SOVEREIGN EXTINCTION AND CULTURE DEATH?

Relocation, Responsibility, and Climate Justice in Small Island Developing States

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INTRODUCTION

The human faces of climate change exist on a continuum of forced and voluntary movement as a result of climatic factors. Of these, no group is more threatened by climate change than those in low-level small island developing states, henceforth SIDS, in what Gonzalez articulates as "sacrifice zones of both the fossil fuel economy and the emerging green energy economy".[1] Due to multilateral failures in climate policy, international law, and climate adaptation, the Intergovernmental Panel on Climate Change has significantly concluded that "reduced habitability of small islands is an overarching significant risk caused by a combination of several key risks facing most small islands *even under a global temperature scenario of 1.5°C*" (IPCC, 2022).[2]As well as slow-onset sea level rise, cyclones, drought and flooding are already displacing small island individuals,[2] and "small island states such as Kiribati and Tuvalu will become uninhabitable long before they physically disappear".[3] Future deterritorialisation and relocation are becoming distinct realities for present and future generations in SIDS such as Vanuatu, Tuvalu, and the Marshall Islands, especially in the context of insufficient adaptation capacity, investment and effectiveness/efficacy.[5] Legal scholars and policymakers alike have proposed new forms of adaptation to mitigate the loss of ancestral homes, culture, and national identity. Through the idea that "[c]limate change is an injustice rather than a misfortune",[4] this essay therefore explores which, if any, are the most just solutions to sea level rise and the

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[1] Carmen Gonzalez. 'Climate Change, Race, and Migration', *Journal of Law and Political Economy* 1 (2020), p.115
[2] Michelle Mycoo et al., 'Small Islands', *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* p.2046
[2] *Ibid*, pp. 2067-2068.
[3] Jane McAdam, *Climate change, forced migration, and international law* (Oxford University Press, 2012), p.106
[5] Mycoo et al., 'Small Islands', p. 2074
[4] Gonzalez, 'Migration As Reparation: Climate Change and the Disruption of Borders', *Loyola Law Review* 66 p. 402

existential threats to small island sovereignty. In doing so, it assesses each solution for feasibility, holding that no solution can truly be just if it is not first a realistic one.

CLIMATE JUSTICE

This essay builds on Eckersley's and Atapattu's articulations of climate justice in the context of climate migration, which involves the principles of 'Polluters Pay', 'Beneficiaries Pay' and 'Ability to Pay'. An intersectional approach to climate justice must be taken when dealing with real-world solutions. Especially in the context of islands such as Kiribati, a climate justice framework must also consider more immediate environmental concerns that contribute to the island's eventual inhabitability, as Klepp and Herbeck posit "it must be kept in mind that the country and its people have many other severe environmental problems, which, in many cases, are accorded higher priority than climate change".[5] As Gonzalez highlights,

> "even if states did grant refugee-like protection to climate-displaced persons, these "climate refugees" would undoubtedly encounter the same obstacles […] increasingly militarized borders, confinement in detention centers, denial of legal representation, and the insurmountable burden of proving that their multi-faceted and complex decision to migrate can be attributed exclusively to climate change".[6]

As such, climate justice should be conceptualised as intersecting and encompassing other forms of justice, including environmental justice, migrant justice, as well as, more broadly, historical and corrective justice. Additionally, it acknowledges the principle of "common but differentiated responsibilities and respective capabilities" codified in the 1992 United Nations Framework Convention on Climate Change (UNFCCC),[7] and 2015 Paris Agreement,[8], in which all

[5] Silja Klepp, and Johannes Herbeck. 'The politics of environmental migration and climate justice in the Pacific region', *Journal of Human Rights and the Environment* 7:1 (2016), p.64
[6] Gonzalez, 'Migration As Reparation', p. 423
[7] United Nations Framework Convention On Climate Change. United Nations, FCCC/INFORMAL/84 GE. 0562220 (E) 200705, (1992)
[8] Conference of the Parties, Adoption of the Paris Agreement. United Nations, FCCC/CP/2015/L.9/Rev/1 (2015).

governments work together, while those who have greater economic and political power contribute more to climate solutions.

MIGRATION

INDIVIDUAL MIGRATION IN THE PRESENT

Migration is already taking place from SIDS to developed New Zealand and the United States. Two existing schemes, the Pacific Access Category (a labour scheme for Fijians, Tongans, I-Kiribati and Tuvaluans to work in New Zealand) and the Compact of Free Association (facilitating movement from the Marshall Islands, Palau and the Federation of Micronesia to the USA), facilitate the movement to a developing country. They are, as Constable rightly notes, distinctly "not related to migration following climate change impacts".[9] Neither scheme is articulated under any mechanism of accountability nor responsibility of a developed state in relation to climate change, (although it should be noted that the Compact of Free Association developed as nuclear damages). Furthermore, both have certain barriers for entry, such as language requirements and the costs of international travel.[10] Many I-Kiribati's view its country's 'migrate with dignity' as one "likely to become an elite programme that will work only for a small percentage of young, educated, middle- and upper-class I-Kiribati".[11] As such, these restrictions thus trouble an intersectional view of justice that incorporates both social and economic justice, but do raise a relevant point about state intention versus result. In terms of climate accountability perspective, neither scheme is 'just' in intention. However, both have significantly increased the climate-related mobility potentials of these islanders in the context of a climate-changing world.

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[9] Amy Louise Constable, 'Climate change and migration in the Pacific: options for Tuvalu and the Marshall Islands', R*egional environmental change* 17 (2017), p.1032

[10] Ibid, p.1032

[11] Klepp and Herbeck. 'The politics of environmental migration', p.68

In 2023, Australia and Tuvalu launched a climate visa scheme known as the 'Falepili Union', based on the native Tuvaluan of 'good neighbourliness' (*fale pili)*. Australia pledges to take in 280 Tuvaluans a year as permanent residents, and ensure "human mobility with dignity" (Article 3).[12] Most importantly, Article 2 explicitly recognises "the existential threat posed by climate change"; "the desire of Tuvalu's people to continue to live in their territory where possible and Tuvalu's deep, ancestral connections to land and sea", that Tuvalu's statehood and sovereignty will continue "notwithstanding the impact of climate change-related sea-level rise"; "additional adaptation opportunities"; and " promoting Tuvalu's adaptation interests to other countries, including through regional and international forums".[15] In brief, Australia pledges to assist adaptation, recognise Tuvaluan sovereignty, acknowledge Tuvaluan cultural connections to the land, and act as an ally in the international area. As for integration, an important component of migrant, and therefore climate [migrant] justice, "Australia has pledged to assist integration and will "provide support for applicants to find work and to the growing Tuvaluan diaspora in Australia to maintain connection to culture and improve settlement outcomes" (Australian Government, 2025).[13] While Australia does not admit any responsibility for the climate crisis, the material effects of the Falepili Union are distinctly just.

However at present, those who individually migrate for climate reasons, but are not awarded Tuvalu's free movement to Australia, find no accommodations in Australia's asylum system. A plethora of asylum and appeal decisions decided in Australia for climate and environmental reasons restrictively denied protection to applicants from Tonga, Vanuatu, (Vietnam) and Fiji based on political definitions in the 1951 Refugee Convention and Australia's

[12] Australian Government Department of Foreign Affairs and Trade, *Australia-Tuvalu Falepili Union* (2023)
[15] Ibid.
[13] Australian Government Department of Foreign Affairs and Trade, 'Memorandum', (2025) <https://www.dfat.gov.au/countries/tuvalu/explanatory-memorandum-falepili-union-between-tuvalu-and-australia>

1958 Migration Act (Sabin Center, 2025).[14] On the international level, *Teitiota v. New Zealand* (2020), the HRCtee upheld the decision to refoule Ioane Teitiota to Kiribati, acknowledging the severity of climate effects upon the island nation but arguing that there was still time for climate adaptation to protect his right to life.[15] The *Global Compact for Migration* (2019), a non-binding instrument, has been a recent development in acknowledging climate migration in the international arena. Whilst it contains an objective to "[m]inimize the adverse driver and structural factors that compel people to leave their country of origin" including "sudden-onset and slow-onset natural disasters, the adverse effects of climate change, and environmental degradation",[16] it falls short of bestowing these people with any meaningful legal definition or protection.

'CLIMATE REFUGEE' QUOTAS

As we have seen, individual migration is a precarious system of movement for people from SIDS. Existing schemes require *de jure* labour skills, English language skills, and the economic requirements to move and *de facto* social networks and communities already established in destination countries. Unauthorised movement subjects migrants to "illegality" and denial of access to developed countries, even in cases of extreme climate change.

Ahmed proposes a method of government accountability, using the 'Polluter Pays' principle to calculate 'climate refugee' quotas, where the highest emitting states have to take in a share of climate migrants.[17] Furthermore, Gonzalez legally grounds her 'migration as reparation'

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[14] Climate Case Chart, 'Refugee Application number: 2320671', 'Refugee Application Number: 2320711 (Refugee)', 'Refugee Application No. 1916631 (Refugee)', 'Refugee Application No. 1929335 (Refugee)', *Sabin Center for Climate Change Law,* <https://climatecasechart.com/non-us-case-category/climate-migration/> [accessed 4.5.25]

[15] Human Rights Committee, 'Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016', (2020)

[16] UN General Assembly, 'Global Compact for Safe, Orderly and Regular Migration', A/RES/73/195, (2019)

[17] Bayed Ahmed, 'Who takes Responsibility for Climate Refugees' (2018)

idea in international law, arguing for its justification in the transboundary harm violation by greenhouse gas emissions and their effects ("injury to the global commons").[18] From a justice perspective, Gonzalez's 'migration as reparation' is consistent with the common but differentiated responsibilities principle, in her perception of a Global North capacity to take in climate migrants, as well as historical justice where migration as reparation provides "providing compensation for climate change and for the North's colonial and post-colonial domination of the South".[19]

Vaha (2018) raises some salient points about the realities of integration. By example, she highlights how religious and ethnic differences between host and relocating communities can be a challenging aspect of integration, especially if host communities have suffered recent civil wars between two religious and ethnic divisions, such as Sri Lanka.[20] Vaha's argument can be expanded outwards to the generally hostile treatment of migrants in Global North countries and a particular dislike of climate migrants. Studies of populations in the US, Germany, Czechia, France, Germany, Hungary, Poland, Romania and the UK found that climate migrants were viewed much less favourably than war refugees, and only slightly more favourably than economic migrants (Arias and Blair, 2019; Krawczyk et al., 2023; Shanaah et al., 2024).[2122] Beyond anticipated difficulties of political will that currently characterise climate and migration politics, public support for SIDS relocation will be difficult to foster, outside of any moral or legal obligations on the behalf of states.

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[18] Gonzalez, 'Migration As Reparation', p.436
[19] Ibid, p.439
[20] Milla Emilia Vaha. 'Hosting the small island developing states: Two scenarios', *International Journal of Climate Change Strategies and Management* 10:2 (2018) p.236
[21] Sabrina Arias, and Christopher, 'Changing Tides: Public Attitudes on Climate Migration', *The Journal of Politics*
[22] :1, (2019); Krawczyk, et al., 'Europeans' Attitudes Towards Displaced Populations: Evidence from a Conjoint Experiment on Support for Temporary Protection', *European Journal of Political Economy*, 85, (2023); Sadi Shanaah et al., 'The Effect of Climate Change Threat on Public Attitudes towards Ethnic and Religious Minorities and Climate Refugees', *Group Processes & Intergroup Relations 0(0)* [sic], (2024).

Furthermore, Ahmed and Gonzalez all fail to contend with in their so-called mantras of 'self-determination': the possibility that the countries most responsible for climate change are not the countries where SIDS climate migrants would choose to go. From an Islander perspective, Vaha (2018) rightly argues that identity "is a complex matter affecting both the host and the endangered nation, and in the case of relocation, it might be that these two identities can be in severe conflict with one another".[23] While from a 'Polluter Pays' perspective these proposals may be just, this justice is problematised by the lack of agency, and even harm, purported upon those it is trying to help. Eckersley argues that movement will, obviously, have less to do with the 'Polluter Pays', 'Beneficiaries Pay' and 'Ability to Pay' principles, "more to do with geographic proximity and cultural connection".[24]

Similarly, Eckersley argues that

> "conferring a right on climate refugees to single out as their host particular states that are seen to be 'the most culpable' or 'the most capable' […] as a form of just dessert is a singularly unproductive way for them to start a new relationship with their host nation".[27]

This argument aptly situates justice alongside an incompatible politics of integration and migrant choice. As such, quotas should remain an intellectual exercise in climate justice, rather than a feasible solution for SIDS.

CLIMATE PASSPORTS

Inspired by the Nansen passports of the 1920s and 1930s, Heyward and Ödalen (2016) proposed a "Nansen-like passport" which would give the "territorially dispossessed" from these small islands the freedom to choose where they will move to. They interpret the human right to

[23] Vaha, 'Hosting the Small Island Developing States', p.236-7
[24] Robyn Eckersley, 'The common but differentiated responsibilities of states to assist and receive 'climate refugees'', *European Journal of Political Theory* 14:4 (2015), p.495 [27] Ibid p.494-495

citizenship as be a right to citizenship of a new country *of their choice*,[25] as a means of compensation for losses of land, identity and the life they could have lived. (They note that "[t]hose that are old enough to have formulated life plans based on the ways of life, resources, and opportunities offered in their island state are faced with no longer being able to pursue them"[26]). In doing so, they articulate a *migration as compensation* based on permanent social and cultural loss. For Heyward and Ödalen, causality and proportionality does not matter "[g[iven that there is no existing state without any emissions record" and that all "[a]ll states have international obligations towards stateless persons, regardless of the cause of the statelessness".[27] However, in order to facilitate movement and integration, Heyward and Ödalen suggest the passport be coupled with an international fund, presumably based on emission responsibility and economic capacity contribution.[28] Receiving states could even stand to benefit, themselves receiving both compensation from an international fund and a reduction of their obligations in contributing to said fund, based on the number of individuals they take in.[29]

Drawing on Heyward and Ödalen's ideas, the Germany-based Advisory Council on Climate Change (WBGU, 2018) proposed a 'climate passport' to serve as an adaptation strategy and a form of compensating loss and damage.[30] In its immediate phase, it would be administered to people from SIDS, but then eventually established for climate displaced people more generally. The authors ground their proposal in the 'Polluter Pays Principle' of climate justice, arguing that the climate passport would be part of a "pragmatic system for identifying host

[25] Clare Heyward, and Jörgen Ödalen, 'A free movement passport for the territorially dispossessed' *Climate justice in a non-ideal world* (2016), p. 209
[26] Ibid, p.213
[27] Ibid, p.218-219
[28] Ibid, p. 221
[29] Ibid, p. 221
[30] WBGU, *Just & In-Time Climate Policy: Four Initiatives for a Fair Transformation*. Policy Paper (2018), p.28
[34] Ibid, p.29

countries could take into account both cumulative, historical emissions and current per-capita emissions".[34] Vinke et al. (2023) suggest a 'Nansen-type' passport which would be assisted by "pre-departure trainings for labor market integration, language skills and financial assistance",[31] solving the SIDS-end of the integration problem. In their justification they do not strictly adhere to a certain climate justice principle, but more broadly suggest that countries should recognise the passport for reasons such as greenhouse gas emissions or on the basis of "other ethical obligations to assist, for example historical debts due to colonization".[32]

In their alternatives, these scholars offer a critique of the 'migration quotas' suggested by Ahmed and others, pushing back against top-down responsibility with a bottom-up prioritisation of free choice. Yet this, in turn, may allow developing countries to escape justice. Vaha articulates the likelihood of choices made based on proximity, regardless of said country's capability to host.[33] Given current migration patterns, it is likely that people leaving the most severely affected SIDS will migrate to other SIDS, in order to maintain similar ties to culture, language,[34] and in-keeping with long-standing Pacific traditions of inter-island migration. As such, for people leaving SIDS, "settling in the regional neighbourhood in order to retain access to their territory may be a bigger concern than the right to choose a major historical emitter or wealthy country".[35] Therefore, Heyward and Ödalen's proposal of an international fund has the most promise, requiring assistance from 'guilty' states whilst first prioritising the right of the SIDS inhabitants to choose their new home.

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[31] Kira Vinke et al., 'The Freedom to Move in Response to Uninhabitability: Enabling Climate Migration by a Nansen-Type Passport' in *Resilience of People and Ecosystems under Climate Stress*, (Vatican City, 2023) p.237
[32] Ibid, p.236.
[33] Vaha, 'Hosting the small island developing states', pp.229-244.
[34] Eckersley, The common but differentiated responsibilities of states', p.495
[35] Ibid, p.495

SOVEREINGTY

NATIONHOOD *EX-SITU*

The climate passport solution has little to say about the maintenance of sovereignty of these SIDS. For scholars such as Heyward and Ödalen, what happens to the actual small island *state* is of little concern. The question of sovereignty, as the right of these states to exist, as affirmed by them, remains. Much like their lack of legal recognition as climate migrants, SIDS "individuals and communities exist in a veritable legal no-man's land" (Burkett, 2011).[36]

SIDS that face full submersion also face a sovereignty dilemma in international law. In order to be considered a state, customary international law requires "(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states", as codified under Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, which is the basis for defining statehood in international law.[37] Clearly, a climate-changed nation without physical territory, or a permanent population *upon* it,[38] disbars a sunken nation like a future Tuvalu or Kiribati from being considered a state. Some scholars have suggested legal workarounds, such as digital nationhood, and nationhood *ex-situ* to fulfil requirements (a) and (c) and (d), while others have proposed artificial land-building or purchase on other territory, as well as emphasising these states' maritime territory (Hioureas and Torres Camprubi, 2021; Pacific Islands Forum, 2021) as fulfilments of requirement (b). As McAdam emphasises, "the absence of population, rather than of territory, may provide the first signal that an entity no longer displays the full indicia of statehood" (p.106). The Pacific Islands themselves have argued

[36] Maxine Burkett, 'The Nation Ex-Situ: On climate change, deterritorialized nationhood and the post-climate era', *Climate law* 2:3 (2011), p.350.
[37] McAdam, *Climate change, forced migration, and international law* p.110
[38] McAdam explains that the key legal difficulty here is whether a state meets the statehood criteria if a state a large amount, or even totality, of its population lives outside the state's territory (*Climate change, forced migration, and international law*, p.113).

that international law supports a presumption of statehood continuity (Pacific Islands Forum, 2023), and the Montevideo Convention affirms that recognition of a state "is unconditional and irrevocable" (Article 6).

Burkett has developed the concept of the nation *ex-situ* as a solution to SIDS sovereignty following the submersion of their territory. In this model, governments would have a permanent location, manage state affairs from a stance, and preserve the culture, connection, security and well-being of its (scattered) citizens.[39] Those from SIDS would enjoy dual citizenship of their host country as well as their nation *ex-situ*.[40] While Burkett does not elaborate on how or where these individuals would move, the idea of free choice is implicit her theory, with an *ex-situ* government's role in "negotiation and arrangements with other states and inter-governmental organizations"[41] and overseeing the efficacy of the transition, ensuring "that human rights are respected and that vulnerability is not increased because of the move".[42] Even though the implementation possibility of these aims is justifiably doubted, Burkett does partially solve the question of integration, placing a duty on receiving states to ensure the reception of these migrants. In practicality, this idea has been adopted by the government of Tuvalu. In 2022, they announced their nation plans to create a "digital identity" for each of its citizens, as well as the regulation of government affairs, marriages, births and deaths online, as well as uploading a digital version of its islands as they currently are to the Cloud, enabling Tuvaluans all over the world to access their ancestral home in digital form.[43] In fulfilling the population, territory, and

[39] Burkett, 'The Nation Ex-Situ' p.363-368
[40] Ibid, p.368
[41] Ibid, p.365
[42] Ibid, p. 368
[43] Delf Rothe, et al. "Digital Tuvalu: state sovereignty in a world of climate loss." *International Affairs* 100:4 (2024): pp. 1491-1509.

governmental capacity requirements, this proposal therefore is both a feasible solution to the sovereignty problem and the question of Indigenous culture.

While the Montevideo Convention *de jure* recognises that the "the political existence of the state is independent of recognition by other states" (Article 3),[44] this sovereignty is highly dependent on *de facto* recognition by the international community. Likewise, Burkett notes the same thing of "the legitimacy of the Nation *Ex-Situ*", but, perhaps naïvely asserts that the "unique reasons for deterritorialized statehood […] favour international acceptance".[49] This is one issue already tangible in Tuvalu's proposal to become a digital nation. As of 2023, only nine other nation-states had agreed to recognise Tuvalu's digital nation as a sovereign body.[45] A digital nation could be just, yet only if it receives international recognition and cooperation from the receiving states.

LAND PURCHASE, ARTIFICIAL ISLANDS, TRUSTEESHIP AND CESSATION OF SOVEREIGNTY

Land purchase is one strategy that has been posited as both for habitability and sovereignty. This option has been explored by SIDS governments, such as the President of the Maldives in 2008,[51] and the President of Kiribati in 2014.[52] This is legally not too difficult, as "there is nothing in international law that would prevent the reconstitution of a state such as Kiribati or Tuvalu within an existing state, such as Australia".[46] In 2009, the government of Fiji offered to host I-Kiribati communities on its territory, and in 2014, the Fijian government sold agricultural land to the Kiribati government to accommodate approximately 70,000 citizens,

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[44] Montevideo Convention on the Rights and Duties of States. Signed at Montevideo, 26 December 1933, (1933)
[49] Burkett, 'Nation Ex-Situ' p. 366
[45] Pranay Varada and Simon Kofe, 'Tuvalu's Fight To Exist', *Harvard International Review* 44:1 (2023), p. 49.
[51] McAdam, *Climate change, forced migration, and international law* p.110 [52] Ibid, p.110.
[46] Ibid, p.121

around half its current population.[47] In the meantime, it is being developed as a farm to solve food insecurity problems in wider Kiribati, with China providing exclusively "technical assistance".[48] Similarly, China proposed building $400 billion's worth of artificial islands to help adapt to rising sea levels in Tuvalu.[49] However out of allegiance to their diplomatic ally, Taiwan, as their support of its own sovereignty, they refused.[50] International relations therefore perturbs evaluations of climate justice, where countries such as Tuvalu apply their ideas of sovereignty unilaterally, even at the costs of climate investment and adaptation. At the same time, following Atapattu's interpretation of climate justice as encompassing interconnected forms of justice — including food justice, as reflected in the Paris Agreement — external assistance from China, one of the world's largest greenhouse gas emitters, has material implications for the I-Kiribati, even if China's offer was not framed with a climate-related motivation.

Along similar dynamics of power, scholars such as Burkett, McAdam, Hioureas and Torres Camprubi have proposed that SIDS become merged with, federations of, or trusteeships under other countries or the United Nations. Burkett, in her elaboration on what governance should look like *ex-situ*, suggests that the state fall under a temporary UN trusteeship (with the caveats of self-determination, self-governance and its citizens as trustees). She argues this will allow the international community, through the UN, to organise the transitions of the people and government of the *ex-situ* nation, administer and finance its ministerial affairs, and ensure "diplomatic protection of the diaspora as its members reside in other sovereign host states".[51] For

[47] World Bank, 'World Development Indicators', (2023) <https://datacatalog.worldbank.org/search/dataset/0037712> [accessed 4.5.25]
[48] Christopher Pala, 'Kiribati and China to develop former climate-refuge land in Fiji' *The Guardian* (23 February 2021) <https://www.theguardian.com/world/2021/feb/24/kiribati-and-china-to-develop-former-climate-refuge-landin-fiji?utm_term=Autofeed&CMP=soc_568&utm_medium=Social&utm_source=Twitter#Echobox=1614111734> [accessed 4.5.25]
[49] Simon Kofe, 'Tuvalu's Fight To Exist', p.47
[50] Ibid, p.47
[51] Burkett, 'Nation Ex-Situ', p.364-366

Burkett, it is this UN trusteeship that will facilitate the international community's acceptance of its *ex-situ* sovereignty.[52] While other elements of Burkett's framework have informed Tuvalu's *Future Now* policy, the government has quietly rejected the trusteeship framework and excluded it from inclusion.

More extreme cessation/subjugation/handing over of/submission of SIDS sovereignty has been proposed from a legal perspective, where Hioureas and Torres Camprubi suggest the possibility for "a full merger, [where] the deterritorialized State becomes completely subsumed into the host State, and its international legal personality ceases to exist independently in international law".[53] The suggested consensual cessation of territory, especially in states that have only recently gained decolonial independence, is arguably neocolonialist. McAdam proposes a self-admittedly "more radical alternative, […] the dissolution of the independent, sovereign state, but with the aim of preserving the 'nation'—as an identifiable national, linguistic and cultural community".[54] For McAdam, it is cultural belonging that forms the basis of nationhood. This view may be supported by islanders themselves: in interviews with Klepp and Herbeck, I-Kiribati spoke of how they wanted "the provision of a land with its own boundary that could accommodate Kiribati people and provide an autonomous government to guarantee cultural sovereignty",[55] where it is evident that self-government is desired mainly as a tool to cultural sovereignty. Burkett similarly suggests that, under cosmopolitan theory, diasporic connection across borders could itself be a form of nationhood.[56]

[52] Ibid, p.366
[53] Christina Hioureas and Alejandra Torres Camprubí, *Climate, State, and Sovereignty: Self-Determination and Sea Level Rise*, p.6
[54] McAdam, *Climate change, forced migration, and international law*
[55] Klepp and Herbeck, The politics of environmental migration', p.71
[56] Burkett, 'Nation Ex-Situ', p.358

Such an approach is not entirely unfeasible. Two small island quasi-states, Niue and the Cook Islands have willingly been absorbed into New Zealand. Niue has explicitly resisted being treated as an independent state in order to benefit from constitutional "economic and administrative assistance"[57] from New Zealand; while the Cook Islands has refused its own citizenship in order to facilitate free movement, living and working rights in New Zealand.[58] The benefits of such a system suggest that the socioeconomic, political and human rights obligations placed on the 'host' state as a duty-bearer, particularly when that state is highly developed, could greatly align with the climate justice principles of 'Polluters Pay', 'Beneficiaries Pay' and 'Ability to Pay'.

While these ideas may provide an effective adaptation method, this approach is extremely unjust from a climate justice perspective. Not only does it explicitly contravene SIDS' own governmental expressions for sovereignty and legal statehood (Pacific Islands Forum), it adds a new category onto the losses already experienced by SIDS as a result of Global North emissions and failure to act. Unlike as it has been portrayed by McAdam, cultural membership and self-governance are not in direct opposition: one does not require a trade-off with the other.

RESPONISIBILITY AND JUSTICE FROM CORPORATIONS

Despite the inventive ways in which scholars have conceptualised climate adaptation for SIDS, none of these scholars have thought outside the borders of the state-based system. Even the problem with the 'Polluter Pays', 'Beneficiaries Pay' and 'Ability to Pay' models articulate a state-based focus on climate justice, for a problem that transcends both governments and borders. Following the plaintiffs in *Kivalina v. ExxonMobil Corp and others*, the native Alaskan village of Kivalina sued several oil, energy and utility companies in the United States for damages and

[57] McAdam, *Climate change, forced migration, and international law,* p.127
[58] Ibid, p.127

"nuisance", after the effects of global warming displaced them from their village and ancestral lands. Lower court judges acknowledged the severity of the situation for Kivalina residents, but the Supreme Court dismissed the case without comment (Sabin Center, 2017). Beyond its litigative failure, *Kivalina* articulated a new position on climate justice and forced relocation: getting *corporations* to pay for its costs. A similar case filed in Switzerland, *Asmania v. Holcim*, involves four Indonesian plaintiffs suing the Holcim building materials company for £3,000 each in compensation for mental harm and as a contribution to their island's climate adaptation, such as planting mangroves and building flood defences.[59] As well as invoking the climate justice of 'Polluter Pays' outside national boundaries, they are also requiring Holcim to reduce its emissions by 43% by 2030 and 69% by 2040.[68] While litigation is one tool that SIDS could explore, as Burkett (2015) has previously suggested, recognised the potential *de facto* ramifications of initiating such cases including retaliative drop in investment and foreign aid,[60] which could be devastating for these countries which have low GDPs, are struggling to finance their own climate adaptation and face issues accessing climate finance (IPCC, 2022).[61]

Suing fossil fuel companies has been explored by SIDS such as Vanuatu, who in 2023 threatened to sue fossil fuel companies for climate damages endured in its nation. The Minister for Foreign Affairs, invoking the climate justice principle of 'Beneficiaries Pay', argued:

> "Vanuatu is on the front lines of climate change and yet we have benefited least from the exploitation of fossil fuels that has caused it [. . .] the climate loss and damages ravaging Vanuatu will not go unchallenged. My government is now exploring all avenues to utilise the judicial

[59] Isabella Kaminski, 'Indonesian islanders sue cement producer for climate damages', The Guardian (20 July 2022), <https://www.theguardian.com/world/2022/jul/20/indonesian-islanders-sue-cement-holcim-climate-damages> [accessed 4.5.25). The Sabin Center notes that it is difficult to access the court documents for this case. [68] Climate Case Chart, (2023). 'Asmania et al. vs Holcim', *Sabin Center* <https://climatecasechart.com/non-uscase/four-islanders-of-pari-v-holcim/> [accessed 4.5.25]

[60] Maxine Burkett. 'A justice paradox: On climate change, Small Island developing states, and the quest for effective legal remedy', *Harvard Law Review* 35 (2013)

[61] Michelle Mycoo et al., 'Small Islands', p.2074

> system in various jurisdictions – including under international law – to shift the costs of climate protection back onto the fossil fuel companies, the financial institutions and the governments that actively and knowingly created this existential threat to Vanuatu".[62]

Perhaps for geopolitical reasons, as suggested by Burkett, the Vanuatuan government has not yet engaged in litigation against corporations. However, the nation has led the current request for an ICJ advisory opinion on the obligations of states in relation to climate change,[63] that is likely to form the basis of future climate change litigation, both in SIDS and other countries.

CONCLUSION: THE 'JUST' WAY FORWARD

This essay has explored the 'non-ideal'[64] solutions to climate change threats to life, territory, sovereignty, and culture in SIDS. Migration is one just solution, and as scholars have articulated in their arguments for *migration as adaptation* (Black et al., 2011), *migration as reparation* (Gonzalez, 2020), *migration as decolonisation* (Achiume, 2019) and *migration as compensation* (Heyward and Ödalen, 2016). However, within this system, migration must be validated by international legal definitions for climate displacement in order to protect those on the move (Atapattu, 2018), while migrant justice must also ensure that climate migrants (including from SIDS) do not face rights violations along the way. Additionally, even though host country quotas may be just in holding the Global North to account under the 'Polluter Pays', 'Beneficiaries Pay' and 'Ability to Pay', they distinctly violate the self-determination and agency of SIDS inhabitants. People moving from SIDS must be assisted and given free choice on their new destination.

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[62] Greenpeace International. 'Vanuatu warns fossil fuel companies could be sued over climate change', (22 November 2018), < https://www.greenpeace.org/international/press-release/19477/vanuatu-warns-fossil-fuelcompanies-could-be-sued-over-climate-change/> [accessed 4.5.25]

[63] International Court of Justice, 'Obligations of States in respect of Climate Change' (2024) <https://www.icjcij.org/case/187> [accessed 4.5.25]

[64] The concept of the 'non-ideal' is articulated by Heyward and Ödalen, and holds that the most just solution, preventing all greenhouse gas emissions and enabling SIDS islanders to stay in their homes, is not possible.

Instead, the principle common-but-differentiated-responsibilities framework, as posited by Eckersley,[65] as one grounded in the current international system, must be expanded beyond state boundaries and moved to include corporations in contributing to a resettlement fund. Conveniently, fossil fuel corporations fulfil the criteria of the 'Beneficiaries Pay' and 'Ability Pay', having seen $490 billion in "superprofits" in 2022 alone,[66] as well as the more obvious criterion inscribed in 'Polluters Pay'. Nation states must still also contribute, given the most developed states' current economic and historically colonial involvement in SIDS and the Global South more generally.[76] This is the first step in how to pursue a future for SIDS in line with the key tenets of SIDS self-determination and climate justice.

[65] Eckersley, 'The common but differentiated responsibilities'
[66] Florian Egli et al.,'Fossil fuel 'superprofits' could have funded international climate finance needs several times over', UCL, (9 November 2024), <https://www.ucl.ac.uk/news/2024/nov/fossil-fuel-superprofits-could-havefunded-international-climate-finance-needs-several> [accessed 4.5.25] [76] Gonzalez, 'Climate Change, Race, and Migration'.

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