CORA Cork Open Research Archive
Cartlann Taighde Oscailte Chorcaí

Title	Reconfiguring the contours of statehood and the rights of the peoples of disappearing states
Authors	Skillington, Tracey
Publication date	2016-01-01
Original Citation	Skillington, Tracey (2016) 'Reconfiguring the contours of statehood and the rights of the peoples of disappearing states'. Social Sciences, 5 (3):46. doi:10.3390/socsci5030046
Type of publication	Article (peer-reviewed)
Link to publisher's version	http://www.mdpi.com/2076-0760/5/3/46 - 10.3390/socsci5030046
Rights	© 2016 by the author; licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC-BY) license (http://creativecommons.org/licenses/by/4.0/). - http://creativecommons.org/licenses/by/4.0/
Download date	2026-11-14 14:48:36
Item downloaded from	https://hdl.handle.net/10468/3089

UCC
University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

social sciences

MDPI

Article

Reconfiguring the Contours of Statehood and the Rights of Peoples of Disappearing States in the Age of Global Climate Change

Tracey Skillington

Department of Sociology, School of Sociology and Philosophy, University College Cork, Cork, Ireland; t.skillington@ucc.ie; Tel.: +353-021-490-2318

Academic Editor: Martin J. Bull
Received: 13 April 2016; Accepted: 24 August 2016; Published: 31 August 2016

Abstract: Many of the elements that have traditionally supported state level normative self-organization, most notably territory, are being actively undermined by rising sea levels, flooding, desertification, amongst other climate change effects. As more and more states come to be redefined as "disappearing", that is, states losing their territories to the natural environment through no specific fault of their own, a question arises as to how displaced communities will be assisted in their desire (and right) to continue to practice principles of self-determination and self-government? What is clear is that the international community can no longer continue with the fiction of a unified or unchanging model of the liberal democratic state. Instead, alternative ontological models of sovereign community are required, as is a re-imagining of how statehood might be re-constituted in the future in response to deepening ecological problems. The international community must now begin to address the immanent nature of threats posed to disappearing states and consider how a model of statehood that does not privilege territory as a fixed component of state identity could be operationalized. This paper considers how a democratic reform of statehood might proceed and resettlement agreements for displaced communities determined. The transition to an era of peaceful sovereign relations under deteriorating global climate conditions and growing natural resource scarcity, it argues, will require a significant extension of established traditions of democratic compromise, human rights solidarity and cosmopolitan justice.

Keywords: climate change; disappearing states; self-determination; territory; transnational deliberation; cosmopolitan belonging; global justice

1. Introduction

Described in 1990 by the Intergovernmental Panel on Climate Change (IPCC) as possibly "the gravest effect of climate change" [1], the displacement to date of nearly 26 million people due to rising sea-levels, increased flooding, drought, desertification and storms surges calls for the creation of a series of new response mechanisms and legal instruments of control [2]. Given that permanent climate displacement is expected to reach an unprecedented 200 million by the middle of this century, a figure cited in respected publications from the IPCC to the Stern Review on the Economics of Climate Change [3], measures must to taken now to protect the safety and basic resource needs of the populations of vulnerable regions and "endangered states". The Maldives, a collection of 1190 low-lying islands in the Indian Ocean, for example, has already begun to explore options for the acquisition of a new territory to enable the migration of all its peoples, currently threatened by rising sea levels and other climate adversities. President of Kiribati, Anote Tong, announced in 2014 that he was searching for ways in which the peoples of Kiribati could be relocated [4]. Possible destinations under consideration include India, Sri Lanka, and Australia. The question, however, remains as to

whether communities facing such threats have a legal, as much as moral right to resettle on the lands of another state? Can a legitimate claim to compensation be made against states that have historically emitted large quantities of greenhouse gases (e.g., compensatory lands)? Furthermore, can such claims be asserted only in relation to each individual's fundamental right to life, health and a safe environment, or can such claims also be made collectively by a dislocated community?

This paper explores whether disappearing states' collective right to self-determination can be protected into the future if the territorial component of their existence is lost? It defends such communities' right to continue as sovereign, self-determining communities on newly allocated lands not only on moral grounds but also, on the basis of the prevailing legal commitments of the wider international community to respect the sovereign equality of all states, engage in cooperative actions in an attempt to solve international problems (e.g., global climate change) and attain common goals. It proposes the establishment of a new, democratically elected global land commission to relocate dislocated communities on new, safer lands and regularly review resource allocations enjoyed by each sovereign state community, taking factors such as global need, population density, and sustainable resource use into consideration.

2. Criteria of State Sovereignty in a Changing World

Prevailing international law may not explicitly recognize the peoples of disappearing states collective legal right to reconstitute their sovereign community elsewhere once their territories have become uninhabitable due to the effects of climate change. However, there is increasing support internationally for a re-examination of existing legal norms, extending in some instances to a reconsideration of the ongoing viability of traditional models of statehood and rights to territory. According to Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, a legitimate state should possess the following characteristics: (1) A permanent population; (2) A defined territory; (3) A government and; (4) A capacity to enter into relations with other states [5]. Under international law, all four criteria must be present for a state to come into existence. If, having acquired all the necessary Montevideo criteria, one of the world's 195 legally constituted sovereign states were to "lose" one or more of these benchmarks of legitimate sovereignty, such as its territory, does this effectively mean that this state will cease to exist? Because climate change will certainly threaten to deprive some states, especially Small Island states, of key Montevideo criteria, most notably territory, does that mean these states will cease to be recognized in the future as legitimate sovereign states by the wider international community? Since the establishment of the United Nations in 1945, there have been few cases of state extinction and virtually none of "involuntary extinction" [6]. How will claims to self-determination on the part of disappearing states fare in the future as local populations are forced to leave their lands forever?

Presumably, the desire of these communities is to stay together as sovereign, self-determining communities and continue as always within a new setting? As the example of Israel illustrates only too well, few things are more politically charged than attempts to carve out a new territorial state. That, however, does not detract from disappearing states' right to exist as states. Since its inception in the 19th century, the nation state has always been imagined as a space of distinct belonging, founded on a particular history and expressing a unique and much cherished culture [7]. For the small island states of the Pacific, one of the most culturally and linguistically diverse regions of the world, imaginaries of the nation are important bonding mechanisms for their seven million inhabitants, many of whom have been living in the region for more than 10,000 years. How will the logic of the nation state fare in such regions in the future as more and more of their territories are lost due to the effects of climate change? The loss of one's territory not only has serious political and social implications, but psychological costs as well:

> In the face of this climate threat, our people can't really accept the fact that maybe one day in the future, we may not have a Kiribati to return to. This is the emotional challenge for our people [8].

At the core of this distinctly 21st century problem is the degree to which the international community is willing to acknowledge the changing territorial component of states' right to self-determination and the desire of threatened states to continue the life of their state, even if that means relocating to a new setting. Throughout its history, the nation state has never depended entirely upon its territorial component. Other important elements include government, sovereignty, as well as the distinct culture, identity, and traditions of its peoples. Acknowledging the rich and complex character of modern states, legal theorists, such as Osterdahl, consider future scenarios where more and more states acquire the status "disappearing states", that is, states losing their territories to the natural environment through no specific fault of their own, and ask how will such states preserve their sovereign identity when their populations are eventually forced to evacuate their lands and continue as nations elsewhere? In such settings, international law, Osterdahl argues, can no longer continue with the fiction of a uniform model of the state, founded historically upon the territorial rights of a "unified" and self-determining people. Rather, law must now begin to accommodate the changing character of the sovereign state landscape by granting legal recognition to alternative forms of statehood in response to deteriorating climate conditions. The elements that have traditionally supported national-level normative self-organization are being actively undermined by more intense flooding, tropical cyclones, and sea level rises, as well as their grave humanitarian consequences (increased likelihood of malnutrition, crop failure, hunger and disease), especially for the peoples of low-lying regions in South East Asia and the South Pacific and the populations of semi-arid states in the Sahara/Sahel, the Middle East and Central Asia [9].

Total GHG emissions for 11 of the 14 independent Pacific Island states account for just 0.04 percent of the global total yet these communities' safety will be "seriously compromised" by intense wave action and storm surges as climate conditions continue to decline in the future [10]. Climate change has already begun to degrade the freshwater supplies, crops, and subsistence fishing reserves of several states, including Tuvalu, the Maldives, as well as the Carteret Islands of Papua New Guinea. For Mr. Maumoon Abdul Gayoom, President of the Republic of Maldives (2008) the current situation is one of extreme inequality and requires immediate redress.

> The fact that vulnerable developing countries contribute least, yet stand to suffer the most from climate change; the fact that we possess limited domestic and foreign policy tools to effectively mitigate its effects; and the fact that we lack the capacity to protect ourselves through adaptation programmes; together suggest a need to address the concept of climate justice [11].

One way in which the international community could rescue sinking states is by granting legal recognition to the "deterritorialised nation state" [12], that is, the state whose lands have been rendered uninhabitable by the effects of climate change. Such states, Burkett ([12], pp. 345 –47) argues, should be allowed to continue as a "Nation Ex-Situ", that is, "a landless state" in perpetuity. Burkett explains "Ex-situ nationhood" as a status that enables the continued existence of a sovereign state, one "afforded all the rights and benefits of sovereignty amongst the family of states" in perpetuity, including a full legal personality under international law, participation in intergovernmental and international agreements, and protection of the right to political self-determination through the regular election of a government-in-exile.

Whilst Burkett's argument in favor of measures allowing for the continuation of the legal and political persona of disappearing states makes an extremely important contribution to this debate [13], the author does not address what this paper sees as the more central issue and that is the right of the peoples of such communities to remain in physical proximity and be relocated collectively to a "safe haven". That is, their desire to move to a new territory rather than be relocated to "disparate locations", as Burkett recommends. If not assigned a new territory, international legal history shows us how displaced communities may not be granted full rights recognition and may even risk losing their rights to collective self-determination over time. Although there have been cases where territory has been temporarily "lost" even when sovereignty remains intact (e.g., governments in exile), such

cases offer little guidance as to how situations where there has been an involuntary and permanent removal of a population from its territory can be addressed. Similarly, while international law does address partial intra-state population displacement ("internally displaced persons" are referenced in the mandate of The UN High Commissioner for Refugees), there are few prior instances of total population displacement. When rising sea levels eventually force the evacuation of whole small island state communities, there is a danger such peoples will not only lose jurisdictional control, but the moral and political authority to continue to establish justice amongst their members [14], as well as access to marine, land, and other resources necessary for the preservation of their community in proximity.

The Arbitration Commission of the European Conference on Yugoslavia in Opinion No. 1 observed how "the state is commonly defined as a community which consists of a territory and a population subject to an organized political authority...[and that] such a state is characterized by sovereignty" [15]. Without the benefits the stable institutions territorial control permit, the rights of the peoples of disappearing states to continue to self-determine state authority and self-government, as well as maintain shared standards of justice, may be undermined. This leads Nine [16] for one to argue in favor of a redrawing of state borders to accommodate the sovereign identity and land requirements of communities newly dislocated by the effects of global climate change. Similarly, Kolers [17] foresees future scenarios where notions of territorial right are expanded, allowing several state communities to inhabit the same land holding whilst simultaneously occupying separate state territories. In this instance, territorial divisions would be formulated according to the results that the control over territory produces, that is, effective use of that territory. A state's right to its land holdings would be conditional upon its abilities to use and care for it in an ecologically sustainable manner. Vaha [13] is skeptical Kolers' proposals would ever be embraced by an international order where competition for resources is intense and inequality in decision-making authority a major concern. State territories are unlikely to be reallocated, Vaha adds, in the absence of a major transformation of the current international state order. Vaha's concerns are valid. However, as more and more states experience the disruptive effects of severe flooding, drought, and storm surges, the practical realization, as Beck [18] rights points out, will be that more extensive cooperation is unavoidable. Such cooperation must start from the international legal obligations that already exist.

The International Covenant of Economic, Social and Cultural Rights (Article 1) recognizes that "all peoples have the right of self-determination" and the right to "freely pursue their economic, social and cultural development" [19]. The UN Declaration on the Rights of Indigenous People [20] recognizes indigenous peoples' right to self-determination as well as "the right to autonomy or self-government", while Article 6 asserts indigenous peoples' "right to a nationality". Conditions are such today that the peoples of many of small island states of the South Pacific qualify as candidates for sovereignty over another territory. Nine makes this argument applying the Lockean proviso mechanism to the question of territory, especially the requirement to leave "as much and as good" for others, as well as the second requirement that rights be limited to what one can exploit before it spoils (that is, the "spoilage proviso"). Nine argues that Locke's proviso mechanism can be used to justify the appropriation of a portion of existing territories from guilty parties (for instance, high emitting states) as compensation to dislocated communities.

In circumstances of plenty, the acquisition of land and other essential natural resources is morally different from the procurement of such resources in circumstances of scarcity, like those that prevail today. Should climate-displaced communities then be allowed to claim "safe haven" [21] against the international community of states at large, or alternatively, against those disproportionately responsible for rising sea levels and other climate changes? It is not that all the territories of this world are disappearing at once, only low-lying regions. The self-interests of more fortunately positioned states therefore ought not be asserted at the expense of those facing immanent danger. According to Nine's interpretation of the Lockean proviso, the existing territorial rights of states should change as a consequence of changes in sea levels and other conditions generated by global climate change. Those states with territorial rights over safe lands, she argues, have an obligation to allow displaced

communities access to some of their territories. However, efforts to reallocate states' territorial rights on the basis of changing ecological circumstances is not likely to be straightforward or without controversy. The issue of which lands ought to be allocated to displaced communities undoubtedly will provoke opposition. Clearly, such issues have to be addressed in an open and democratic forum that promotes justice and address the grievances of all parties. This is especially important given the likely reluctance of many states to agree to a "shrinking" of their territorial holdings in an effort to accommodate the needs of the global other and provide displaced populations fair access to a share of their lands.

To minimize disagreement over moral fundamentals, Byravan and Rajan [22] propose the notion of a corrective justice as a guide to a more practical allocation of responsibility for climate change dislocation. A corrective justice applied to climate dislocation would assign responsibility for displaced communities to states in proportion to their wrongdoing, as indicated by levels of historical greenhouse gas emissions. Tuvalu's Prime Minister, Koloa Talake announced in March 2002 that his community was giving serious consideration to the possibility of taking legal action against those nations most responsible for carbon dioxide emissions by bringing its case to the International Court of Justice. Such a case may proceed on the basis of the "no harm rule"—a commonly recognized rule of customary international law according to which states are bound to prevent, reduce, and control the risk of environmental harm to other states. Legal cases for compensation owed to climate vulnerable communities may proceed on the basis of clear evidence of "traceable harms" [23], where specific effects can be linked to the activities of particular parties. As data documenting the main sources of carbon dioxide pollution and their detrimental effects on the climate of different states grows more precise (for example, data collected by the Carbon Dioxide Information Analysis Centre (CDIAC)) emerging information on the links between CO_2 emissions levels, extreme weather conditions, and the living conditions of vulnerable communities offer a possible basis for legal prosecution.

There are, however, still a number of problems with this approach to corrective justice since it requires claimants to prove precisely the degree to which harms caused are attributable to the actions of a specific state. There is also the fact that historically high emitting states may not necessarily be in an ideal position to absorb newly displaced communities because of damage already caused to their own resource reserves. It is for mainly these reasons that this paper argues in favor of what Wyman [24] refers to as a "present or forward-looking" rationale for the relocation of displaced communities, one that gives serious consideration to a more worldwide redistribution of rights to arable lands, clean water, and other essential, life-sustaining resources. A preliminary legal accommodation of new climate realities may take the form of a series of international treaties where states that have in some way been "altered" by the effects of climate change will continue to have their sovereign status recognized and their resource needs accommodated by the wider international community through a series of legal guarantees of community resettlement agreements. Clearly, private land holdings cannot be so easily reallocated but there may be a case for state-owned lands being leased (long-term) to displaced communities. Acts of cosmopolitan solidarity like these would have to be acknowledged by the wider community in the form of global fund reimbursements or generous adaptation grants. To ensure the enforcement of new international agreements, a series of complementary institutional reforms are required.

No doubt, radical changes of this nature call for a significant transformation to the prevailing political imagination of states. States would have to begin to think more creatively and inclusively beyond the normative horizons of Hobbesian, border-prioritizing solutions to the humanitarian effects of deteriorating climate conditions. Until now, more fortunately positioned states have defended the notion of limited state liability on the grounds that they do not bear primary responsibility for the suffering of those who happen to be beyond the jurisdiction of their state. However, as atmospheric concentrations of CO_2 soar, the earth's lands and ocean surfaces heat up, weather patterns and hydrological cycles change beyond recognition, millions are threatened with hunger and disease and state territories begin to disappear, the limitations of this "nation state outlook" [25] become evermore apparent. According to traditional understandings of distributive justice, in situations of

resource shortage, states ought to secure the resource needs of compatriots first and consider such partiality as a matter of giving greater recognition to the rights claims of citizens over those of others in need. The territories of a particular state are most convincingly equated from this perspective with a restricted realm of duty beyond which only "thin" relations of moral care apply. Under conditions of global resource scarcity, granting resettlement rights and resource access to displaced outsiders is not a rational move, according this reasoning. That said, what becomes increasingly apparent is that the parochialism inherent in a nation prioritizing position proves evermore problematic, especially from the point of view of states' legal-ethical commitments to universal law and the stark realities diminishing global reserves of life-sustaining resources create today. The fate of the communities of the low-lying regions of this world cannot simply be left to happenstance but rather require a stronger display on the part of the international community as a whole of commitments to rescue those most in need.

All actors involved in the current climate change crisis make a claim to justice as fairness. For instance, with its water reserves at just a quarter of the world's average, China asserts its need for additional water sources to accommodate its expanding populations (for example, its carbon intensive North-South Water Transfer Project is already drying up sources of freshwater and fish stocks for local populations) while Russia makes a claim to a large portion of the gas and oil reserves of the Arctic on the grounds that it has a right to its territories (over and beyond the rights of the indigenous communities of the Arctic) and that its energy needs surpass those experienced by communities living in less extreme climates. Given the facts of reasonable pluralism, a stronger legal and political institutional basis for justifications of current resource allocations and the possibility of changes to those allocations under conditions of scarcity, are required. Those left without sufficient land reserves or the basic means to survive deteriorating climate conditions (for instance, the peoples of the low lying states of the Pacific) must be accommodated through resettlement arrangements that allow for the continuation of their self-determining sovereign identity within new territorial settings. Since the justifications offered in this instance are addressed mainly to other sovereign communities, they proceed from what is, or what these communities hold in common (the equal rights of all states to self-determination). They also begin from shared fundamental ideas implicit in international law and democratic politics in the hope of developing from them a reasoned agreement on new possibilities, including new possible models of democratic deliberation on resource allocation amongst states. That said, any new understandings of resource entitlement are unlikely to arise automatically or, realistically, without a degree of opposition. What they will also require, therefore, is the assistance of a more transnational decision-making authority whose visions of climate justice are not rooted in the particular interests of any one configuration of states but, rather, are focused on addressing the type of practical problems facing increasing numbers across the globe with policy actions that give greater effect to an ethic of co-responsibility [26] for the welfare of all peoples.

3. New Settings for the Application of a Rescue Principle

It is perhaps important at this point to remind ourselves of the fact that neither the idea nor the practice of relocating populations is entirely new. During the so-called "Age of Discovery" (late 1400s–1800s), scholars including Condorcet, Diderot, and Gibbon contributed to a lively debate on whether it was just for the citizens of one community to establish settlements on the lands of another [27]. Indeed, this early debate provides an important basis for a more contemporary discussion on the rights of peoples of disappearing states to resettle on other lands. In the Third Definitive Article of *Perpetual Peace*, Kant explains how in situations where "people who are forced by circumstances outside of their control to arrive on another state's territory" cannot be turned away if that ensures the "death" or "destruction" of the person [28]. Beneficiaries of the right to hospitality are said to have the right "to stay at least until the circumstances are favorable for their return" (that is, granted "temporary sojourn"). If, however, circumstances were never to become favorable for the return of the stranger, as in the case of the peoples of sinking states, then presumably rights to hospitality would

become permanent? Before Kant, Samuel Pufendorf (1632–94) already had explored the rights of strangers to refuge in foreign countries and spoke of "imperfect obligations" we all share to assist persons in need, such as those shipwrecked at sea. As the residents of sinking states are driven from their homelands through no fault of their own (e.g., rising sea levels), then it would seem these people meet the minimum requirements laid out by both Pufendorf and subsequently Kant to invoke a more contemporary rendition of the right to safe haven, a right legitimated in the final instance by humanity's "common possession of the surface of the earth" [29]. All the peoples of this world form one community to which Kant ascribes a collective will charged with the regulation of access to the resources that reside therein. Recognizing all peoples right to safe haven is an important goal and is one to which the peoples of disappearing states could legitimately appeal. As Waldron ([29], p. 78) explains:

> Refusing to share resources with others is also a form of injustice; refusing to modify a [land] holding based on First Occupancy in response to demographic changes in circumstances is an injustice. Taking more than you need or occupying so much that sequent arrivals have nothing to occupy, is an injustice.

It is something of a historical irony though that many of those who now seek safe haven from rising sea levels caused by the climate destructive practices of high carbon emitters are descendants of peoples who historically were colonized by European imperial empires. Prior to colonization, many of the traditional communities of the Pacific, for instance, lived in protected, high land areas chiefly as a defense against sudden storms or flooding. Colonial authorities, however, encouraged the amalgamation and establishment of coastal villages in areas more vulnerable to tropical cyclone events and increased exposure to storm [30]. The vulnerability of communities today to sudden weather changes is compounded further by escalating climate changes. Given the historical injustices bestowed upon these communities, it is difficult to see how the rescue principle could be reasonably rejected, especially by those who continue, through their climate destructive practices, to inflict suffering, and upon whom accommodating the other would impose only slight or moderate costs. Citizens of disappearing states would certainly qualify as in need of assistance once their capacity to survive further climate extremities is exceeded but as a community, perhaps they qualify for something more?

Granting permanent refuge to displaced communities may be motivated by pragmatic concerns to reduce likely suffering and improve the wellbeing of vulnerable peoples but such decisions may also be triggered by human rights obligations. Grounding the right of the peoples of disappearing states to safe haven within a universal framework simultaneously evokes a recognition of norms of equality, dignity, and self-determination. If the granting of what is now defined as an imperfect right to relocation is left purely to the prerogative of states, there is a danger that states will find reasons not to accommodate newcomers? When in 2001 Tuvalu approached the Australian government with a proposal to merge the two states in the future, not only was its proposal rejected but the Australian government further questioned the feasibility of granting refuge to displaced Tuvaluans in the face of competing interests (for instance, rising unemployment in Australia). Also in 2001, Tuvalu, along with Kiribati, Fiji, and Tonga signed The Pacific Access Category with New Zealand, allowing seventy-five residents from Tuvalu and Kiribati and 250 from Tonga and Fiji to be granted New Zealand residency each year. Although New Zealand's immigration policies are more supportive than that of other states, there are certain stipulations that discriminate against specific sections of the population. For example, in the case Kiribati, Tuvalu, Tonga or Fiji, applicants for citizenship status must be between the ages of 18 and 45, possess a minimum level of skills in English language and have an offer of employment in New Zealand.

Both Australia and New Zealand (along with the Canada and the US) voted against the UN General Assembly's adoption in September 2007 of the Declaration on the Rights of Indigenous Peoples recognizing, amongst other things, the rights of indigenous peoples (many of whom endure the worst effects of global climate change) to preserve the communal aspects of their existence. Reporting on the adoption of the Declaration, the UN noted those states "voting against the Declaration said they could not support it because of concerns over provisions on self-determination, land and resources

rights" [31]. If non support for a new convention protecting the rights of indigenous peoples is justified on the grounds that states may, amongst other things, have to concede resource rights to indigenous communities, then such arguments cannot be said to be in keeping with wider human rights legislation, especially that which recognizes the dangers posed by climate change to many indigenous communities living in vulnerable regions, and such peoples' right to a safe, clean and sustainable environment. At the 21st session of the conference of the parties which met in Paris in December 2015, the United Nations High Commissioner for Human Rights clarified how urgent, effective and ambitious action to combat climate change is not only a moral imperative, but also an essential practical component to satisfy the duties of States under human rights law. Not only are states reminded in this instance of their obligations to protect the rights of all peoples to a safe environment both within and beyond their own territorial boundaries, but also their obligations to respect the equality of all state communities under international law. In September 2008, President Litokwa Tomein of the Marshall Islands, speaking at the United Nations General Assembly, drew attention to legally grounded responsibilities to protect his community's "right to survive from the onslaught of climate change" [32]. President Tomeing deliberately evoked a collective understanding of "our right to survive" and the right of his people to continue as a self-determining community. The Prime Minister of Tuvalu raised a similar point when at the COP 14 Conference in Poznań, Poland in 2008 he described how "we are a proud nation of people... We want to survive as a people and as a nation. And we will survive—it is our fundamental right" [33].

A community's collective right to determine its political status and freely pursue economic, social, and cultural development are crucial components of a legally recognized definition of the right to self-determination. These dimensions of a community's right to flourish do not necessarily dissolve with the disappearance of its territories. In 2010 at the 16th Conference of the United Nations Framework Convention on Climate Change (UNFCCC) parties in Cancun, a petition was signed by Small Island States and NGOs for a new protocol under the UNFCCC to protect the social, cultural, and economic rights of "climate forced migrants" as co-members of this global community, on the basis of their reading of Article 3 of the UNFCCC mandating developed states to assume the lead in combating the adverse effects of climate change. The main demand of these small island states was that the rights of those left without sufficient sources of fresh water, arable land, or food supplies as a consequence of deteriorating climate conditions be brought into closer alignment with the human rights commitments of the wider international community, at which point the question of responsibility becomes central.

4. Realizing Human Rights Obligations to the Peoples of Disappearing States

The climate conditions that lead directly to the displacement of millions are *globally* sustained and this fact in itself necessitates a more proactive and internationally coordinated effort to assist these people in the event of a full-scale evacuation of their lands. If the international community is to continue to uphold its commitments to protect the sovereign rights of all member states and devise a programme of cooperation on climate change issues that is genuinely "inclusive of the development interests of all members of the international community", then it must also continue to recognize the peoples of disappearing states' rights to self-determination. While larger state powers cling to traditional arguments regarding the limits of sovereign state responsibility for the miseries of a wider, ecologically threatened world, the UN on the other hand, is compelled to respond to member states' framing of global warming and rising sea levels as issues of grave injustice and human rights violation. With this in mind, Hodgkinson and Young [34] points to the necessity of a new convention recognizing the collective rights status of the peoples of disappearing states. Ignoring the plight of our international neighbors is, quite simply, not an option for the international community in the future. The global community is now faced with the very real challenge of peaceful co-existence and responsible cooperation in addressing growing climate change problems. States' ongoing rights to proximity, self-determination and the preservation of their traditional identity must be upheld. For reasons of practical necessity, a new international convention is needed to support the legitimacy

of land transfer agreements and new legal norms are required to protect the sovereign status of states forced, under deteriorating climate conditions, to relocate to new territorial settings.

By focusing specifically upon the collective rights of sovereign communities whose common way of life is being destroyed by a lost, ruined, or degraded environment, such new legislation would give greater credence to the notion of our co-responsibility to protect and assist peoples in need. Such changes may not be popular with some states, or at least, not initially, but with 11 states currently under threat of disappearance, the necessity of new, far-reaching measures cannot be ignored in the long-term. As the International Covenant on Economic, Social and Cultural Rights (1966) points out: "In no case may a people be deprived of its own means of subsistence" [35]. Yet this is precisely the outcome of ongoing climate destructive practices. No one makes this point more poignantly than the community leaders and political representatives of the small island states of the South Pacific:

> Within an international community based upon the rule of law and universal values of equality, human rights and dignity, it is surely wrong for small, vulnerable communities to suffer because of the actions of other more powerful resource-rich countries, actions over which they have no control, and little or no protection [36].

Some efforts have been made recently at the international level to address climate displacement, including the COP 21 Paris Agreement (Article 8) [37] (its preamble alludes to climate migrants and it calls for a task force to "develop recommendations for integrated approaches to avert, minimize, and address displacement related to the adverse impacts of climate change") and the work of the Independent Expert on the Enjoyment of all Human Rights by Older Persons. If the larger climate powers are now willing to act upon their "co-responsibility" for CO_2 emissions levels (as promised in Paris), it may be that they can finally acknowledge their responsibilities to protect and accommodate whole climate-displaced communities.

Long-term effective remedies for the major consequences of ongoing climate destruction require the involvement of all players. Without the latter, prospects for a growing together of all peoples into one community of global justice is not likely to succeed. We commit to human rights constraints and international legal agreements yet in practice, limited cooperation still prevails. The cosmopolitan reconfiguration of the nation state has gained real momentum over the last 150 years with the expansion of global economic markets, transnational migration flows, international legal agreements, human rights legislation, various political, as well as economic cooperative measures. All represent moves towards a greater world openness that has been crucial to the further development of the "cosmopolitan imagination" of today [38]. Under democratic constitutional law, the openness of the cosmopolitan sovereign state to international legal, economic, and political regimes is not only moved by the purpose of serving principles such as world peace and human rights solidarity, it is also constitutionally required [39]. Similarly, at the EU level, legal revision has proven possible because both the Treaty on European Union and the Lisbon Reform Treaty recognize the central importance of openness in relation to the Union's external actions and uphold a fundamental rights understanding of democracy that is applicable to all peoples. Because state supremacy is understood within this context to be somewhat less than "absolute", is it reasonable or even possible to hypothesize a future democratic order of states that re-allocates territorial rights amongst the populations of a climate threatened world on the basis of states' recognition of the legitimate resource needs of others and their inclusion in the calculation of one's own needs? Guiding such new practices might be some shared minimum standards of humanitarian need which at times, rightfully supersede the exclusive and more traditional historical claims of states to designated areas of land. There is no reason to assume that this could not be a possibility in the future, given that the character of states, as much as that of global cities and democratic institutions, is forever evolving and re-imagined in the context of changing political, economic, social and ecological interdependencies [40].

Arguably, prospects for real peace between resource challenged communities in the future will depend on a capacity to adapt to new ecological, political and social realities and develop a more overarching, fair system of deliberation on resource distribution and cooperation. Even Kant could

not have foreseen the extent to which the growing together of the world's peoples into one "universal community" of cosmopolitan justice would be driven by grave necessity. Moves to introduce a series of new regulative principles protecting the rights of displaced populations would be an important first step in this direction. However, such changes also require supporting democratic institutional structures to oversee the implementation of any new agreements.

5. Building New Transnational Democratic Settlements on Resource Allocation and Sovereign State Reconfiguration

In addition to new legal instruments of regulation, transnational deliberative mechanisms designed to cultivate the social and political life of new imaginaries of democratic inclusion and equality are also required. Crucial to any revisions in decision-making procedures on resource sharing is their "chain of legitimation" [41], that is, arguments made publicly warranting the necessity and desirability of such new arrangements. Every planned graduation of global cooperation on resource issues must employ publicly justifiable reasons, especially as the delegitimation of states' exclusive rights to resources such as water or control over fixed territories under conditions of scarcity is likely to be irreversible. Any changes to criteria required for maintaining state sovereign status or allowances made for new land resettlements ought to be the subject of a broad system of democratic accountability and public debate. The legitimacy of changes must be formal in that they must be invested with a necessary degree of institutional legal and political support. Second, they must be popular in the sense that "we the people" must be provided with sufficient opportunities to input into deliberations on such potentially controversial changes. Third, legitimacy must be deliberative in the sense that all actors involved must see themselves as part of a democratic process of public accountability and mutual justification where reasons are offered for and against any new proposals [42].

Apart from a formal legal recognition of decisions allowing state communities to resettle on other lands, there are also practical issues that demand broad democratic consideration. For instance, who eventually will accommodate displaced communities and how will the sovereign status of these communities be preserved within new settings? Will binding agreements allow for an arrangement of "nested sovereignty", for instance, where displaced communities are allowed to settle on a portion of the lands of another state and granted a limited amount of political independence? Because of the potential for conflict and disagreement over such issues, great attention would have to be given to the manner in which decisions are made. There is no way of allowing a decision-making process on such highly charged issues other than through a multi-leveled network of deliberative procedures encompassing the perspective of global, national, regional and local representatives, as well as a whole range of legal, political, and scientific experts to ensure an enlarged perspective prevails, one capable of maximizing the potential for consensus-building.

Because of the complexities of these issues, Nine [16] proposes that new deliberative procedures be coordinated on a global scale by one democratically elected body. Sharing Nine's sentiments, this paper also supports the idea of a global land commission where decisions on the relocation of displaced communities can be made on the basis of inputs from a broad range of local, regional, national and international representatives. The perspective of the "climate witness" would have to be central to the deliberations of this commission, offering graphic accounts of living with the daily threat of flooding, drought, or famine, etc. Perhaps the most difficult task confronting a new global land commission would be the making of final decisions on the relocation of climate displaced communities to states with the greatest capacity to accommodate them. Such decisions would have to take account of multiple factors such as population density, resource supply, weather extremities, infrastructural capacity, quality of land, amongst other elements. Second, each state's resource allotments would have to be periodically reviewed and assessed against changes in sea levels, rates and intensity of flooding, desertification, soil erosion, extreme weather cycles, as well as total availability of resources. To maximize the decision-making authority of this proposed new global land commission and maintain the broader legitimacy of its operations, it would have to be closely aligned with the organizational

structures of the UN system. However, the question remains as to whether states will agree to such far-reaching measures even if ecological conditions deteriorate further and the pragmatic benefits of greater global cooperation become ever more apparent? Perhaps we cannot assume that changes in perspective on moral and in time, political and legally relevant community will emerge automatically and, therefore, incentives, such as generous tax concessions or global adaptation funds will also be required to increase support for an internationally coordinated relocation system.

What is clear is the need for new thinking. The further development of cosmopolitan notions of justice, peace and solidarity in relation to serious practical concerns facing the international community today (e.g., securing the basic resource needs and fundamental rights of all peoples) require an enlarged perspective on justice. No doubt, the desire would be to continue with cherished traditions of liberal democracy but states' commitments to cosmopolitan visions of international peace, human rights and social justice have to adjust to a changing world complete with a new set of requirements, if peace and stability are to be maintained in the long-term.

6. Conclusions

With 11 sovereign states now classified as "disappearing" due to conditions exacerbated by climate change, the challenge is to accommodate the changing character of the sovereign state landscape by granting legal recognition to alternative forms of statehood. There are a number of issues at present preventing a broad support for any changes in this direction. Perhaps the most obvious is the over-assertion of a traditional territory-nation state nexus where state identity is still heavily bound up with the historical associations that have developed between particular land holdings and peoples. Because of historical ties, resource rights are thought to be owed more to fellow co-nationals than to humanity as a whole and state borders offer clear distinctions between what are commonly seen as "politically relevant" resource inequalities (those occurring within the boundaries of a specific territorial state) and "politically irrelevant" inequalities (for instance, those occurring between states in terms of the distribution of the burdens of climate change) [43]. In light of the currently dominant formulation of resource justice as integral to nation state attachment, we may wonder if there are really any prospects for a greater degree of resource sharing beyond this model in the future? For critical theorists such as Apel [26], there are good reasons for assuming that the privileges currently enjoyed by the world's community of states will not be relinquished easily, especially as the more severe effects of climate change begin to be felt by all. A truly global ethics of justice, Apel adds, may not be fully formed as of yet but that does not mean they cannot be advanced further in the future. In a context of increasing ecological adversity worldwide, conventional interpretations of resource entitlement may no longer be justifiable in a truly democratic sense. Alternative interpretations based on our collective belonging to the commons of "world risk society" [44] will prove increasingly necessary in the years ahead.

Conflicts of Interest: The author declares no conflict of interest.

References and Notes

1. Intergovernmental Panel on Climate Change (IPCC). "Policy makers' summary of the potential impacts of climate change. " Report from Working Group II to IPCC, Sundsvall, Sweden, 27–30 August 1990.
2. United Nations High Commissioner for Refugees. "Millions of People without Protection: Climate Change Induced Displacement in Developing Countries." 29 January 2013. Available online: http://www.unhcr.org/5151bf239.html (accessed on 19 September 2013).
3. Stern, Nicholas, ed. *The Economics of Climate Change: The Stern Review*. Cambridge: Cambridge University Press, 2006, p. 3.
4. Office of the President of Republic of Kiribati. "Kiribati Buys a Piece of Fiji." 30 May 2014. Available online: http://www.climate.gov.ki/tag/president-anote-tong/ (accessed on 27 July 2016).

5. International Conference of American States in Montevideo, Uruguay. "Montevideo Convention on the Rights and Duties of States." Available online: https://www.ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf (accessed on 27 August 2016).
6. McAdam, Jane. "Disappearing States', Statelessness and the Boundaries of International Law." University of New South Wales (UNSW) Law Research Paper No. 2010-2, UNSW, Sydney, Australia, 21 January 2010. Available online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1539766 (accessed on 11 July 2013).
7. Anderson, Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London: Verso, 1991, p. 49.
8. Kiribati's Foreign Affairs Secretary, Tessie Eria Lambourne. Quoted in Nic Maclellan. "Kiribati's policy for 'migration with dignity'." *Inside Story*, 4 December 2011. Available online: http://inside.org.au/kiribati\T1\textquoterights-policy-for-migration-with-dignity/ (accessed on 3 August 2013).
9. World Health Organization. "Protecting Health from Climate Change: The World Health Organization-World Health Day 2008." Available online: http://www.who.int/world-health-day/toolkit/report_web.pdf (accessed on 23 June 2010).
10. United Nations. "United Nations Human Development Report 2011. Sustainability and Equity: A Better Future for All." Available online: http://hdr.undp.org/sites/default/files/reports/271/hdr_2011_en_complete.pdf (accessed on 12 April 2016).
11. Gayoom, Maumoon Abdul. "Climate Change and Most Vulnerable Countries—The Imperative to Act." 8 July 2008. Available online: http://www.un.org/ga/president/62/ThematicDebates/ccact/maldives.pdf (accessed on 27 August 2016).
12. Burkett, Maxine. "The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era." *Climate Law* 2 (2011): 345–74.
13. Vaha, Milla Emilia. "Drowning under: Small island states and the right to exist." *Journal of International Political Theory* 11 (2015): 206–23. [CrossRef]
14. Ödalen, Jörgen. "Underwater self-determination: Sea-level rise and deterritorialized small island states." *Ethics, Policy & Environment* 17 (2014): 225–37. [CrossRef]
15. Commission established pursuant to the Declaration of 27 August 1991 of the European Community, Bull EC 7/8 (1991); 92 ILR 162–65. Quoted in Rosemary Rayfuse, and Emily Crawford. "Climate Change, Sovereignty and Statehood." Legal Studies Research Paper No. 11/59, Sydney Law School, the University of Sydney, Sydney, Australia, September 2011, p. 4. Available online: https://www.ilsa.org/jessup/jessup13/Climate%20Change,%20Sovereignty%20and%20Statehood.pdf (accessed on 27 August 2016).
16. Nine, Cara. "Ecological Refugees, State Borders, and the Lockean Proviso." *Journal of Applied Philosophy* 27 (2010): 359–75. [CrossRef]
17. Kolers, Avery. "Floating provisos and sinking islands." *Journal of Applied Philosophy* 29 (2012): 333–43. [CrossRef]
18. Beck, Ulrich. "Living in the world risk society." *Economy and Society* 35 (2006): 329–45. [CrossRef]
19. United Nations. "International Covenant of Economic, Social and Cultural Rights." 1966. Available online: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx (accessed on 27 July 2016).
20. United Nations. "United Nations Declaration on the Rights of Indigenous Peoples." 2007. Available online: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (accessed on 12 April 2016).
21. Kleingeld, Pauline. "Kant's Cosmopolitan Law: World Citizenship for a Global Order." *Kantian Review* 2 (1998): 72–90. [CrossRef]
22. Byravan, Sujatha, and Sudhir Chella Rajan. "Providing New Homes for Climate Change Exiles." *Climate Policy* 6 (2006): 247–52. [CrossRef]
23. Caney, Simon. "Cosmopolitan Justice and Equalizing Opportunities." In *Global Justice*. Edited by Thomas Pogge. Oxford: Blackwell, 2001, pp. 123–44.
24. Wyman, Katrina M. "Sinking States." 2010. Available online: www.law.nyu.edu/academics/colloquia/clppt/ECM_PRO_067260 (accessed on 12 May 2013).
25. Beck, Ulrich. *Cosmopolitan Vision*. Cambridge: Polity Press, 2006, p. 17.
26. Apel, Karl Otto. "Discourse Ethics as a Response to the Novel Challenges of Today's Reality to Co-responsibility." *The Journal of Religion* 73 (1993): 496–513. [CrossRef]

27. Reill, Peter Hans, and Ellen Judy Wilson. "Encyclopedia of the Enlightenment. Facts on File." 2004. Available online: http://www.gmu.ac.ir/download/booklibrary/elibrary/Encyclopedia%20of%20Enlightment.pdf (accessed on 6 July 2013).
28. Kant, Immanuel. "To Perpetual Peace. A Philosophical Project." In *Kant's Political Writings*. Edited by Hans Reiss. Translated from the German by Hugh Barry Nisbet. Cambridge: Cambridge University Press, 2007, p. 358.
29. Waldron, Jeremy. "Indigeneity? First Peoples and Last Occupancy. New Zealand." *Journal of Public and International Law* 1 (2003): 55–82.
30. Barnett, Jon, and John Campbell. *Climate Change and Small Island States: Power, Knowledge and the South Pacific*. London: Earthscan, 2010, p. 15.
31. United Nations Department of Public Information. "General Assembly Adopts Declaration on Rights of Indigenous Peoples." 13 September 2007. Available online: http://www.un.org/News/Press/docs/2007/ga10612.doc.htm (accessed on 4 August 2013).
32. Tomeing, Litokwa. "Republic of the Marshall Islands: Statement by H.E. Litokwa Tomeing, President of the Republic of the Marshall Islands at the General Debate of the 64th Session of the United Nations General Assembly." 24 September 2009. Available online: http://www.un.org/ga/64/generaldebate/pdf/MH_en.pdf (accessed on 28 July 2016).
33. Secretariat of the Pacific Community. "Tuvalu's Pleas Receives Global Acknowledgement." 12 December 2008. Available online: http://www.spc.int/ppapd/index.php?option=com_content&task=view&id=332&Itemid=2 (accessed on 5 August 2013).
34. Hodgkinson, David, and Lucy Young. "In the Face of Looming Catastrophe: A Convention for Climate Change Displaced Persons." 20 January 2012. Available online: http://www.ccdpconvention.com/documents/a%20Convention%20for%20Climate%20Change%20Displaced%20Persons%20(January%202012).pdf (accessed on 16 July 2013).
35. United Nations Office of the High Commissioner for Human Rights. "Article 1.2 of the International Covenant on Economic, Social and Cultural Rights." 1966. Available online: http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf (accessed on 28 July 2016).
36. Gayoom, Maumoon Abdul. "Climate Change and Vulnerability." 8 July 2008. Available online: http://www.un.org/ga/president/62/ThematicDebates/ccact/maldives.pdf (accessed on 28 July 2016).
37. Open Knowledge. "Preamble of COP 21 Paris Agreement (Article 8)." Available online: http://cop21.okfnlabs.org/agreement/#preamble (accessed on 27 August 2016).
38. Delanty, Gerard. *The Cosmopolitan Imagination*. Cambridge: Cambridge University Press, 2009.
39. Mosler, Hermann. *Die Übertragung von Hoheitsgewalt, in Isensee, Josej; Kirchhof, Paul (Hrsg) Handbuch des Staatsrechts Der Bundesrepublik Deutschland, Band. VII*. Heidelberg: Internationale Beziehungen, 1992, pp. 599–646.
40. Beck, Ulrich, and Daniel Levy. "Cosmopolitanized Nations: Reimagining Collectivity in World Risk Society." *Theory, Culture & Society* 30 (2013): 3–31. [CrossRef]
41. Böckenförde, Ernst-Wolfgang. "Mittelbare/reprasentative Demokratie als eigentliche Form der Demokratie. Bemerkungen zu Begriff und Verwirklichungsproblemen der Demokratie als Staats—und Regierungsfrom." In *Festschrift Kurt Eichenberger*. Edited by Georg Muller. Basel and Frankfurt: Helbing and Lichtenhahn, 1982, pp. 301–28.
42. Bohman, James. "Jus Post Bellum as a Deliberative Process: Transnationalizing Peace-building." *Irish Journal of Sociology* 20 (2012): 10–27. [CrossRef]
43. Erskine, Toni. *Embedded Cosmopolitanism: Duties to Strangers and Enemies in a World of Dislocated Communities*. Oxford: Oxford University Press, 2008.
44. Beck, Ulrich. *World Risk Society*. Cambridge: Polity Press, 1999.



© 2016 by the author; licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC-BY) license (http://creativecommons.org/licenses/by/4.0/).