



What Possibilities and Obstacles Does International Law Present for Preserving the Sovereignty of Island States?

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Abstract

According to the Montevideo Convention on Rights and Duties of States, among other criteria, a state must possess a defined territory. This paper considers how the scope of international law addresses the issue of threatened sovereignty of island states, which may soon no longer possess territory as a result of rising sea levels due to climate change. The situation in Tuvalu, the Maldives, and Kiribati is considered as three of the many islands dealing with the effects of climate change. This paper finds that the current state of the art of international environmental law and human rights law has limited utility in protecting these states' sovereignty. Artificial islands, land acquisition, and individual or collective resettlement are discussed as possible ways forward.

Keywords

Climate change – island state – sovereignty – human rights – nation *ex-situ*

1 Introduction

The increasing surface temperature of the earth has resulted in a corresponding sea level rise as glaciers and ice sheets melt.¹ Sea level rise will increasingly lead to submergence, coastal flooding, and coastal erosion in

1 Intergovernmental Panel on Climate Change (hereinafter: IPCC), Working Group I Summary for Policymakers of IPCC Fifth Assessment Report (2013), 23, DOI: 10.1017/CBO9781107415324.

low-lying areas.² While these effects are not noticeable for many countries, low-lying small island states find themselves in a precarious position as 'islands could become uninhabitable long before they become submerged'.³ Some islands have already been flooded to the extent that entire populations had to be relocated to neighbouring islands within the state. Human migration was predicted to be the 'greatest single impact of climate change' in 1990.⁴ Individuals in small island developing states and other small islands risk death, injury, ill health, and disrupted livelihoods.⁵ For the economy of these islands, maritime zones are of great importance since their economy is predominantly dependent on ocean-based natural resources. States' coastlines are used to calculate their maritime zones. As the coastline disappears, the maritime zone will shrink and could ultimately disappear.⁶ For instance, in the Maldives, fisheries account for the second largest industry after tourism, contributing to ten percent of the gross domestic product (GDP). Sea-level rise could therefore be catastrophic for its economy.

The right to self-determination of these states with disappearing territory and basic human rights of their inhabitants are also under threat.⁷ As spokesperson for the United Nations (UN) High Commissioner for Human Rights, Rupert Colville put it, 'if the islands of Kiribati and Tuvalu disappear beneath the waves, all the trappings of a modern state government buildings, courts, hospitals and schools will vanish with them'.⁸ The possibilities and obstacles international law features to preserve the sovereignty of island states must now be considered.

In the past, it may have been possible to avoid the discussion about vanishing states, altogether by mitigation of climate change. However, the required

2 IPCC Working Group II Fifth Assessment Report (2013) sections 5.3–5, 8.2, 22.3, 24.4, 25.6, 26.3, 26.8 <<https://ipcc-wg2.gov/AR5/report/full-report/>> accessed 25 April 2015.

3 Sumudu Atapattu, 'Climate Change: Disappearing States Migration And Challenges for International Law' (2014) 4(1) *Washington Journal of Environmental Law and Policy* 1, 3.

4 *ibid* 12.

5 IPCC Working Group II (n. 2) sections 5.4, 8.2, 13.2, 19.2–4, 19.6–7, 24.4–5, 26.7–8, 29.3, 30.3.

6 Michael Gagain, 'Climate Change, Sea Level Rise, and Artificial Islands: Saving the Maldives' Statehood and Maritime Claims Through the 'Constitution of the Oceans' (2012) 23(1) *Colo J Int'l Envtl L & Pol'y* 77, 94.

7 Rupert Colville, UNHCR Spokesperson, 'Press briefing note on Indonesia / death penalty and Climate Change and Human Rights' (Geneva, 6 March 2015) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15654&LangID=E>> accessed 15 April 2015.

8 *ibid*.

commitment to this goal at the international level has been inadequate.⁹ Alarmingly, it appears that the IPCC models underestimated the rise in sea level for several decades.¹⁰ In fact, the rate of sea level rise in the last decade alone was double that of the entire last century.¹¹ Furthermore, rising sea levels cannot be avoided now; at the current level of carbon dioxide emissions it has been estimated that sea levels will continue to rise for 1000 years to come.¹²

In the context of international law, climate change means that sovereign states will physically lose the land on which the population lives, and with this loss, they also risk losing other rights that come with the possession of territory – for example, the ability to declare maritime zones.¹³ Without a physical state, will full UN membership be possible? The implications of climate change on statehood and international law are ‘potentially seismic’.¹⁴ Can current international law cope with the island state loss-of-territory scenario?

We must now discuss what will happen to the nation states as their territory disappears. It is imperative for the effective protection of human rights that this discussion happens before their territory is lost.¹⁵ To begin, the current meanings of the terms ‘state’ and ‘sovereignty’ must be considered. The Montevideo Convention on Rights and Duties of States provides four criteria needed to constitute a state: a defined territory; a permanent population; an effective government; and the capacity to enter into relations with other states.¹⁶ Sumudu Atapattu adds a fifth implicit requirement: recognition by other states.¹⁷ Island states facing rising sea levels will ultimately be unable to

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- 9 Maxine Burkett, ‘The Nation Ex-situ: On Climate Change, Deterritorialized Nationhood, And The Post-Climate Era’ (2011) 2 *Climate Law* 345, 346, DOI: 10.3233/CL-2011-040.
- 10 Stefan Rahmstorf, Grant Foster & Anny Cazenave, ‘Comparing climate projections to observations up to 2011’ (2012) 7 *Environmental Research Letters*, DOI: 10.1088/1748-9326/7/4/044035.
- 11 John Church & Neil White, ‘A 20th century acceleration in global sea level rise’ (2006) 33(1) *Geophysical Research Letters*, 1.
- 12 IPCC Working Group II, Fourth assessment report ‘Impacts, adaptation and vulnerability’ (2007) <<http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter17.pdf> 736>; U.S. Department of Commerce, ‘New study shows climate change largely irreversible’ (2009) National Oceanic and Atmospheric Administration <http://www.noaanews.noaa.gov/stories2009/20090126_climate.html> accessed 25 April 2015.
- 13 *ibid* 87.
- 14 Maxine Burkett, (n. 9) 345.
- 15 Selma Oliver, ‘A New Challenge to International Law: The Disappearance of the Entire Territory of a State’ (2009) 16 *International Journal on Minority and Group Rights* 209, 213, DOI 10.1163/157181109X427743.
- 16 Montevideo Convention on the Rights and Duties of States (adopted on 26 December 1933, entered into force 26 December 1934) 165 *LNTS* 19 (Montevideo Convention) art 1.
- 17 *cf* Atapattu (n. 3) 14.

meet the criterion of possessing a 'defined territory'. As it stands today territory plays a fundamental role in international law, a view supported by Gagain who describes the notion of territory as a 'vital element' to statehood and also by Atapattu who regards territory as playing 'a crucial role in relation to statehood and sovereignty'.¹⁸ A crucial part of this investigation is therefore to determine whether possessing a defined territory is a condition *sine qua non* for sovereignty, or if fulfilment of the remaining criteria is sufficient. According to Rayfuse, 'international law already recognizes that sovereignty and nation may be separated from territory'.¹⁹ Given the interrelatedness of the criteria, however, it is imperative to redefine concepts such as 'permanent population' and 'effective government' independently of the concept of territory. The concept of 'permanent' may rapidly lose meaning in the context of a dispersed population, perhaps spread over several states after fleeing their homes. It could perhaps be identified by participation through voting, or possession of a special passport for populations displaced due to climate change. Effective government would be complex to redefine without the territorial element, as governing implies jurisdiction over a territory. However, both historical and current cases illustrate the possibility of a non-territorial conception of effective government. Some scholars have argued that the multination 'millet' system of the Ottoman Empire involved autonomy without territory for religious communities that were responsible for among other things, group legal affairs and education.²⁰ Frey challenges the notion 'that governments must have a well-defined territorial monopoly [...] in line with the emergence of virtual governments witnessed over the recent past'.²¹ These 'virtual governments', he suggests, include intergovernmental international organisations such as the UN or the International Criminal Court in the Hague – that 'perform functions similar, if not identical, to the functions performed by states [...] and] are made up of member countries, but they have no monopoly power over a territory';²² religious organisations like the Catholic Church – the 'tiny' territory in Rome being less important than the allegiance of members; profit-making global firms; and cultural organisations like FIFA – that have 'huge resources at their disposal' and 'impose rules on their members, have a

18 cf Oliver (n. 15) 238; Gagain (n. 6) 91; Atapattu (n. 3) 15.

19 Rosemary Rayfuse, 'W(h)ither Tuvalu? International Law and Disappearing States' (2009) 9 University of New South Wales Faculty of Law Research Series 1, 7, 11.

20 Anthony G McGrew & Paul Lewis, *Global Politics: Globalization and the Nation-State* (John Wiley & Sons, 2013).

21 Bruno S. Frey, 'A Utopia? Government without Territorial Monopoly' (2001) 6(1) *The Independent Review*, 99, 110.

22 *ibid* 100–1.

foreign policy, distribute development aid, and so forth'.²³ Frey's virtual governments nonetheless depend on the continued consent of states to exercise these autonomous functions. In short, the Montevideo Convention's criteria pose significant challenges to this investigation, as the island states' dilemma cannot neatly be resolved by current conceptions of statehood. Nevertheless, island states could retain their sovereignty, provided that it is possible to reconceptualise current notions of statehood and the other criteria (permanent population, effective government, and recognition by other states) independently of territory. Regarding the definition of sovereignty, it has been defined as signifying:

Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State [...]. Territorial sovereignty is, in general, a situation recognised and delimited in space, either by so-called natural frontiers as recognised by international law or by outward signs of delimitation that are undisputed, or else by legal engagements entered into between interested neighbours, such as frontier conventions, or by acts of recognition of States within fixed... boundaries.²⁴

However, for the purposes of this investigation, sovereignty will be defined as supreme control and authority of a state over internal affairs including law making.²⁵ Consequently, the possibility of sovereignty being independent of the possession of a defined territory is still latent. While the notion of internal affairs could be interpreted as distinct from external affairs and thus implying a territorial element, scholars such as Burkett and Rayfuse argue that states can have affairs internal to the 'nation *ex-situ*' or 'state in exile'. The demarcation would therefore be the community that remains – the population, not the territory. The right to self-determination may bridge the old conception of sovereignty to a newer, more flexible conception. This was evident when in clarifying the legal position of states during the dissolution of Yugoslavia, the European Community's Badinter Committee raised the possibility of different sovereign powers for different nationalities within a single state.²⁶ Similarly,

²³ *ibid.*

²⁴ *United States v Netherlands* [1928] II RIAA 829.

²⁵ Oxford Reference Dictionary 'Sovereignty' <<http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100520397>> accessed 21 April 2015.

²⁶ 'In the Committee's view one possible consequence of [the right of self-determination] might be for the members of the Serbian population in Bosnia-Herzegovina and Croatia to

the law-making aspect in the definition of sovereignty has traditionally had a territorial component.²⁷ However, law can be linked to a group of people, as is the case for aboriginal customary law in Australia.²⁸ Certain legislative privileges could rest with the deterritorialised state. This viewpoint presents an alternative conception of law and offers a non-territorial way of defining the law-making component of sovereignty. However, as it stands, nationalism provides little flexibility in sharing autonomy, which includes law making.

This paper will now demonstrate scientifically that island states are in danger. It will focus particularly on three states facing climate change impacts; specifically Tuvalu, the Maldives, and Kiribati. This will be followed by exploration of three possibilities currently being considered by island states to preserve their sovereignty: construction of artificial islands; land acquisition within another state; and resettlement of populations (such as through *ex-situ* nations based on a trusteeship system). Given the current importance attributed to territory, artificial islands and land acquisition from other states are more promising options for preserving the sovereignty of island states over the third possibility, namely the collective resettlement of entire populations. Discussing this last possibility allows the reconsideration of the concepts of statehood and sovereignty with regard to the system of nation-states and the need for possession of territory. In terms of what current international law offers for preserving island states' sovereignty, a territorial conception of sovereignty is preferred. However, not all states will have the luxury of building artificial islands or acquiring land in conformity with such an approach to sovereignty, and so it is necessary to explore practical implementation of a non-territorial conception of sovereignty. This paper aims to showcase both sides of the debate, referring not only to scholars who argue for the necessity of territory for sovereignty, but also to scholars advocating for the continued existence of states without territory.

be recognized under agreements between the Republics as having the nationality of their choice, with all the rights and obligations which that entails with respect to the states concerned.' Badinter Committee, Opinion 2, (1992) ILM 1495, para 3 as cited in Robert McCorquodale, 'Group Rights' in Daniel Moeckli, Sangeeta Shah, & Sandesh Sivakumaran (eds), *International Human Rights Law* (2 edn, Oxford University Press 2014), 343.

27 Hans Kelsen, *General Theory of Norms* (Michael Hartney tr, Oxford University Press, 1991).

28 Australian Law Reform Commission 'The Recognition of Aboriginal Customary Laws and Traditions Today: Recognition through Legislation' Recognition of Australian Customary Laws (ALRC Report 31) <<http://www.alrc.gov.au/publications/6.%20The%20Recognition%20of%20Aboriginal%20Customary%20Laws%20and%20Traditions%20Today/recognition-thro-o>> accessed 20 May 2015.

2 Case Studies

This section will provide relevant background information on the three vulnerable islands – Tuvalu, the Maldives, and Kiribati – whose experiences and precautions will be discussed in later parts of the paper.

2.1 *Tuvalu*

Tuvalu has the third-smallest population of any sovereign state in the world, with 10,544 people.²⁹ It is located in the Pacific Ocean approximately halfway between Australia and Hawaii, and consists of nine coral atolls, or coral reefs enclosing a lagoon.³⁰ Apart from being particularly vulnerable to sea level rise and other extreme climate events, Tuvalu is at risk of losing its territory, sovereignty, and its culture.³¹ At its highest point it is just four meters above sea level. Tides reaching 3.4 metres in early 2015 had a huge impact on the island, causing several infrastructural damages.³² According to predictions, Tuvalu may disappear during the next 50 years.³³ Tuvalu's GDP is 39 million USD, or 3,200 USD per capita. The Tuvaluan economy depends significantly on a trust fund established by Australia, New Zealand and the UK in 1987.³⁴ Tuvalu's main industries are fishing, tourism.³⁵

29 cf Atapattu (n. 3) 11.

30 CIA World Factbook 'Tuvalu' <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/tv.html> accessed 18 April 2015; Encyclopaedia Britannica 'Atoll' (20 October 2013) <<http://www.britannica.com/EBchecked/topic/41543/atoll>> accessed 18 April 2015.

31 Atapattu, (n. 3) 11.

32 Kotra Krishna Kumar, 'Impact of Cyclone PAM on Rainwater Harvesting Prospects in the Pacific Region' (2015) 12 (4) *British Journal of Applied Science & Technology* 1, DOI: 10.9734/BJAST/2016/20526.

33 Vikram Odedra Kolmannskog, 'Future floods of refugees: A comment on climate change, conflict, and forced migration' (2008) Norwegian Refugee Council <http://www.migrationdr.org/publications/resource_guides/Migration_and_Climate_Change/Future_floods_of_refugees.pdf> accessed 25 April 2015; Anwen Roberts, 'Islanders without an island: What will become of Tuvalu's climate refugees?' (2007) 37 *Der Spiegel* <<http://www.spiegel.de/international/world/0,1518,505819,00.html>> accessed 25 April 2015; Margarita Windisch, 'Climate refugees – the hidden cost of climate change' (2008) *Green Left Online* <www.greenleft.org.au/node/40761> accessed 25 April 2015.

34 EACH-FOR, 'Environmental Change and Forced Migration Scenarios' (2009) 7 <<https://www.ehs.unu.edu/file/get/7739.pdf>> accessed on 18 April 2015.

35 Copra is the white part of the coconut used to make oil. See CIA World Factbook 'Tuvalu' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/tv.html>> accessed 18 April 2015.

2.2 *The Maldives*

The Maldives is a collection of 26 coral atolls located in the Indian Ocean, southwest of India.³⁶ The Maldives has a population of 393,595 people, 44 percent of which live within 100 metres of the coastline.³⁷ The IPCC has estimated that by 2100 the sea level will have risen by 50cm. Being the lowest-lying state in the world, it would take only a one-meter rise for the whole of the Maldives to disappear under water. Fourteen islands have already been evacuated due to inhabitability.³⁸ Other impacts of climate change have also caused not only homes and infrastructure damages, but also food crops due to saltwater flooding; shortages of water; and increased dengue and chikungunya epidemics.³⁹ Coral bleaching is also significant, with implications for food security.⁴⁰ Finally, for over a decade the Maldives has been experiencing climate-induced ocean swells that cause flooding, property damage, and the destruction of sea defences.⁴¹ The country's GDP is 4.254 billion USD, or 12 400 USD per capita, but it is estimated that by 2050 the Maldives will experience economic losses of over 2 percent GDP per year.⁴² Its main industries are 'tourism, fish processing, shipping, boat building, coconut processing, woven mats, rope, handicrafts, coral and sand mining'.⁴³

36 GCCA, 'Support to climate change adaptation and mitigation in Maldives' <<http://www.gcca.eu/national-programmes/asia/gcca-maldives>> accessed on 18 April 2015; Ben Goldfarb, 'Acute Water Shortage Leads to State of Emergency in the Maldives' (10 December 2014) Vice News <<https://news.vice.com/article/acute-water-shortage-leads-to-state-of-emergency-in-the-maldives>> accessed on 18 April 2015; Gagain, (n. 6) 85.

37 cf Atapattu (n. 3) 9; CIA World Factbook 'Maldives' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/mv.html>> accessed 18 April 2015.

38 Ben Doherty, 'Maldives warns of climate refugees' (January 7 2012) The Sydney Morning Herald <<http://www.smh.com.au/national/maldives-warns-of-climate-refugees-20120106-1p0og.html>> accessed on 18 April 2015.

39 GCCA, 'Support to climate change adaptation and mitigation in Maldives' <<http://www.gcca.eu/national-programmes/asia/gcca-maldives>> accessed on 18 April 2015.

40 IPCC Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change 'Impacts, Adaptation and Vulnerability' (2014) Cambridge University Press, 1621.

41 *ibid*, 1631.

42 ADB, 'Maldives Most At-Risk Economy in South Asia from Climate Change - Report' 19 August 2014 <<http://www.adb.org/news/maldives-most-risk-economy-south-asia-climate-change-report>> accessed on 17 April 2015.

43 CIA World Factbook 'Maldives' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/mv.html>> accessed 18 April 2015.

2.3 *Kiribati*

Located in the Pacific Ocean, Kiribati is a collection of 33 coral atolls located between Tuvalu and Hawaii.⁴⁴ Kiribati has a population of just over 100,000 people.⁴⁵ It is estimated that in 30 years Kiribati will be completely submerged.⁴⁶ Signs of climate change impact on Kiribati are an increase in temperatures; annual rainfall; sea level; and ocean acidification.⁴⁷ Growing food shortages are linked to climate change with seawater contaminating the state's sources of fresh water, and coral bleaching severely impacting reef ecosystems.⁴⁸ An increase of both temperature and level of carbon dioxide has caused a coral bleaching with nearly 100 percent coral mortality in the Phoenix Islands.⁴⁹ This has repercussions on a vital source of food and income. The relocation of entire villages within Kiribati such as Tebunginako demonstrates that Kiribati will face an increasing erosion and rising sea level.⁵⁰ Endemic dengue has increased in incidence, along with malaria.⁵¹ In addition, like Tuvalu, Kiribati is experiencing ciguatera fish poisoning, a food-borne illness acquired from eating fish, which has been rising due to the increasing water temperature.⁵² The country's GDP is 164 million USD, or 1 600 USD per capita.⁵³ Its two main industries are fishing and handicrafts.⁵⁴ The costs of protection and reparation of damages caused by coastal flooding is estimated to be

44 CIA World Factbook 'Kiribati' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/kr.html>> accessed 18 April 2015.

45 Wilson Dizard 'Plagued by sea-level rise, Kiribati buys land in Fiji' (July 1 2014) Al Jazeera America <<http://america.aljazeera.com/articles/2014/7/1/kiribati-climatechange.html>> accessed on 18 April 2015.

46 *ibid.*

47 Kiribati Climate Change, 'Changing climate' <<http://www.climate.gov.ki/changing-climate/>> accessed on 18 April 2015.

48 Laurence Caramel 'Besieged by the rising tides of climate change, Kiribati buys land in Fiji' (1 July 2014) The Guardian <<http://www.theguardian.com/environment/2014/jul/01/kiribati-climate-change-fiji-vanua-levu>> accessed on 18 April 2015.

49 IPCC Working Group II (n. 40) 1621.

50 Randy Astaiza, '11 Islands That Will Vanish When Sea Levels Rise' (12 October 2012) Business Insider <http://www.businessinsider.com/islands-threatened-by-climate-change-2012-10?op=1&IR=T> accessed on 18 April 2015.

51 L Russell, 'Poverty, Climate Change and Health in Pacific Island Countries' Menzies Centre for Health Policy, (2009) University of Sydney, 55.

52 IPCC Working Group II (n. 40) 1625.

53 CIA World Factbook 'Kiribati' <<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/kr.html>> accessed 18 April 2015.

54 *ibid.*

several percentages of their GDP every year, specifically 4.8% GDP for Tuvalu and 8.6% GDP for Kiribati.⁵⁵

3 Possibilities and Obstacles

Since the 1980s, the governments of Tuvalu, the Maldives and Kiribati have grappled with the possibility of having to relocate their populations.⁵⁶ It has been reported that the Prime Minister of Tuvalu engaged in talks with Australia during 2008 with the goal of securing the relocation of the Tuvalu population when the time comes.⁵⁷ This relocation would most likely take the form of permanent resident visas and the loss of sovereignty of the island state. However, it would not exclude the possibility of the Tuvaluan population then exercising its right to self-determination. This section will consider options under international law that may permit small island states to preserve their sovereignty.

The notion that having a defined territory is a prerequisite for statehood is not universally agreed upon, including in the context of disappearing islands. International law has no provisions to deal with a state losing its entire territory, as this has never happened. However, there are various examples of territories that have been partially lost and the state has lived on, suggesting that international law can cope with such a phenomenon. Scholars have argued that state practice is in favour of continuing to recognise statehood even without all criteria being met.⁵⁸ Atapattu writes that it is difficult for a 'firmly established' state to become extinct, and that therefore it is possible that to be without territory does not necessarily mean to be without sovereignty.⁵⁹ The example of the *Order of Malta* is frequently used to show that an entity without territory can still be recognised as a sovereign state, with embassies in 59

55 IPCC Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change 'Impacts, Adaptation and Vulnerability' (2014) Cambridge University Press, 392.

56 cf Rayfuse (n. 19) 7.

57 Brad Couch, 'Sinking Tuvalu Wants Our Help as Ocean Levels Rise' (3 October 2008) Perth Now <<http://www.perthnow.com.au/news/sinking-tuvalu-wants-our-help/story-e6frg12c-111117662797>> accessed 25 April 2015.

58 Jane McAdam, 'Disappearing States', Statelessness and the Boundaries of International Law' (2010) UNSW Law Research Paper No. 2010-2, 17; James Crawford, *The Creation of States in International Law* (Oxford University Press 2006), 417; cf Burkett (n. 9) 345; Atapattu, (n. 3) 14.

59 cf Atapattu, (n. 3) 14.

states despite losing sovereignty of the Maltese islands at the end of the 18th century.⁶⁰ Gagain concludes that this example demonstrates that a submerged island state could thus become a '*sui generis* international entity' if states continue to recognise it.⁶¹ However, it is an exception to the rule – other scholars have based their research on the assumption that territory is a necessary element of statehood.⁶²

It seems that whatever option is chosen, small island developing states will need the assistance (financial or otherwise) of larger developed states to relocate populations. While ideally states would assist small island developing states to preserve their sovereignty, there is no legal obligation which regulates cooperation between states in this case, and it is unlikely to happen. The principle of territorial integrity is protected rigorously by states in the current system of nation-states. However, in the case of financial assistance required, countries most responsible for anthropogenic climate change should arguably contribute to the costs of adapting to climate change, including relocating populations. The preamble to the United Framework Convention on Climate Change (UNFCCC) specifically refers to Small Island States, and developed countries have made a pledge to assist vulnerable developing countries with the costs of adaptation to climate change.⁶³ Atapattu argues that this pledge suggests that developed countries should assist small island states with funding climate change adaptation measures. However, it has not yet been established whether this obligation on developed countries stretch to assisting with relocation of populations.⁶⁴ More broadly, under article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR):

Each State Party [...] undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the...Covenant.⁶⁵

60 cf Gagain (n. 6) 93; Susin Park, 'Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States' (2011) Division of International Protection United Nations High Commissioner for Refugees, UN Doc PPLA/2011/04; Rayfuse (n. 19) 10.

61 cf Gagain (n. 6) 93.

62 cf Gagain (n. 6) 77; Rayfuse (n. 20); Oliver (n. 15) 238.

63 United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) Treaty Doc No. 102-38 (UNFCCC).

64 cf Atapattu, (n. 3) 16.

65 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

While international law principles included in article 3 of the UNFCCC (such as the *common but differentiated responsibility* principle and the *polluter pays* principle) are relevant to this discussion, they are not politically favourable to developed-country member states.⁶⁶ Compliance with international law is dependent on both capacity and the intent of a state.⁶⁷ Thus the possibilities which international law presents in theory for preserving sovereignty in this context are useless in practice if they depend on the political will of states. Island States may soon request an advisory opinion from the International Court of Justice regarding states' legal obligations in the context of climate change.⁶⁸ This may clarify the possibilities for island states to preserve their sovereignty.

3.1 *Artificial Islands*

Artificial islands have been proposed as a means of transferring the territory – and the accompanying rights of possessing territory – both of which island states will lose as sea levels rise.⁶⁹ Some island states have already commenced this process as part of adaptation to climate change measures. Hulhumalé, an artificial island, has been described as a 'modern Noah's Ark' for the Maldives in the case that the territory is fully submerged.⁷⁰ Hulhumalé is intended to hold 60,000 people.⁷¹ In 2011, the Kiribati president also announced that he was considering 2 billion USD plans to build structures that would work in a similar fashion to oilrigs.⁷² The advantages of creating artificial islands are clear: the state will continue to have land, there will no longer be vulnerability to sea level rise, and states would *prima facie* continue to have access to resources in the maritime zone. The population can have its own place, as compared to other options that would require mixing potentially conflicting cultures.⁷³

66 cf Atapattu, (n. 3) 18.

67 Nina E. Bafundo, 'Compliance with the Ozone Treaty: Weak States and the Principle of Common but Differentiated Responsibility' (2006) 21 (3) *Am U Int'l L Rev* 461, 472.

68 cf Atapattu, (n. 3) 12.

69 cf Gagain (n. 6) 90.

70 *ibid* 82.

71 *ibid* 86.

72 Kathy Marks, 'Sinking Pacific island Kiribati considers moving to a man-made alternative' (8 September 2011) *The Independent* <<http://www.independent.co.uk/environment/climate-change/sinking-pacific-island-kiribati-considers-moving-to-a-manmade-alternative-2350964.html>> accessed 20 April 2015.

73 Ilan Kelman, 'Island Security and Disaster Diplomacy in the Context of Climate Change' (2006) 63 *Les Cahiers de la Sécurité*, 61, 71 <<http://www.disasterdiplomacy.org/kelman2006cce.pdf>> accessed 20 April 2015.

While artificial islands appear to be an effective solution to retaining statehood, under article 121 the Law of the Sea Convention, these type of islands cannot legally have maritime zones. Gagain argues that the Maldives should advocate for artificial island statehood so that maritime zones aren't affected by rising sea levels, and thus proposes amending the Law of the Sea Convention.⁷⁴ For this to be acceptable states may need to demonstrate the need for artificial islands to influence legal maritime zones, by showing that current maritime zones are threatened as their coastline disappears. It has been suggested that this threat could be determined officially by the IPCC or another scientific body.⁷⁵

There are various other practical hurdles to be overcome in order for artificial islands to become viable means of preserving island states' sovereignty. First, the financial costs are significant – for instance, the cost of construction for Hulhumalé was approximately 63 million USD.⁷⁶ Nevertheless, it has been argued that this money will be better spent on artificial islands (so that citizens can remain in their existing location) rather than on buying land in another state and relocating the population.⁷⁷ Secondly, the environmental impact of artificial islands is far from negligible. For example, Hulhumalé has caused coastal erosion on neighbouring islands. This effect was seen in the case of 36 artificial islands of Gayoom, which led to sea current changes severe enough to erode the coast.⁷⁸ It may be necessary to alter current international law or create new legal instruments to comprehensively deal with artificial islands replacing states. A new instrument would need to take into account the environmental risks mentioned above. The *precautionary principle* in international environmental law may be an obstacle in this regard.⁷⁹ Yet perhaps the biggest obstacle will be obtaining consensus in the international community on the legal status of artificial islands.⁸⁰ Modifying

74 cf Gagain (n. 6) 82.

75 *ibid* 108.

76 *ibid* 119.

77 *ibid* 119.

78 *ibid* 120.

79 The precautionary principle suggests that where scientific uncertainty exists about potential serious or irreversible damage, a precautionary approach should be taken. It is controversial because opponents feel it threatens to over-regulate and thus limit human activity. See also Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (3rd edn, Cambridge University Press 2012) 217–18.

80 *ibid* 120; For instance, international controversy surrounds the South China Sea where China is reclaiming land by dredging sand from the sea floor and pumping it onto reefs to form new land. The drafting of international law that risks legitimising these artificial

international law can be a long process. In brief, the approach of building artificial islands will only be successful if the definition of maritime zones can be stretched, if there is sufficient funding, and if international environmental law allows such structures.

3.2 *Land Acquisition*

If a state wishes to preserve its sovereignty without foregoing the territory criterion, there are various legal pathways to acquire land such as by treaties of cession, purchasing land, or acquiring land as a gift. However, land acquisition options depend fully on the political will of the host state, and as such, it is unlikely that island states will retain their sovereignty in practice, regardless of the possibilities that international law presents.

In the Maldives, the long-term adaptation strategy was the establishment of a sovereign wealth fund to facilitate the purchase of new land and the relocation of the population should it become necessary.⁸¹ A Kiribati minister told the UN Human Rights Council in January 2015 that the government was buying land so that when its islands are no longer habitable, the people will have the ability to 'migrate with dignity'.⁸² Both Kiribati and Tuvalu have looked to New Zealand and Australia to relocate their populations.⁸³ Some historical examples of states purchasing land from another include when Russia sold Alaska in 1867, albeit to the benefit of Russia as well as the United States;⁸⁴ the Tuvaluan Vaitupu people purchasing land from Fiji (Kioa island in 1947);⁸⁵ and the Banabans from Kiribati purchasing Rabi island in Fiji in 1945.⁸⁶ Kiribati purchased land in 2014, buying land on Vanua Levu in Fiji for

islands would be highly controversial. Rupert Wingfield-Hayes, 'China's Island Factory' *BBC News* (9 September 2014) <<http://www.bbc.co.uk/news/resources/idt-1446c419-fc55-4a07-9527-a6199f5dcoe2>> accessed 27 November 2015.

81 cf Gagain (n. 6) 86; Ben Doherty, 'Maldives warns of climate refugees' (January 7 2012) *The Sydney Morning Herald* <<http://www.smh.com.au/national/maldives-warns-of-climate-refugees-20120106-1p0og.html>> accessed on 18 April 2015.

82 Rupert Colville, UNHCR Spokesperson, 'Press briefing note on Indonesia / death penalty and Climate Change and Human Rights' (Geneva, 6 March 2015) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15654&LangID=E>> accessed 15 April 2015.

83 cf McAdam (n. 58) 16.

84 Oliver, (n. 15) 239.

85 Ilan Kelman, 'Difficult decisions: Migration from Small Island Developing States under Climate Change' (2015) Institute for Risk & Disaster Reduction and Institute for Global Health, University College, DOI: 10.1002/2014EF000278.

86 cf McAdam (n. 58) 17.

8.77 million USD.⁸⁷ If the population is successfully relocated to another state, the island state will not continue to have the same legal status. Unless provided for in a legal agreement, the land will be bought as a private property purchase with no accompanying rights for citizens, and the laws of the selling country will apply. In a scenario where the host state wishes to reclaim the purchased land, international law will not adequately prevent it.⁸⁸ The principle of territorial integrity will once again be a fundamental obstacle in the preservation of island state sovereignty.

Another possibility is the acquisition of new territory through a treaty of cession.⁸⁹ This would ensure that the state retains its legal status and its existing maritime zones, regardless of how far away its populations reside. There is already precedent for this possibility; after a volcanic eruption in Iceland, which occurred during the 1870s, approximately 20,000 Icelanders fled. These people made an agreement with the Canadian government, a piece of land was given, and the colony of New Iceland was formed.⁹⁰ Acquisition through a treaty of cession may challenge the principle of territorial integrity. It is thus most unlikely that this means of land acquisition would be politically viable.

Alternatively, land can technically be acquired as a gift. Austria gave Venice to France as a gift, before France gave it to Italy in 1866, demonstrating a precedent for this option.⁹¹ In reality however, this option cannot be relied upon as it is fully dependent on the will of states and there has been no indication that any state is willing to give land as a gift in the context of climate change adaptation.

Finally, an alternative course of action suggested for island states is merging with another state.⁹² Tuvalu has already discussed this option with New Zealand (which agreed) and Australia (which declined). However, New Zealand agreed to accept only 75 Tuvaluans per year on the condition that migrant Tuvaluans be 'of good health, good character, have a reasonable standard of English and be under 56 years of age'.⁹³ This outcome demonstrates the states'

87 Wilson Dizard 'Plagued by sea-level rise, Kiribati buys land in Fiji' (July 1 2014) Al Jazeera America <<http://america.aljazeera.com/articles/2014/7/1/kiribati-climatechange.html>> accessed on 18 April 2015.

88 cf McAdam (n. 58) 117.

89 Alfred H. A. Soons, 'The Effects of a Rising Sea Level on Maritime Limits and Boundaries' (2009) 37(2) *NILR* 207, 230.

90 cf Rayfuse (n. 19) 8.

91 cf Oliver (n. 15) 238.

92 cf Rayfuse (n. 19) 8.

93 New Zealand Immigration 'Skilled Migrant Category: Expression of Interest Guide' (2015) <http://www.immigration.govt.nz/NR/rdonlyres/E741D6F6-7670-48E1-B824-69B3959461D4/0/1NZ1101.pdf> accessed 25 April 2015.

unwillingness to absorb populations.⁹⁴ This is not a fair solution, as it leaves those who have barely contributed to climate change at the mercy of those who have been most responsible for impacting the climate.⁹⁵ This is inconsistent with the international law *polluter pays* and *common-but-differentiated responsibility* principles. The only foreseeably viable approach to preserve sovereignty is the population exercising its right to self-determination, or merging the states into a federation in order for the island state to retain some law-making capacity.

In any case, the challenge will be finding a state that is prepared to forego some of its territory.⁹⁶ Next, it will be necessary to fund such a purchase. Oliver explores whether international law provides for the collection of funds in this context.⁹⁷ She concludes that international human rights law will be inadequate in facilitating the collection of financial aid for the purpose of acquiring new territory.⁹⁸ Environmental law seems to offer more promising assistance. The viability of this option would be contingent on the state retaining its legal *status quo*, in order for the UNFCCC obligations to be applied. The gradual disappearance of the island states means that the territory criterion will likely be present at the moment when financial assistance is requested. As mentioned above, even without territory, Ataputtu, McAdam and Gagain have suggested that the statehood may not be affected. Article 4(4) of the UNFCCC refers to financial costs for adaptation, so it would be necessary to argue that buying the territory is indeed considered part of adaptation. A UNFCCC fund could be set up to help purchase a new territory, putting further pressure on states by referring to Articles 55 and 56 of the UN Charter on International Economic and Social Co-Operation. Nevertheless, the scope of the obligations may not reach as far as relocation of a state's entire population.⁹⁹ Once again, states are reluctant to give up sovereignty as a result of an international obligation,¹⁰⁰ and thus modifying international law can be not only a long process, but also risky, potentially leading to states withdrawing or reducing their obligations rather than extending them.

It has been predicted that conflict could occur if the incoming populations keep their old nationality, and that it is therefore more likely that people from

94 cf Rayfuse (n. 19) 9.

95 *ibid* 9.

96 cf Oliver (n. 15) 238.

97 *ibid* 239.

98 *ibid* 240.

99 *ibid* 240.

100 cf Oliver (n. 15) 242.

these island states become citizens of the host country.¹⁰¹ If this is the way states proceed with the issue of climate-displaced populations, there will be no hope for preserving the sovereignty of island states. Regardless, host-state citizens do not always welcome climate migrants. Villagers in Fiji have expressed concern that if too many migrants arrive, environmental issues, such as river pollution and erosion will worsen.¹⁰² In relation to some potential host states, island states are at risk of cultural misunderstandings ‘about the importance of land and cultural identity’.¹⁰³ This challenge was demonstrated when, after extensive phosphate mining in Nauru, Australia entered into negotiations with Nauru about the resettlement of the Nauruan population in Australia.¹⁰⁴ Australia proposed that the population would manage its local administration and could make domestic laws applicable to its own community, while simultaneously acquiring Australian citizenship. However, Nauru rejected the offer stating a wish to remain ‘as a Nauruan people in the fullest sense of the term’.¹⁰⁵ So, in the context of island states and climate change, the land where the incoming people will reside must be habitable (with at least fresh water and a place to grow food)¹⁰⁶ but also of no great importance to the population of the host state – difficult requirements to fulfil. In the unlikely scenario that the island state keeps its law-making capacity, such as by treaty of cession, the country that has ceded land may not approve practices occurring on the newly annexed land. This could be detrimental to relations between the new neighbours, and could potentially lead to tensions. Even in the case of internal exercising of self-determination, where the island state no longer has a territory and the population is absorbed into the host-state, it may allocate legislative powers to the group of islanders (as in Scotland and Wales in the UK, or the cantons in Switzerland).¹⁰⁷ Detailed bilateral agreements would need to ensure that the powers are limited to certain areas. In any case, a state giving up its territory or legislative powers to another would not do so lightly, especially given the fact that some island states do not respect international human rights standards in their domestic law. For example, in the Maldives, protest is sometimes criminalised.¹⁰⁸ In Tonga, crimes can be punished by whipping or

101 cf Atapattu, (n. 3) 19.

102 Scott Leckie, *Land Solutions for Climate Displacement*, (Routledge, 2014), 35.

103 cf McAdam (n. 58) 16.

104 *Case concerning Phosphate Lands in Nauru (Nauru v Australia)* ‘Preliminary Objections of the Government of Australia’ [1990] ICJ vol 1, as cited in McAdam, (n. 58) 19.

105 *ibid* 18.

106 cf Kelman (n. 73) 71.

107 cf McCorquodale (n. 26) 342.

108 cf Kelman (n. 73) 71.

death by hanging.¹⁰⁹ Australia, for example, is already faced with harmonising the conflicting Aboriginal customary law and common law. A compromise could be allocating limited legislative powers solely regarding cultural and linguistic matters.¹¹⁰ However, all these accommodations are once again conditional on the will of states taking in populations, and are therefore far from reliable as an option for preserving island state sovereignty.

In brief, land acquisition, as a means of preserving the sovereignty of island states, has several drawbacks: the will of states; the funding of such an acquisition where necessary; the threat to a sense of community and culture; and the risk of conflict. Moreover, some land acquisition options suggested by scholars do not preserve the sovereignty of island states.

3.3 *Collective Population Resettlement*

Sovereignty will be difficult to preserve in the events of collective resettlement, under current international law. Citizens may be able to maintain symbolic citizenship, but they will be under the jurisdiction of the host state, unless a new international law category may be created. One suggestion is 'the Nation *Ex-Situ*', for sovereign states whose citizens, while in various new locations, still require an entity to protect their rights and act in their best interests on their behalf.¹¹¹ A similar proposal is the 'deterritorialised state'.¹¹²

Burkett bases the proposed nation *ex-situ* on the UN International Trusteeship System.¹¹³ Rayfuse similarly advocates for a trusteeship system to coordinate states without territory in the global arena.¹¹⁴ This UN trusteeship system in a contemporary climate change context aims to allow elected citizens to be trustees so that self-governance and self-determination can continue.¹¹⁵ Originally the idea was that post-colonial territories would be held under supervision in trust by another state(s) or the UN.¹¹⁶ Chapter XII of the UN Charter provides for an international trusteeship system for the purposes of, *inter alia*, progressive development towards self-government (with or without independence); respect for human rights; and furthering international peace

109 *ibid* 71.

110 As is the case in Switzerland for its cantons. cf McCorquodale (n. 26) 342.

111 cf Burkett (n. 9) 346.

112 cf Rayfuse (n. 19) 11.

113 cf Burkett (n. 9) 363.

114 cf Rayfuse (n. 19) 13.

115 cf Burkett (n. 9) 364.

116 *ibid* 364.

and security.¹¹⁷ The interventions in Bosnia, Kosovo, East Timor, Afghanistan and Iraq ‘exhibit the continued viability of the political trusteeship concept’, and were undertaken ‘for the purpose of preparing the trust territory for eventual self-rule’.¹¹⁸ Perritt describes in detail what is needed for successful political trusteeship: clear defining of the trusteeship including how the sovereignty is legally held; legitimacy at the international level as well as internally; and announcement and follow-through of an exit strategy.¹¹⁹ Burkett argues that the trusteeship arrangement should have no set time period, whereas Rayfuse argues that it should be expressly transitional with a defined limit of either 30 or 100 years.¹²⁰ While it does find a compromise between maintaining some level of autonomy on the one hand, and losing territory on the other, the proposal of the nation *ex-situ* based on the UN trusteeship system is idealistic. It assumes that the concept of island states becoming nations *ex-situ* will be embraced by the international community, and that the trustee, serving as an interim body, will be willing to ‘combine with the dislocated governing body to form a single locus of power’.¹²¹

Rayfuse similarly argues for the recognition of a new category: the ‘deterritorialised state’.¹²² This would involve a ‘government’ or ‘authority’ elected by the registered voters of the state, acting as a trustee of the assets of the state for the benefit of its citizens in their new location. While it cannot exercise its sovereignty over the new land, it can represent the state at the international level as well as in relations with the host state(s). Examples of this might include the protection of ‘the right to maintain their original personal, property, cultural, linguistic and nationality rights for themselves and their descendants while simultaneously being granted full citizenship rights in the new ‘host’ state or states’.¹²³ This concept of the deterritorialised state is not new to international law, as can be demonstrated by the Holy See, the Palestinian Territories, and the Tibetans.¹²⁴ Governments in exile have demonstrated that statehood can be maintained temporarily.¹²⁵ However, the islands states face a

117 Henry H Perritt, Jr ‘Structures and Standards for Political Trusteeship’ (2003) *UCLA J Int’l L & Foreign Aff* 385, 397.

118 *ibid* 398.

119 *ibid* 386.

120 *cf* Rayfuse (n. 19) 13, 366.

121 *Ibid* 366.

122 *ibid* 9.

123 *ibid* 11.

124 *ibid* 10–11.

125 McAdam (n. 58); U.N. High Commissioner For Refugees, ‘Climate Change And Statelessness: An Overview’ (May 15, 2009) <<http://www.refworld.org/docid/4a2d189d3.html>> accessed on 18 April 2015.

permanent loss of territory. Hence, the difficulty to preserve sovereignty. International law allows entities other than states to exercise sovereignty to an extent, (for example the European Union or Taiwan) regardless of the fact that they are not strictly recognised as a state, and that they do not fulfil the four criteria for statehood.¹²⁶ For these reasons, international law has the potential to recognise the sovereign rights of disappearing islands. Rayfuse argues that an international agreement to freeze maritime baselines is going to be central for three reasons: the state will be able to continue to use its maritime zones for bargaining purposes; it could be a way for its 'continued sovereign existence'; and it will contribute to the livelihood of the population.¹²⁷ Atapattu has also supported more generally the idea of a 'new legal regime'.¹²⁸

In the context of climate change, the meaning of the state under international law is and should continue to be challenged. Arguably since the Peace of Westphalia (1648) states have been organized in a particular way, and there is a reluctance to move away from the Westphalian traditional structure.¹²⁹ However, Burkett argues that such an exceptional situation as fully submerged states could justify a transformation of the international state structure as we enter the 'post-climate era' – a new legal and political chapter for humanity.¹³⁰ Group rights in general have been seen as 'a reflection of the changing values in the international community away from a state-based and solely state-interested system towards a more flexible system'.¹³¹ Unfortunately, however, modifying international law can be a long process. As Oliver acknowledges, states are reluctant to sacrifice some of their sovereignty for international law in the first place.¹³² In practice, Australia has demonstrated this reluctance with strict policies on migration.¹³³

Furthermore, the right to self-determination, as expressed in article 1 of the ICCPR and the ICESCR, is highly relevant in this discussion. The right to self-determination of those living on sinking islands is threatened by climate change. The question that needs to be asked is: does the fact that the right to self-determination is a *jus cogens* rule and therefore *erga omnes*, result in their

126 cf Rayfuse (n. 19) 11.

127 *ibid.*

128 cf Atapattu, (n. 3) 34.

129 Azar Gat and Alexander Yakobson *Nations: The Long History and Deep Roots of Political Ethnicity and Nationalism* (CUP, 2013).

130 cf Burkett (n. 15) 347.

131 cf McCorquodale (n. 26) 345.

132 cf Oliver (n. 15) 242.

133 EACH-FOR, 'Environmental Change and Forced Migration Scenarios' (2009), 7 <<https://www.ehs.unu.edu/file/get/7739.pdf> accessed on 18 April 2015>.

being a global obligation for other states to ensure that disappearing states are not prevented from exercising this right?¹³⁴ Oliver has argued that observing the right to self-determination would oblige developed states to make it possible for island states to seek collective asylum or acquire land.¹³⁵ Atapattu is also confident about the applicability of the principle of self-determination, on the condition that there is land available in another state.¹³⁶ However, this last condition is a major hurdle, as host states frequently assert territorial integrity to limit exercise of the right to self-determination of the relocated State.¹³⁷ Internal self-determination would be a compromise, but this is not enough for preserving the sovereignty of island states – with the host-state having supreme authority over internal affairs and law making.

4 Conclusion

There are many avenues for attempting to preserve sovereignty under international law. Actually, it is potentially not even necessary to possess territory. This paper has considered just three possibilities: artificial islands, land acquisition and collective resettlement of populations. Artificial islands present various advantages, including the retention of territory and the same community. However there is significant work to be done before international law will recognize artificial islands as entities with maritime zones. Issues concerning the environmental impact of artificial islands, and funding to construct them, are likewise yet to be fully resolved. Land acquisition has potential for preserving island state sovereignty, *if* the territory acquired can be under the jurisdiction of the island state. This could be made possible through a treaty of cession, or if the land is given as a gift. However, this option is severely limited by the fact that it depends on the willingness of states to provide such land. The likelihood that land acquisition will preserve sovereignty is extremely small. Collective resettlement, the third option discussed, is least likely to preserve the sovereignty of island states. Even in the scenario of a nation *ex-situ*, or a deterritorialized state, the citizens will nonetheless be under the jurisdiction of the host state, at which point two of the four criteria for statehood will be missing. In the unlikely scenario that a host state agrees to such an arrangement, this

134 Eric A. Posner 'Erga Omnes Norms, Institutionalization, And Constitutionalism In International Law' (2009) 165(1) JITE 5.

135 cf Oliver (n. 15) 224.

136 cf Atapattu, (n. 3) 18.

137 cf McCorquodale (n. 26) 346.

could lead to confusion as island state and host state law will inevitably collide.

Clearly all of the options discussed have significant obstacles. The pathways considered here rely on acceptance of a particular definition of sovereignty; flexibility in the interpretation of the requirements for statehood; and significant good will from the international community. Given these numerous obstacles to preserving sovereignty with the current criteria for statehood, in the future, scholars should consider the international legal implications (particularly for human rights law) of loss of island state sovereignty and attempt to mitigate damage to the states' populations. At this early stage, however, no option should be ruled out. A combination of adaptation strategies must be implemented before it becomes clear what works best in practice. More general concerns are that the merging of different communities could lead to tension and conflict. As climate change impacts are felt increasingly across the globe, issues like water scarcity and food shortages will surely increase this tension. The populations of island states should endeavor to exercise and emphasize their human rights, particularly the right to self-determination. It should be noted that the socioeconomic conditions in some host-states might pose challenges for protecting human rights. Although the world will not face these challenges tomorrow, the longer we wait, the harder the problems will be to manage. International law needs to be modified to reflect the needs of the international community as we face these global challenges. The problem of island state sovereignty needs to be approached with flexibility, and open-mindedness to the notion of statehood. Nation-states are no longer an appropriate way of territorial division. The multi-cultural composition of populations outdates the current world order based on nationalism, now better suited to a system of multicultural entities, including populations of disappeared island states. Of vital importance is maintaining democratic representation of the island states' populations in their new homes – be it through a modified version of their current state, or in the government of the host-state. Cultural practices and sense of community should be taken into account in addressing climate-induced emigration.¹³⁸ Culture and identity are so strong that, despite imminent climate induced impacts, many Tuvaluans have chosen to stay on the disappearing island.¹³⁹ Populations must be in a position to continue to

138 Elaine Stratford, Carol Farbotko, & Heather Lazrus, 'Tuvalu, sovereignty and climate change: considering fenua, the archipelago and emigration' (2013) 8 (1) *Island Studies Journal*, 67; Burkett (n. 12) 345.

139 Mortreux, C. & J. Barnett, 'Climate change, migration and adaptation in Funafuti, Tuvalu' (2009) *Global Environmental Change*, 19(1), 105, DOI: 10.1016/j.gloenvcha.2008.09.006.

practice their cultures, languages, and religions so that even when their territory disappears, their history and traditions live on.

‘Whosoever desires constant success must change his conduct with the times’.

— NICCOLO MACHIAVELLI

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