CLIMATE CHANGE & STATELESSNESS

Assessing the risks and the legal implications

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AIM OF THE PRESENTATION

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2. Climate change impacts and small islands
3. Islands, environment and migration: a new challenge or a recently politicized issue?
4. “Climate-induced statelessness”: which states could be concerned?
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INTRODUCTION

A new form of statelessness worldwide?

“Never before in all history has the disappearance of whole nations been such a real possibility” (M. Chin, Palau’s Republic delegate, 09.25.2008)

“For some 40 small island developing states, sea level rise could submerge entire parts of sovereign nations” (Warner et al. 2009)

“Sinking island states present one of the most dramatic scenarios of the impact of climate change. The entire populations of low-lying states (…) may in future be obliged to leave their own country as a result of climate change” (UNHCR 2009)

“There are implications for rights, security, and sovereignty of the loss of statehood because of the disappearance of territory” (UNSG 2009)

CLIMATE CHANGE IMPACTS AND SMALL ISLANDS

Sea-level rise, sudden-onset disasters, erosion and increased salinity in land and beaches, water scarcity and droughts, ocean acidification (Mimura et al. 2007)

Island states will become uninhabitable long before they are completely submerged (Maas and Carius 2011; Ödalen 2012; Piguet 2012)

Holland Island, Chesapeake Bay (USA)
(Arenstam Gibbons and Nicholls 2006)

Carteret Island, Papua New Guinea

ISLAND, ENVIRONMENT AND MIGRATION: A NEW CHALLENGE OR A RECENTLY POLITICIZED ISSUE?

“Migration to and from small island states is not a new issue, but can be traced back for millennia” (Maas and Carius 2011)

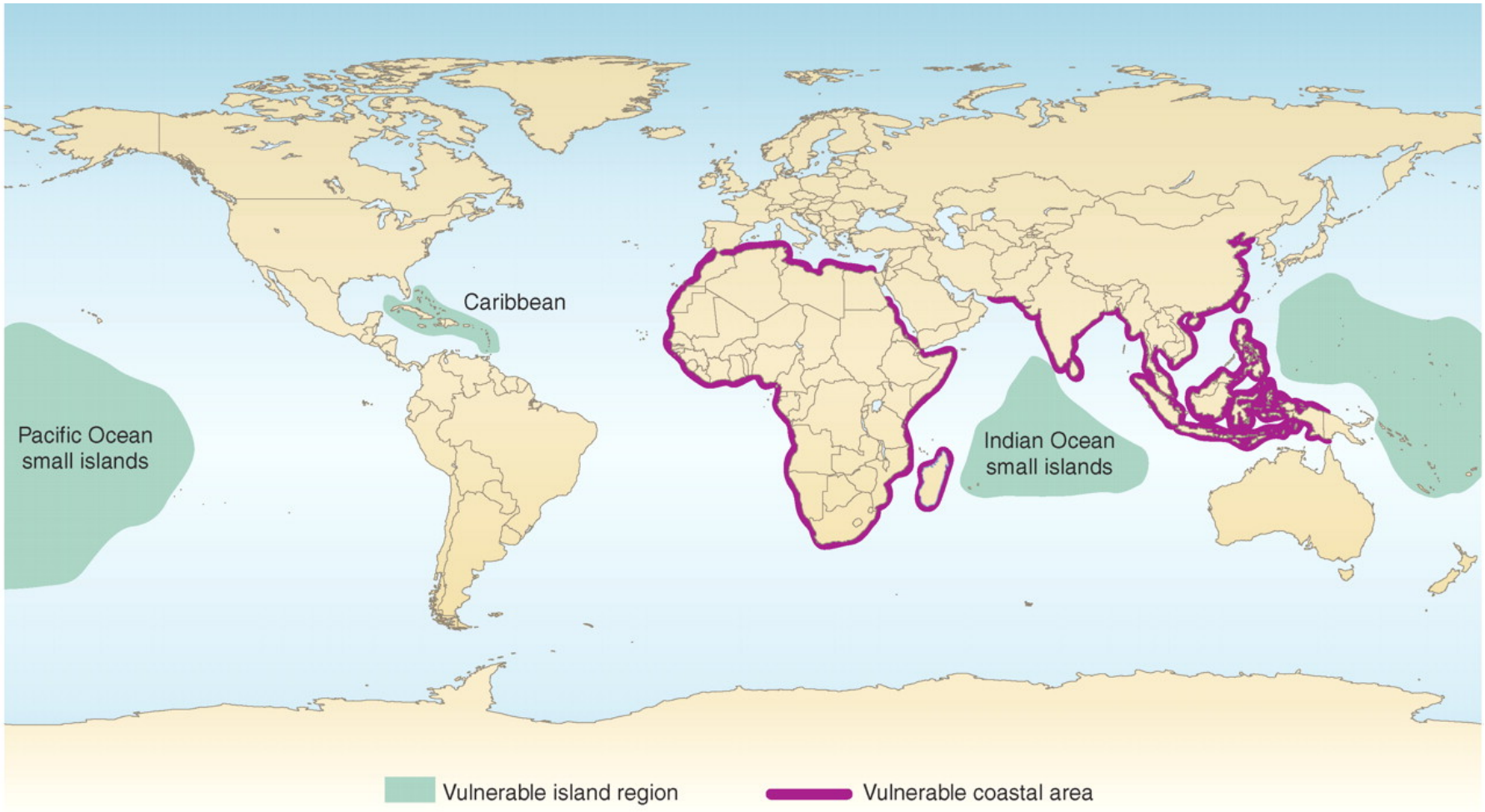
“The fears of ‘sinking islands’ are the product of victimisation rather than robust science” (Farbkoto 2010)

Carteret: the first climate refugees due to SLR and Climate Change. However, it appears than resettlement due to erosion was already discussed earlier in 1960

Tuvalu, Funafuti, Fongafale: intense flooding is mainly attributed to climate-SLR, but historical reports show that interior of this islet was already often flooded in the 1890s, although today’s flooding is exacerbated by the construction of an airstrip (Connell 1999, 2003, 2011)

But whether they are facing new degradations or not, the purpose of the first part of this presentation is to show where are located vulnerable islands countries. More precisely, to determine which could be the “climate-induced statelessness vulnerable states”?

SEA-LEVEL RISE VULNERABILITY



Source: Nicholls and Cazenave 2010

WHICH ISLAND STATES?

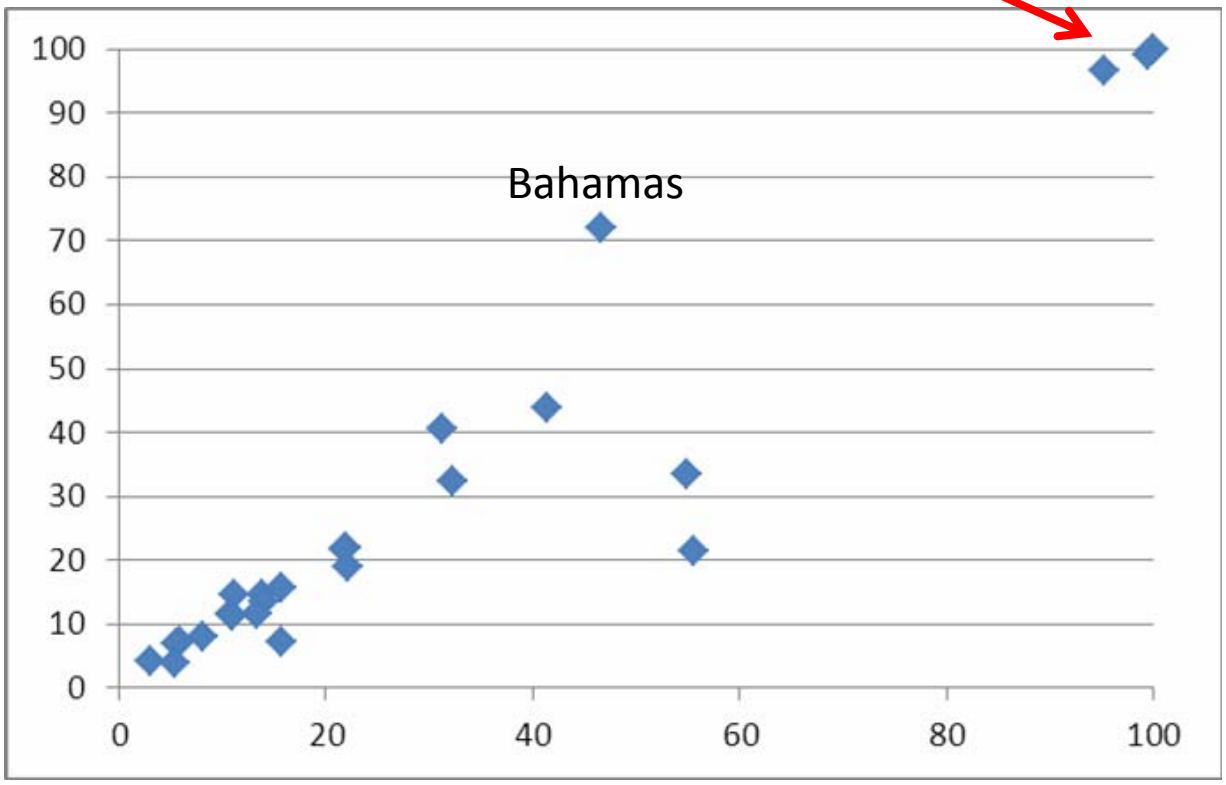
Countries	Population -5m (%)	Land Area -5m (%)
Maldives	100	99.99999
Tuvalu	99.99996	99.99996
Marshall Islands	99.42851	99.01826
Kiribati	95.22124	96.66959
Bahamas	46.53529	71.98609
Seychelles	41.33482	43.94353
Tonga	31.31068	40.46064
Federated States of Micronesia	54.85011	33.37462
Antigua & Barbuda	32.30729	32.42317
St Vincent & Grenadines	21.95772	21.95773
Grenada	21.74678	21.74677
Palau	55.5714	21.3706
St Kitts & Nevis	22.11966	19.02063
Barbados	15.69373	15.69373
Sao Tome & Principe	11.09405	14.72324
Cape Verde	13.8443	14.51925
Comoros Islands	14.03701	13.46283
Vanuatu	10.84096	11.67647
Solomon Islands	13.39024	11.53864
Fidji	10.99503	11.35986
St Lucia	8.024293	8.024293
Samoa	15.64689	7.33132
Jamaica	5.845192	7.141161
Mauritius	5.645287	7.070228
Dominican Republic	2.983391	4.139139
Haïti	5.396142	3.940334

Source: World Bank (http://data.worldbank.org)

SEA-LEVEL RISE VULNERABILITY INDEX

Which States are concerned and most vulnerable?

Maldives, Tuvalu,
Marshall Islands and Kiribati



Land area
where elevation
is below 5 meters
(% of total land area)

Population living in areas where elevation is below 5 meters (% of total population)

WHICH STATES?

Maldives, Indian Ocean. Population: 394’451.
Maximum elevation: 2m
Land area: 298 km^2

WHICH STATES?

Tuvalu, Polynesia, Pacific Ocean, population: 10’619.
Maximum elevation: 5m
Land area: 26 km^2

WHICH STATES?

Marshall Islands, Northern Pacific Ocean. Population: 68’480.
Maximum elevation: 10m
Land area: 181 km^2

WHICH STATES?

Kiribati, Central Tropical Pacific Ocean. Population: 101’998.
Maximum elevation: 81m
Land area: 811 km^2

WHICH STATES?

Nauru, Micronesia, Pacific Ocean. Population: 9378.
Maximum elevation: 61m
Land area: 21km^2 (world's smallest republic)

WHEN IT COMES TO MIGRATE

The acquisition approach (buy or rent new territory, create artificial island…)

The treaty approach

The pull-factor approach

(Maas and Carius 2011)

LEGAL GAPS AND CHALLENGES TO PROTECT HUMAN RIGHTS OF INDIVIDUALS

This article deals with a specific at-risk group, and with the contemporary debate oriented to understand if changes affecting one of the basic criteria of statehood may automatically affect the identity and continuity of a State (Raested 1932; Mark, 1955; Crawford 2006).

The former UN Commission on Human Rights (now UN Human Rights Council) addressed this issue in 2005 by the adoption of a working paper on *"The human rights situation of Indigenous People and States Threatened with Extinction for Environmental Reason"* stating that
"Whilst members of the UN... are used to addressing issues of State succession, it would appear that the extinction of a state, without there being a successor, is unprecedented ..." (para. 6).

LEGAL GAPS AND CHALLENGES TO PROTECT HUMAN RIGHTS OF INDIVIDUALS

So-called *Rights Gap*:

-The main risk is to be deprived of their nationality and all related rights;

-As recently reported during the Universal Periodical Review the population of these islands risk to not enjoying adequate standard of living, right to water and to a healthy environment if adaptation measures will be not adopted.

Evolution of states practices of low-lying Island State

In general, there are numerous endeavours to cope with the risks of statelessness using a twofold approach:

-Efforts to prevent the situation statelessness, by allowing citizens to maintain their nationality (*Adaptation* measures);

-Attempts to improve the situation of potential stateless persons (*Migration* strategies).

Adaptation strategies to prevent statelessness

Adaptation measures: short-term effort: building sea walls (e.g. Great Wall of Male,), reinforcing coastlines, monitoring sea-level rise; long-term effort: sovereign markers, building artificial islands, establishment of an investment fund for the purchase of new land and possible relocation (Maldives, Kiribati)

Maldives: construction of an artificial island (Hulhumale) to overcome the potential loss of statehood and maritime zones.
Which is the legal status of this artificial island? The UN Convention on the Law of the Sea (LOSC) excludes artificial island from definition of an island, defined as land "naturally formed" (art. 121).

Amendment to the LOSC to endorse artificial island as "defined territory" and to give them further legal effect

Reduce vulnerability: migration strategies

Face with the lack of financial means at domestic level, some states adopted different strategies and measures to reduce or at least to mitigate the potential consequences of states disappearance

-Marshall Islands: according to the Compact of Free Association Marshallese (also citizens from Palau and Micronesia) have the right to live and work in the United States "visa-free"

No automatic right to citizenship

-Kiribati: elaborate "Migration with Dignity" strategy. Kiribati was involved in the Pacific Seasonal Workers Pilot Scheme (PSWPS) promoted by Australia in 2009 to encourage seasonal workers to assist Australia employers in horticultural industry (2500 visas available in 3 years for citizens from Kiribati, Papua New Guinea and Vanuatu. Only 19 workers from Kiribati took part to this program)

Low number of workers recruited

KEY MESSAGES

There is no simple determinism between migration and climate change-induced sea level rise (Cournil and Gemenne 2010). The link between environment and migration is not univocal, migration rather needs to be considered as multicausal, as well as countries in question are to be seen as heterogeneous and not as homogeneous entities with same characteristics

Emigration is not in the decades to come the unique solution, as there is time left and other possibilities to keep Island States habitable (Maas and Carius 2011). The fact to present migration as inevitable could lead to compromise the local adaptation strategies. Moreover, local populations are not necessarily willing to migrate, but they would prefer adaptation strategies to secure their islands

"While Tuvalu faces an uncertain future because of climate change, it is our view that Tuvaluans will remain in Tuvalu. We will fight to keep our country, our culture and our way of living. We are not considering any migration scheme. We believe if the right actions are taken to address climate change, Tuvalu will survive" (A. Ielemia, President of Tuvalu, in McAdam 2011)

Even if the danger remains marginal (very few Island States threatened of complete submersion), this case is a promising opportunity to identify how to assist and protect affected population by environmental changes

ISSUES FOR DISCUSSION

-How effective have been responses and measures taken by countries to deal with these challenges?
-How to address the legal gaps and legal uncertainty raised by the case of « disappearing states »?
-Whether these issues should be (or not) dealt with at multilateral level for a human rights based approach?

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THANK YOU!

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