

Receding maritime zones, uninhabitable states and climate exiles

How international law must adapt to climate change¹

International law is flexible and dynamic. It continuously adapts to unforeseen circumstances and new political demands, and it will have to adapt to climate change. Climate change challenges us to reconsider many areas of international law, from the management of transboundary natural resources to state liability for environmental damage.

This paper looks at three consequences of climate change: receding maritime zones, uninhabitable states, and “climate exiles”. Many states will be affected by these consequences, including small island developing states (SIDS) and low-lying coastal states.

Receding maritime zones

As maritime zones recede, coastal states may lose rights to lucrative economic resources. These include living resources such as fish and non-living resources such as minerals, oil, and gas. The submergence of a remote island could result in the loss of over 125,000 square nautical miles of maritime zones.² Competition for resources in these zones, combined with shifting and uncertain boundaries, could result in increased conflict between states.³ Low-lying coasts, such as the northern coasts of Sumatra and Java and southern coast of Kalimantan in Indonesia, will recede the most quickly.

Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS) maritime zones are measured from a baseline. The normal baseline is the “low-water line along the coast” with lines closing river mouths and bays.⁴ Special rules define baselines for reefs and establish straight baselines or archipelagic baselines under certain conditions.⁵

The baseline is used to define four maritime zones.⁶

- States have sovereignty over the territorial sea which extends to 12 nautical miles from the baseline.⁷

¹ By David Wei with Ruth Dawes and Iain Maxwell, FIELD.

² Jonathan Lusthaus, ‘Shifting Sands: Sea Level Rise, Maritime Boundaries and Inter-state Conflict’ (2010) 30(2) Politics 113, 116.

³ *ibid*; David D. Caron, ‘When Law Makes Climate Change Worse: Rethinking the Law of Baselines in Light of a Rising Sea Level’ (1990) 17 Ecology Law Quarterly 621, 635-36.

⁴ United Nations Convention on the Law of the Sea (10 December 1982, in force 16 November 1994) 21 ILM 1261 (1982) (UNCLOS) Arts. 5 (normal baseline), 9-10 (lines closing river mouths and bays).

⁵ UNCLOS Arts. 6 (reefs), 7 (straight baselines), 47-48 (archipelagic baselines).

⁶ The exclusive fisheries zone is not part of UNCLOS and has developed in customary international law. It overlaps the exclusive economic zone but limits the state’s jurisdiction to exploration and exploitation of living resources. A.H.A. Soons, ‘The Effects of a Rising Sea Level on Maritime Limits and Boundaries’ (1990) 37 NILR 207, 214.

- Adjacent to the territorial sea is the contiguous zone which runs for an additional 12 nautical miles from the baseline.⁸ In the contiguous zone, a state may prevent and punish infringement of customs, fiscal, immigration or sanitary laws within its territory or territorial sea.⁹
- The exclusive economic zone (EEZ) is also adjacent to the territorial sea but extends to 200 nautical miles from the baseline.¹⁰ A state generally has sovereign rights over the natural resources in its EEZ and their economic exploitation.¹¹ Other states possess the freedoms of navigation and overflight.¹²
- A state also has sovereign rights to explore and exploit the natural resources in its continental shelf.¹³ The continental shelf is defined to run to 200 nautical miles from the baseline even when it does not physically extend that far,¹⁴ and is generally limited to 350 nautical miles from the baseline when it physically extends further.¹⁵

Sea level rise is causing baselines to recede. Although UNCLOS defines maritime zones from a baseline, it does not explicitly address the effect of moving or “ambulatory” baselines.

Many scholars and practitioners have concluded that as the baseline recedes, so do a state’s maritime zones.¹⁶ The existence of two UNCLOS provisions which create more permanent boundaries could be interpreted to imply that all of the other provisions create moving ones.¹⁷

In response, commentators have explored many possible legal solutions to fix the current boundaries of maritime zones.¹⁸

Broadly interpreting UNCLOS Article 76(9)

Article 76(9) requires states to deposit information “permanently describing the outer limits of its continental shelf.”¹⁹ This may provide an argument for states to maintain their existing continental shelf.²⁰

⁷ UNCLOS Arts. 2-3.

⁸ UNCLOS Art. 33.

⁹ *ibid.*

¹⁰ UNCLOS Arts. 55, 57.

¹¹ UNCLOS Art. 56(1)(a).

¹² UNCLOS Art. 58(1).

¹³ UNCLOS Arts. 76-77.

¹⁴ UNCLOS Art. 76(1).

¹⁵ UNCLOS Art. 76(5)-(6).

¹⁶ “Because of the landward shift of the baseline, the outer limits of the territorial sea and EEZ will also shift landward accordingly.” Soons (n 6) 216. “[T]he [UNCLOS] appears to provide that . . . the outer boundary of the exclusive economic zone, the contiguous zone, and the territorial sea are ambulatory in that they will move with the baselines from which they are measured.” Caron (n 3) 635. “Many scholars have therefore considered the legal and physical boundary of these maritime zones to be ambulatory.” Charles Di Leva and Sachiko Morita, ‘Maritime Rights of Coastal States and Climate Change: Should States Adapt to Submerged Boundaries?’ World Bank Law and Development Working Paper Series No. 5, 18

<http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/L&D_number5.pdf> accessed 31 January 2011. “[A]s the baseline ambulates, so does each of the maritime zones measured from it.” *ibid* citing Michael Reed, ‘Shore and Sea Boundaries: The Development of International Maritime Boundary Principles through United States Practice’ (2000) U.S. Department of Commerce, Washington, DC.

¹⁷ David D. Caron, ‘Climate Change, Sea Level Rise and the Coming Uncertainty in Oceanic Boundaries: A Proposal to Avoid Conflict’ (2008) <http://works.bepress.com/david_caron/39> accessed 31 January 2011.

¹⁸ We do not address here the doctrine of historic waters. This doctrine treats waters over which a state, in deviation of the general rules of international law, has exercised clear, effective and uninterrupted sovereignty with the acquiescence of the international community, as maritime internal waters. Soons has considered adapting the doctrine to sea level rise and has formulated several objections. Soons (n 6) 223-25.

¹⁹ (emphasis added)

Broadly interpreting UNCLOS Article 7(2)

Article 7(2) fixes a straight baseline when “because of the presence of a delta and other natural conditions the coastline is highly unstable . . . notwithstanding subsequent regression of the low-water line” until it is changed by the coastal state. Article 7(2) was intended to ensure that the outer limits of the coastal state’s maritime zones do not change.²¹

Is it possible to interpret Article 7(2) broadly enough to fix baselines receding due to climate change? The negotiating history indicates that it was intended to apply only to deltas.²² But states could assert a broad interpretation through subsequent practice or treaty.

Permanence of declared baselines

Another possible solution is for states to argue that the existing declared baselines are permanent. As a practical matter, after the normal baseline is established, it remains in place until it is redrafted even if the coastline has moved.²³ Going further, some commentators suggest that the published charts legally determine the baseline even when the coastline has moved.²⁴ The feasibility of this solution will depend in part on whether states have a duty under international law to declare updated baselines.²⁵

Reinforcement of islands which form part of baselines

Under UNCLOS, islands can generate all four maritime zones.²⁶ In contrast, Article 121(3) states that “[r]ocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.”²⁷ Rocks are therefore entitled only to a territorial sea and contiguous zone. For states composed of many separate islands, the transformation of an island into a rock could result in the loss of a large EEZ and continental shelf zone.

What legally qualifies as a rock under the wording of Article 121(3) is not clear.²⁸ For example, what kind of “human habitation” or “economic life” is required to pass for an island?

States such as Iceland and Japan have reinforced small islands disappearing below sea level, at great expense, to try and prevent them from becoming rocks.²⁹ If successful, this would maintain the EEZ and continental shelf zones generated by these islands.

²⁰ Soons (n 6) 216-19 explores this possible solution. See Rosemary Rayfuse, ‘International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma’ (2010) UNSWLRS 52, 5.

²¹ Soons (n 6) 220.

²² Caron (n 3) 634-35, footnote 77.

²³ Caron (n 17) 9, footnote 20.

²⁴ Di Leva and Morita (n 16) 19, footnote 75; Rayfuse (n 20) 6.

²⁵ Soons, for example, suggests that states do have a duty to replace baselines which have disappeared underwater. Soons (n 6) 220.

²⁶ UNCLOS Art. 121(2). Art. 121(1) defines an island as “a naturally formed area of land, surrounded by water, which is above water at high tide.”

²⁷ UNCLOS Art. 121(3).

²⁸ “[T]he meaning of the apparently simple provision of Article 121, paragraph 3 is not easily identifiable either in the context of other provisions of [UNCLOS], or the *travaux préparatoires* . . . Nor can one find much guidance in the practice of States.” Barbara Kwiatkowska and Alfred H.A. Soons, ‘Entitlement to Maritime Areas of Rocks Which Cannot Sustain Human Habitation or Economic Life of Their Own’ (1990) 21 NYIL 139, 142. “[T]he literature generally acknowledges the impossibility of an authoritative interpretation of it . . .” Alex G. Oude Elferink, ‘Clarifying Article 121(3) of the Law of the Sea Convention: The Limits Set by the Nature of International Legal Processes’ (1998) IBRU Boundary and Security Bulletin Summer 1998, 58. See also Jonathan I. Charney, ‘Rocks That Cannot Sustain Human Habitation’ (1999) 93 AMJIL 863.

²⁹ Soons (n 6) 223, footnote 71; Lusthaus (n 2) 117.

Delimitation agreements

Bilateral or multilateral delimitation agreements between states may hold a maritime boundary in place. If delimitation agreements provide that a boundary is definitive, that boundary may continue to apply.³⁰ This could freeze both movable land-based boundaries, such as the median line between two coastal states, and fixed boundaries based on geographic coordinates.³¹

These are some of the possible legal avenues states can pursue to fix their maritime zones in the face of sea level rise. In the long run, sea level rise may cause a state to be rendered uninhabitable from storm surges and saltwater intrusion. This raises crucial questions. Would an uninhabitable state continue to exist? Would it retain sovereignty over maritime zones or would these be absorbed by the high seas, opening resource exploitation to other states? Could these maritime zones be used as a bargaining chip in a state's efforts to support its continued sovereignty and the livelihoods of its citizens?³²

Uninhabitable states

Very few states have become extinct during the UN Charter period and almost none involuntarily.³³ Although no modern state has ever ceased to exist due to sea level rise, that may become a reality. Two uninhabited Kiribati islands have already disappeared.³⁴

The most widely accepted criteria for the existence of a state are reflected in the 1933 Montevideo Convention on the Rights and Duties of States. Article 1 provides that a state should possess a permanent population, a defined territory, effective government, and the capacity to enter into relations with other states. The predominant view is that a state's existence in international law does not depend on the recognition of other states.³⁵ But in practice recognition remains important. It can resolve uncertain situations and regularise new ones.³⁶

There appears to be neither a minimum required territory nor a minimum required population for a state to exist.³⁷ A state can continue to exist despite ineffective government³⁸ or after the loss of substantial territory.³⁹ Most importantly, there is a strong presumption in favour of the continuity of an established state.⁴⁰

With foresight, commentators are exploring legal alternatives to protect the sovereignty of uninhabitable states.

³⁰ See Rayfuse (n 20) 5. Article 62(2) of the 1969 Vienna Convention on the Law of Treaties states that a fundamental change of circumstances may not be invoked to terminate or withdraw from a treaty if that treaty establishes a boundary.

³¹ For a general discussion of delimitation agreements, see Soons (n 6) 226-229.

³² Rosemary Rayfuse, 'W(h)ither Tuvalu? International Law and Disappearing States' (2009) UNSWLRS 9, 12; Rayfuse (n 20) 12.

³³ James Crawford, *The Creation of States in International Law* (2nd edn, Oxford University Press 2006) 715.

³⁴ Lilian Yamamoto and Miguel Esteban, 'Vanishing Island States and sovereignty' (2010) 53 *Ocean & Coastal Management* 1, 3.

³⁵ Crawford (n 33) 25. This is known as the declaratory theory of statehood, where "recognition of a new State is a political act, which is, in principle independent of the existence of the new State as a subject of international law." *ibid* 22.

³⁶ *ibid* 27.

³⁷ *ibid* 46-55. Vatican City has 0.4 square kilometres and a population of just over 800.

³⁸ *ibid* 56-7. Crawford uses the former Belgian Congo as an example of ineffective government in an existing state.

³⁹ *ibid* 673.

⁴⁰ *ibid* 701.

Acquisition of new territory from existing state

One option is for a threatened state to acquire territory from another state by treaty of cession,⁴¹ perhaps in exchange for rights over continuing maritime zones. But in practice it is difficult to see any state agreeing to cede a portion of useful territory.⁴²

Rayfuse notes one precedent for this solution. In the 1870s, tens of thousands of Icelanders were driven out of Iceland by poverty and a volcanic eruption. The Canadian government entered into an agreement which provided them with land, funds, livestock, and rights as both Canadian and Icelandic citizens. Their colony of New Iceland was eventually integrated into Canada.⁴³

Merger with existing state

Another option is merger by treaty with an existing state, possibly into some form of federation.⁴⁴ This would involve relocating the threatened state's population and effectively transferring its continuing maritime zones to the other state. As Rayfuse puts it, "[t]he disappeared state would basically have purchased its relocation with its maritime zones."⁴⁵

Government-in-exile

There are many examples of states, such as the Baltic states and Poland during World War II, which in the face of foreign occupation have continued to exist as governments-in-exile. When the foreign occupation is tainted by illegality, a very long time will be necessary to overcome the presumption of continuing statehood.⁴⁶

It would be difficult to extend governments-in-exile to uninhabitable states. An equivalent taint of illegality doesn't currently apply to states causing climate change, and the uninhabitable or submerged island state may never revert to its current condition.⁴⁷

Deterritorialised international personality

Some scholars point towards precedents which suggest that various aspects of sovereignty can be decoupled from the requirement of territory. One is the Sovereign Military Order of St John of Jerusalem, of Rhodes and of Malta, which after ejection from Malta by Napoleon in 1798, has retained many aspects of international personality. The Order retains sovereign immunity in countries that recognise it, has formal diplomatic relations with 102 states, and has permanent observer status at the United Nations.⁴⁸ Similarly, the Papal See was recognised as a state after being annexed by Italy in 1870, until it was granted sovereignty over Vatican City.⁴⁹

Rayfuse proposes a new category of international personality called the "deterritorialised state", consisting of a government or authority elected by registered voters which would act as trustee of the assets of the state for the benefit of its citizens.⁵⁰ This authority would

⁴¹ Soons (n 6) 230.

⁴² Rayfuse (n 32) 8.

⁴³ *ibid.*

⁴⁴ Soons (n 6) 230; Caron (n 3) 650; Rayfuse (n 32) 8.

⁴⁵ Rayfuse (n 32) 9.

⁴⁶ "The case of the Baltic States and the prevalence of the view that they 'reappeared' in the 1990s after fifty years 'abeyance' further supports the proposition that a very long time indeed will be required for effective control that is tainted by underlying illegality to displace the presumption of continuity of statehood." Crawford (n 33) 703.

⁴⁷ For a discussion of potential re-emergence of island states, see Yamamoto and Esteban (n 34) 7-8.

⁴⁸ Yamamoto and Esteban (n 34) 6.

⁴⁹ *ibid.*

⁵⁰ Rayfuse (n 32) 11.

continue to represent the rights and interests of citizens – such as their desire to retain their culture and traditions – vis-à-vis their new host state(s). The existence of deterritorialised states could be transitional, spanning one generation or one human lifetime.⁵¹

Additional questions arise when people emigrate from a state which will be rendered uninhabitable by climate change. Do they have the right to stay in another country? Can they – and should they – be considered refugees?

Climate exiles

Intrastate displacement is already occurring. The inhabitants of Papua New Guinea's Carteret Islands are reportedly preparing to leave for the mainland as saltwater intrusion makes traditional livelihoods and food sources impossible.⁵²

Climate induced displacement reveals a gap in international law. The 1951 Refugee Convention and its 1967 Protocol define "refugee" as any person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."⁵³

Commentators generally agree that this definition cannot be interpreted to include climate exiles – those forcibly displaced across international borders by the impacts of climate change.⁵⁴ Climate exiles remain governed by international human rights law, but this does not entitle them to admission and stay in another country. The refugee definition was not drafted with them in mind.⁵⁵ Climate exiles do not share an immutable characteristic which grounds their membership in a "particular social group". Their "persecution" lacks intent and is not an act of government. Unlike refugees, climate exiles can usually count on the protection of their state, even if it is limited.

Even though the large majority of climate migration will take place within states, we focus on climate exiles because they fall into this legal gap. However, many of the solutions proposed to assist climate exiles address intrastate climate induced displacement as well.

Expanded definition under the Refugee Convention

The Refugee Convention definition has been expanded in several regional contexts. The 1969 Organization of African Unity (OAU) Convention includes people compelled to leave their country "owing to . . . events seriously disturbing public order in either part or the whole

⁵¹ Rayfuse (n 20) 13.

⁵² Jane McAdam and Ben Saul, 'An Insecure Climate for Human Security? Climate-Induced Displacement and International Law' (2010) UNSWLRS 59, 7.

⁵³ Convention Relating to the Status of Refugees (28 July 1951, in force 22 April 1954) 189 UNTS 137 (Refugee Convention) Art. I(A)(2).

⁵⁴ We acknowledge the vigorous and nuanced scholarly debate on how to classify climate and/or environmental migrants. We use the term "climate exiles" instead of "climate refugees" to underscore that they do not have the same rights as refugees in international law, and that an amendment of the Refugee Convention may not be the best legal solution. For an illustration of the opposing view that climate exiles already qualify as refugees under the Refugee Convention, see Jessica B. Cooper, 'Environmental Refugees: Meeting the Requirements of the Refugee Definition' (1998) 6 N.Y.U. Environmental Law Journal 480.

⁵⁵ Note that where climate exiles coincidentally fit the Refugee Convention definition, they will qualify for refugee status. For example, climate exiles may flee because their government has consciously obstructed assistance to punish them on one of the enumerated grounds, or because climate change sparks violent conflict over resources which leads to persecution. UNHCR et al., 'Forced Displacement in the Context of Climate Change: Challenges for States Under International Law' (20 May 2009), Submission to the 6th session of the Ad Hoc Working Group on Long-Term Cooperative Action under the UNFCCC, 9-10.

of his country of origin or nationality . . .”⁵⁶ The 1984 Cartagena Declaration on Refugees similarly includes people “who have fled their country because their lives, safety or freedom have been threatened by . . . circumstances which have seriously disturbed public order.”⁵⁷ These instruments could be interpreted to include climate exiles as people compelled to leave due to events seriously disturbing public order.⁵⁸

Therefore, one option is the amendment of the Refugee Convention to cover climate exiles,⁵⁹ or the establishment of a new Protocol with the same effect.⁶⁰

Many commentators have argued against this approach. Adding climate refugees to the Refugee Convention may weaken protection of traditional refugees and create competition for resources between the two groups.⁶¹ Some suggest that a renegotiation of the Refugee Convention may actually undermine the international refugee protection regime, given that many developed countries seek to interpret its provisions restrictively.⁶²

New agreement under the United Nations Framework Convention on Climate Change (UNFCCC)

Other proposals address climate exiles within the UNFCCC regime. Williams suggests that a post-Kyoto agreement should specifically recognise climate change displacement and provide for regional cooperation addressing the problem.⁶³ She suggests that regional cooperation which builds on existing geopolitical and economic relationships is more likely to be effective.⁶⁴ The South Pacific region, for example, may come to agreement more quickly than the community of states as a whole.

In contrast, Biermann and Boas propose a fuller UNFCCC Protocol on Recognition, Protection and Resettlement of Climate Refugees. Their proposal includes an executive committee, use of implementing agencies to operationalise the Protocol, and a new climate

⁵⁶ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (10 September 1969, in force 20 June 1974) 1001 UNTS 45 Art. 1(2).

⁵⁷ Cartagena Declaration on Refugees (22 November 1984), Annual Report of the Inter-American Commission on Human Rights OEA/Ser.L/V/II.66/doc.10, rev. 1, at 190-93 (1984-85) para. 3.

⁵⁸ Jane McAdam, ‘Environmental Migration Governance’ (2009) UNSWLRS 1, 15, citing A. Edwards, ‘Refugee Status Determination in Africa’ (2006) 14 RADIC 204, 225-27, who questions whether the OAU Convention can capture claims based on environmental movement.

⁵⁹ Cooper (n 54) 494 (“A proposed expansion of the refugee definition might read: any person who owing (1) to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, or (2) to degraded environmental conditions threatening his life, health, means of subsistence, or use of natural resources, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”); Molly Conisbee and Andrew Simms, ‘Environmental Refugees: The Case for Recognition’ (2003) New Economics Foundation pocketbook, 26, 32, <http://www.neweconomics.org/sites/neweconomics.org/files/Environmental_Refugees.pdf> accessed 8 February 2011.

⁶⁰ A meeting organised by the Maldives government in 2006 produced text elements of a draft Protocol on environmental refugees. “It appears that proponents envisage a protocol to the Geneva Convention that would be similar in many respects to the traditional regime in terms of level of protection, but expand its scope to cover people who have to leave their places or countries because of environmental change, or who have a reasonable fear of having to leave their place or country.” Frank Biermann and Ingrid Boas, ‘Preparing for a Warmer World. Towards a Global Governance System to Protect Climate Refugees’ (November 2007) Global Governance Working Paper No 33, 18-19.

⁶¹ *ibid* 19-20; Fabrice Renaud et al., ‘Control, Adapt or Flee: How to Face Environmental Migration?’ (2007) United Nations University, Institute for Environment and Human Security, Interdisciplinary Security Connections Publication Series No. 5/2007, 34; Bonnie Docherty and Tyler Giannini, ‘Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees’ (2009) 33 HVELR 349, 393.

⁶² Biermann and Boas (n 60) 19; UNHCR (n 55) 10.

⁶³ Angela Williams, ‘Turning the Tide: Recognizing Climate Change Refugees in International Law’ (2008) 30:4 Law & Policy 502, 520.

⁶⁴ *ibid* 518.

refugee fund.⁶⁵ They argue against an independent convention because it would weaken links with the climate policy process and require lengthy negotiations on core principles.⁶⁶

Independent convention

A new convention need not be related to the refugee or UNFCCC regimes. There are many proposals for a new independent convention.

In Docherty and Giannini's view, the UNFCCC regime suffers from a limited mandate which is not focused on remedies, a track record of inaction, and a general historical reluctance to incorporate human rights issues directly into environmental treaties.⁶⁷ Their proposed convention would distribute shared responsibility for climate exiles among home states, host states, and the international community.⁶⁸ It creates a global fund, a coordinating agency, and a supporting body of scientific experts.⁶⁹

Falstrom proposes a convention patterned on the Convention Against Torture. Like that convention, her proposal provides interim protection for climate exiles and includes provisions outlining state responsibility to find, correct, and prevent underlying environmental degradation.⁷⁰

Hodgkinson and his co-authors propose a convention which operates prospectively based on whether an environment is likely to become uninhabitable in the future.⁷¹ They set out in detail the operation of a climate change displacement organisation and its constituent bodies.⁷² Their proposal notably treats SIDS as a discrete group, with bilateral displacement agreements between SIDS and host states to be negotiated under the aegis of the climate change displacement organisation.⁷³

Bilateral or regional arrangements

Bilateral agreements to accept climate exiles, for example between a Pacific Island state and Australia or New Zealand, remain another possibility. McAdams argues that initial attention should be focused on bilateral and regional agreements, and that the development of regional soft-law declarations would prove more effective than a new international convention.⁷⁴

There are currently no bilateral or regional arrangements for climate migration. New Zealand accepts 75 citizens from Tuvalu, 75 from Kiribati, and 250 from Tonga annually through its Pacific Access Category.⁷⁵ But this is a labour migration programme and New Zealand

⁶⁵ Biermann and Boas (n 60) 27-30.

⁶⁶ Biermann and Boas (n 60) 26.

⁶⁷ Docherty and Giannini (n 61) 394. A self-standing convention would, in contrast, give the issue of climate exiles independent attention, benefit from a multidisciplinary approach, and create a new process influenced by civil society and affected communities. *ibid* 392.

⁶⁸ Docherty and Giannini (n 61) 376-84.

⁶⁹ Docherty and Giannini (n 61) 385-91.

⁷⁰ Dana Zartner Falstrom, 'Stemming the Flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment' (2001) *COJIELP* 2, 19-24.

⁷¹ David Hodgkinson et al., 'The Hour when the Ship Comes In': A Convention for Persons Displaced by Climate Change', 18 <https://www.ccdpconvention.com/documents/CCDP_Convention_Summary.pdf> accessed 9 March 2011.

⁷² *ibid* 23-24.

⁷³ *ibid* 42.

⁷⁴ Jane McAdam, 'Refusing 'Refuge' in the Pacific: (De)constructing Climate-Induced Displacement in International Law' (2010) *UNSWLRS* 27, 25.

⁷⁵ Immigration New Zealand, 'Pacific Access Category' <<http://www.immigration.govt.nz/migrant/stream/live/pacificaccess>> accessed 8 February 2011.

immigration makes clear that “there is no link between the [Pacific Access Category] quota and climate change.”⁷⁶

The adaptation of international law

Climate change is challenging international law on many fronts. Among other things, international law must evolve to address receding maritime zones, uninhabitable states, and climate exiles. International lawyers have raised many potential solutions for each of these challenges. What remains is to muster the political will necessary to turn potential solutions into reality.

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⁷⁶ Immigration New Zealand, ‘New Zealand’s immigration relationship with Tuvalu’ <<http://www.mfat.govt.nz/Foreign-Relations/Pacific/NZ-Tuvalu-immigration.php>> accessed 8 February 2011.