon Barnett and Natasha Chamberlain, “Migration as Climate Change Adaptation: Implications for the Pacific,” *Global Environmental Change* 2050 (2002): [52](#).

¹⁶ Lauren Herzer Risi and Schuyler Null, “Navigating Complexity: Climate, Migration, and Conflict in a Changing World,” USAID, 2016, 4. https://www.wilsoncenter.org/sites/default/files/ecsp_navigating_complexity_web_1.pdf.

¹⁷ *Ibid.*, 12.

¹⁸ “Montevideo Convention on the Rights and Duties of States.” Council on Foreign Relations, n.d.

<http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>.

¹⁹ Rosemary Rayfuse, “International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma,” *University of New South Wales Faculty of Law Research Series* 52, no. November (2010): 284.

²⁰ *Ibid.*, 285.

²¹ Laurence Caramel, “Besieged by the Rising Tides of Climate Change, Kiribati Buys Land in Fiji,” *The Guardian*, June 30, 2014. <https://www.theguardian.com/environment/2014/jul/01/kiribati-climate-change-fiji-vanua-levu>.

²² <http://www.aparchive.com/metadata/youtube/aba0dae6de261daef23246733794b72e>

²³ *Ibid.*

²⁴ Rosemary Rayfuse, “International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma,” 285.

²⁵ *Ibid.*, 285.

The deal with New Zealand was for 30 years, 75 migrants a year, that must speak English, have a job offer in New Zealand, and be under the age of 45.

²⁶ Maxine Burkett, “The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era,” *Climate Law* 2, no. 3 (2011): 346.

²⁷ *Ibid.*, 346.

²⁸ *Ibid.*, 363.

²⁹ *Ibid.*, 355.

³⁰ *Ibid.*, 363.

³¹ *Ibid.*, 358.

³² *Ibid.*, 357.

³³ “Lateran Treaty,” Encyclopedia Britannica. Encyclopedia Britannica, 2008.

<https://www.britannica.com/event/Lateran-Treaty>.

³⁴ Sovereign Order of Malta, “FAQ,” n.d. <https://www.orderofmalta.int/sovereign-order-of-malta/faq/>.

³⁵ Rosemary Rayfuse, “International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma,” 285.

³⁶ Maxine Burkett, “The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era,” 358.

³⁷ C.D. Olivier Farran, “The Sovereign Order of Malta in International Law,” *International and Comparative Law Quarterly* 2 (1954): 221.

³⁸ Specifically, the idea of ‘norm cascade’ in Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52, no. 4 (1998): 887-917.

³⁹ Stefan Rahmstorf, “Modeling sea level rise,” *Nature Education Knowledge* 3, no. 3 (2012): 4.