

Call for Papers
Drowning Island Nations: Legal Implications and Remedies

Columbia Law School -- Center for Climate Change Law

In its 2007 Assessment Report, the Intergovernmental Panel on Climate Change noted that sea level is projected to rise at an average rate of about 5 mm/yr over the 21st century, with the maximum rate of rise in the central and eastern Pacific Ocean. Given that the land masses of many low-lying island states exist at or just a few meters above sea level, rising sea levels raise prospects of land loss, vital infrastructure loss, and population relocation, not to mention the effects on water supply, marine resources, and agriculture that may be wrought by changes in rainfall patterns and extreme weather events.

The government of the Republic of the Marshall Islands, a member of the Alliance of Small Island States, has approached Columbia Law School's Center for Climate Change Law to explore creative approaches to the legal issues facing low-lying island nations as climate change causes sea levels to rise. Recognizing that immediate action on mitigation and adaption are necessary, the Center also acknowledges the need to engage with the complex, thus far unexplored, legal questions that accompany sea level rise, including the implications of the loss of physical territory and uninhabitability for statehood, entitlement to and jurisdiction over maritime spaces, and legal remedies.

To this end, the Center will be convening a conference at Columbia Law School in the spring of 2011 that would allow scholars and practitioners from around the world, including from the affected island nations, to come together to explore and examine these issues. More specifically, legal scholarship is solicited on questions including, but not limited to, the following:

Statehood and statelessness

- How is statehood defined under international law? Can a state maintain its legal personality despite its lack of physical territory or the uninhabitability of its territory? How might respective national Constitutional legal interpretations of statehood interact with international law in this regard? How do legal rights to self-determination and territorial integrity play a role in determining statehood? Would a state that no longer has any land still be entitled to a seat in the United Nations, and be able to invoke the legal rights of states, such as instituting proceedings before the International Court of Justice?
- What can states do now to prevent or address statelessness?
 - The UN Secretary General's 2009 Report on the Possible Security Implications of Climate Change suggests that multilateral or bilateral comprehensive agreements would be the ideal preventive mechanism, and should provide where, and on what legal basis, affected populations would be permitted to move elsewhere and the status of these populations. What are these legal bases? What status might these populations take? Do existing agreements provide an adequate legal basis to address these issues?
 - How can the risk of territory loss through sea level rise be minimized? What adaptation activities, including insurance or risk management strategies, can be implemented to prevent or address statelessness?

- How can the resilience of human populations be reinforced through preparation for displacement (e.g. through labor migration schemes)?
- How might the resilience of animal and plant species, many of them likely unique to the islands in question, be enhanced? Should species be transplanted in anticipation of uninhabitability?
- What are the various options for a “disappearing” state?
 - 1) Are there any legal precedents for acquiring new territory from another state by treaty of cession? Is this a feasible and/or desirable solution?
 - 2) Are there any legal precedents for merging into a host state? What legal and political arrangements must be made to effectuate such merging? What obligations would the host state owe to the displaced population of the “disappearing” state with respect to dual nationality, right of residence, military obligations, health care, pensions and social security benefits, and the protection of national identity and culture?
 - 3) What are the implications of permitting the legal continuation of a state that no longer controls physical territory? Should “deterritorialized statehood” be a permanent or a transitional status?
 - 4) In those countries that have large lightly populated land masses and are significant greenhouse gas emitters (e.g. the United States, Canada, Australia, Russia), does domestic law allow the creation of reservations where displaced states can be reconstituted? How might countries adjust their immigration policies to prepare for climate displacement?

Maritime governance: entitlement to and jurisdiction over maritime spaces

- What is the effect of coastal regression on the location of baselines and the delimitation of maritime zones? Are maritime boundaries ambulatory? Should a rule of law be developed that would freeze the outer limits of maritime zones where they are located at a certain time? In light of potential climate impacts, what is the legal basis for interpreting submitted baselines, both under various national laws and international law?
- How do/ can/ should bilateral or multilateral maritime boundary delimitation treaties play a role? How might such treaties be negotiated to protect the interests of the island states?
- What are the implications of any proposed solution to coastal regression for existing maritime sovereignty disputes (e.g. in the South China Sea), or for the opening of previously inaccessible maritime transport routes in the Arctic?
- If deterritorialized states are permitted to maintain and manage their maritime zones, what issues of monitoring, control, surveillance, and enforcement ought to be considered?

Property rights

- What are the effects of inundation, displacement, and/or statelessness on real property rights and associated debts in the affected island nations?
- What issues relating to trusts, estates, and successorship arise in the face of inundation, displacement and/or statelessness?

Legal Remedies

- What actions can/ should be taken in the courts of the island states? In the courts of major emitting countries? In international bodies? For each type of action:

- Who are permissible plaintiffs and defendants?
- What are the causes of action? What relief and remedies should be sought?
- What procedures ought to be followed?
- What are other strategic considerations?
- What are the special rights of residents of territories and protectorates? Of residents of nations with compacts of free association or commonwealth covenants?

General

- To what extent can/ should the UNFCCC play a role in developing a response to the problems faced by low-lying island states? What other international legal mechanisms or bodies can/ should play a role?
- What principles of international law play a role or should play a role in the consideration of the statelessness and maritime boundary problems faced by low-lying island states?
 - What can the international human rights discourse offer?
 - What are the obligations of states to prevent the loss of statehood? Is there a clear legal basis for a “right to survival” in the context of climate change? What obligations do states have to protect stateless persons?
 - What are the obligations of states to respect the right of self-determination?
 - How does the right to a nationality play a role?
 - How does equity, especially as seen in ICJ cases, play a role?
 - Does the Convention Relating to the Status of Refugees provide an adequate legal framework for consideration of these issues?
 - Can any helpful lessons be drawn from international law on the rights of indigenous populations?

Initial funding for this conference is being provided by The Earth Institute of Columbia University. Efforts are being made to secure support for travel by participants from small island nations and other particularly vulnerable populations, and for other conference expenses.

We welcome papers from legal scholars and practitioners around the world. Please e-mail abstracts of 300 words or less to Michael Gerrard, Director of the Center for Climate Change Law, at michael.gerrard@law.columbia.edu by September 1, 2010.

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