The rights of climate-induced refugees: A study on the preservation of the rights of refugees as a consequence of the effects of climate change in Pacific Small Island States

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A study on the preservation of the rights of refugees as a consequence of the effects of climate change in Pacific Small Island States

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Abstract

New patterns of human migration are caused by the impact that global climate change has on the habitability of Pacific Small Island States. This thesis looks at the preservation of the rights of climate-induced refugees through the analysis of the principle that climate refugees should be granted citizenship in another state or through the concept of ex-situ nationhood. Further, this thesis aims to identify who in the international community is best suited for bearing the responsibility for the preservation of the rights on climate refugees. These analyses are made on the basis of the 1951 UN Convention Relating to the Status of Refugees and the principles of legal statehood according to the 1933 Montevideo Convention.

Keywords: climate change, migration, ability to pay principle, polluter pays principle, Pacific small island states

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1. Introduction

Migration is nothing new. All around the world people migrate for various reasons: economic, social or political motives have already led many people to relocate. However, the impacts of climate change on the habitability of places and living opportunities add a new factor to the list of reasons to move. The first report by the Intergovernmental Panel on Climate Change (IPCC) in 1990 states that the greatest single impact of climate change would be on human migration (Atapattu, 2020). This prediction has become the harsh reality in 2022 now that people are forced to move away from their original homeland as it is no longer safe or possible to stay. As environmental changes go beyond state borders and will affect almost every corner of the world, international human migration patterns will be transformed (Black et al., 2011). A UNHCR report (GRID, 2016) found that 21.5 million people have been forcibly displaced by extreme weather events – such as extreme temperatures, floods or storms – on an annual basis between 2008 and 2016. Thousands of others flee their homes due to gradually evolving hazards, such as droughts or coastal erosion linked to sea-level rise. This thesis considers climate refugees, who are "persons displaced in the context of climate change' (UNHCR, 2016) as the ones that should receive protection from the international community. This thesis focuses on climate refugees from PSIS who are displaced because of the rise in sea level.

The effects and consequences of climate change are highly visible in the Pacific region, particularly the Pacific Small Island States (PSIS). In specific, low-lying atolls such as the Republic of Kiribati are faced with one of the biggest challenges that climate change brings about: erosion of land. PSIS are relatively vulnerable to the sudden- and slow onset of climate hazards such as flooding and the rise in sea level and PSIS has little resilience to these effects of climate change (TAR, 2001). This rise in sea level threatens the habitability of the PSIS Piguet, 2019) and therefore, Kiribati and other PSIS are considered to be among the most likely to produce climate change refugees (Abrar, 2005). For the reason that the local government of Kiribati is unable to offer a sustainable long-term solution to this problem, the population (I-Kiribati) has no other choice than to relocate. Therefore, the threats of climate change have become a solid reason for people in PSIS to move beyond internal borders (Barnett & McMichael, 2018). The move across internal borders is not an easy choice. Analyses of the motivation for migration in PSIS have shown that migration is often seen as the last resort for many islanders (Farbotko, 2018; Hermann & Kempf, 2019). But the threats

that climate change brings about, make the prospect of climate migration become undisputable (Piguet, 2019).

Current literature provides little information on the protection of the rights of climate refugees. Therefore, this thesis takes international law documents into account. First, the 1951 Refugee Convention excludes environmental refuge as a qualifying factor for receiving refugee status. Further, the 1933 Montevideo Convention argues that the legality of a state is in jeopardy when it no longer upholds all four qualifications of statehood: a permanent population, a defined territory, a government and the capacity to conduct international relations.

Although current literature highlights multiple sides of the story, it fails to identify the normative and policy recommendations with regard to who in the international community will bear the responsibility for climate migration (Page, 2008; McAdam, 2010). Therefore, this thesis has researched the following question: who is most capable of bearing responsibility for protecting the rights of climate refugees? This thesis argues that a mix of the 'contribution to problem' and 'ability to pay' can generate a satisfactory mix of theoretical integrity and practical operation of the protection of rights of climate refugees.

In terms of structure, this thesis is composed of five sections. In order to reach a well-rounded answer, it is first necessary to consider scientific research that has been done on climate change. This shows the likelihood of certainty of the disappearance of PSIS like Kiribati. The following section will elaborate on that by the explanation of how the negative effects of the climate change challenge the principles of the Montevideo Convention (1933). Section 3 discusses two possible processes on what is owed to climate refugees by the international community and section 4 will consider the role of international law when identifying the position of climate refugees. Then, section 5 looks at how the responsibility of who owes what towards climate refugees is distributed and whether this distribution is fair. Finally, section 6 will present a discussion of the different sections and ideas for further research.

2. Literature review

Existing literature on the rights of climate refugees and potential protectors of vulnerable human rights is often written from a legal perspective (McAdam, 2010; Alexander and Simon, 2014; Lee and Bautista, 2021). In doing so, authors often used two conventions to explain the concepts of statelessness and climate refugees: the 1933 Montevideo Convention and the 1951 UN Convention relating to the Status of Refugees.

The Montevideo Convention is an important document that defines the concept of statelessness in legal terms by explaining what a state is. The main idea of the Montevideo Convention holds that a state has to meet the four requirements to conserve the legality of a state. A significant body of literature has discussed the legality of the states that no longer meet all four requirements of the Montevideo Convention (McAdam, 2010; Burkett, 2013). For example, Burkett (2013) advocates for a nation ex-situ, in which state continuity is ensured through a system where a state's government is located outside the nation's borders.

The 1951 Refugee Convention is often used to explain the difficult legal situation of climate refugees since the Convention has not adopted environmental refuge. This is highly criticized by some scholars (McAdam, 2010; Alexander and Simon, 2014; Marshall, 2019). Alexander and Simon (2014) explain since climate refugees in Kiribati are physically unable to return home, the terms of the 1951 Convention suffice in providing a foundation to seek asylum in a new country, differing from the conclusion of the 1951 Refugee Convention. Both McAdam (2010) and Marshall (2019) criticize the limitations of both the Montevideo and the Refugee Convention since they are unable to offer policymakers a sufficient framework in the case of protection of climate refugees in sinking islands.

Another strand of authors indicates that PSIS will suffer disproportionately from the adverse effects of global warming as the rise in sea level leads to accelerated erosion of coastal land (Nurse and Moore, 2005; IPCC SAR, 2022). Without proper duties of adaptation and/or mitigation, this loss of land might negatively affect the long-term sustainability and sovereignty of PSIS when the state no longer matches the principles of the Montevideo Convention (Barnett and Adger, 2003; Nurse and Moore, 2005; Byravan and Rajan, 2010).

Then, the literature has not properly identified the problem of the loss of rights of the individuals once PSIS' sovereignty is in jeopardy and climate refugees face the chance of becoming stateless. However, the issue of statelessness is not a new phenomenon. During

World War II, Nazi Germany used denationalization as one of the weapons in conducting the brutal war against minorities, such as Jews and Roma. Many of the thousands of Jews and Roma living in Europe in the year's post-World War II found themselves formally stateless (Rosenhaft, 2021). Hannah Arendt, a Jewish refugee from Germany herself, placed the enigma of the stateless in a central philosophical position by the introduction of the concept of 'the right to have rights' (Arendt, 1951). Arendt embodied a move toward conceptualizing a new international paradigm where (human) rights could be sought beyond the traditional bounds of an individual state-based legal order, especially since those bounds themselves had been shattered by the state itself (Fraser and Caestecker, 2013). Arendt's question on statelessness is relevant in the nexus of climate refugees. However, the perspective of this question should be altered. Arendt's original account of statelessness focuses on the future of a group of individuals, but in the nexus of climate refugees, the future sustainability of an entire state is at stake.

3. Scientific data

This section will provide an overview of the scientific data and empirical facts that have been attained through climate reports by the International Panel on Climate Change (IPCC). Over the past decades, the IPCC has released five comprehensive assessment reports on the state of scientific, socio-economic and technical knowledge related to climate change. The reports not only illustrate future risks and impacts but also consider options for reducing the increase of climate change. The established facts show the likelihood of certainty of the disappearance of PSIS. The first IPCC report was released in 1990 and the subsequent four reports were all under the same assumption: humans are causing most of the current changes to climate by burning fossil fuels such as coal, oil, and natural gas (Johnson et al., 2021). This phenomenon is called anthropogenic climate change and it has continued to be addressed since the first IPCC report in 1990. The combination of the facts that climate change is no new phenomenon and that climate change is increasing indicates that the human population has not done enough to prevent the situation from worsening (Johnson et al., 2021). In order to illustrate the situation clearly, we will analyze some parts of the IPCC reports.

First, the Third Assessment Report (TAR) by the IPCC in 2001 shows that Earth's surface is warming, (partially) caused by the increasing amount of atmospheric concentrations of greenhouse gases. Also, IPCC TAR (2001) shows that the projected changes in the climate system will have adverse effects on both the socio-economic and environmental systems, especially on PSIS.

The 2007 Fourth Assessment Report (AR4) quantified the impacts of climate change on the rise of the sea level. This sea-level rise is then reflected in the impact it has on the habitability of PSIS, such as Kiribati. From the scientific perspective, IPCC AR4 (2007) argued the major physical impacts of sea-level rise to be the erosion of beaches, inundation of deltas as well as flooding and loss of many marshes and wetlands. In conclusion, IPCC AR4 (2007) states that low-lying PSIS are among the most vulnerable countries to be affected by anthropogenic climate change as habitable land will diminish.

This loss of habitable territory forces people to move. For inhabitants from PSIS like Kiribati, it is often not possible to relocate within the borders of the country, so the population has to migrate internationally. In 1990, the IPCC already noted that the impact of climate change on human migration is large – with millions of people displaced by coastal flooding, agricultural disruption and shoreline erosion (IOM, 2008). A UNHCR report (GRID, 2016)

found that 21.5 million people have been forcibly displaced by extreme weather events on an annual basis since 2008.

The last released IPCC report, the Sixth Assessment Report (SAR) (2022), is a continuation of the findings of IPCC TAR (2001) and IPCC AR4 (2007). SAR (2022) shows that climate change is an ongoing problem and that PSIS are increasingly affected by the projected increase in temperature, the rise in sea level and extreme weather events such as droughts, and unpredictable precipitation patterns. Even more, scientists who contributed to SAR (2022) agree that the adverse effects of climate change are expected to increase the forced migration of PSIS inhabitants well before 2100.

In conclusion, TAR (2001), AR4 (2007) and SAR (2022) show that there has already been done much scientific research on the consequences of climate change and that it is no new phenomenon. However, the results of the SAR (2022) show that climate change is increasing, rather than improving compared to the first IPCC report in 1990 despite the taken adaptation and mitigation duties.

4. Montevideo Convention

As established by the several reports of the IPCC, climate change affects the rise in sea level, the habitability of PSIS, the socio-economic system, biodiversity and most important for this paper: the long-term sustainability of PSIS. This nexus on the long-term sustainability of PSIS potentially undermines the physical basis of national sovereignty of these states, consequently endangering the rights that come with citizenship of individuals in PSIS (Barnett and Adger, 2003; Byravan and Rajan, 2010). So, not only do consequences of climate change endanger the physical basis of states, but they potentially also harm their ability to function as independent states.

An independent state is defined under international law by the 1933 Montevideo Convention on the Rights and Duties of States. This convention works with the declarative theory of statehood, which defines a state as a person of international law when it meets four qualifications: a government, the capacity to enter into relations with other states, a permanent population and a defined territory. However, the Montevideo principles are no longer adequate in light of the challenges posed by climate change. Specifically, the argument made on defined territory and permanent population should be reconsidered. This chapter will look at the implications of the Montevideo Convention and its declarative theory of statehood that highlight the importance of defined territory and a permanent population as part of the qualifications for the legality of a state.

4.1 Defined territory

In light of the 'drowning of land' of PSIS due to the sea level rise, the qualification of having a defined territory should be reviewed. The impact of climate change on the definition of 'territory' according to the Montevideo Convention (1933) indicates a nexus between territory and statehood. The current and future impacts of climate change on a state's territory question this nexus as the rise in sea level will cause submersion of existing territories (see Chapter 1). This nexus centres around the dispute on the continued legal existence of a state when its territory is no longer defined, thus any longer upholding all four principles of the Montevideo Convention (Lee and Bautista, 2021).

In order to properly discuss this dispute, one should define ‘territory’. International law prescribes a ‘defined territory’ as “all land, internal waters, territorial sea, and air space above the territory as part of a state’s territory” (Taylor, 1994). Although the territory of a state defines the limits of its sovereignty, there is no rule governing the specifics indicating a minimum or maximum size. The territory of a state can take on many shapes; it can either be small or large, fragmented or unified, surrounded by the territories of other states or by huge expanses of water. It is not about the size of the state, but rather the effectiveness of its legislative and administrative functions that manifest territorial sovereignty, and therefore determine statehood (Lee and Bautista, 2021). The development of the state is closely linked to the ability to exercise effective control over a defined territory. Thus, the territory is a fundamental characteristic for a state to achieve legal status in the international community (Montevideo, 1933).

4.2 Permanent population

Not only do states consist of territorial entities, but these entities are inhabited by groups of individuals. For that reason, a permanent population is considered another necessary requirement for statehood (Montevideo, 1933). The term ‘permanent population’ defines a community that has the intention to permanently reside in the defined territory (Zadeh, 2021). Similar to a defined territory, there are no established criteria for the size of the population. For example, Kiribati with its 120,000 inhabitants (The World Bank: Population Kiribati, 2022) is as much of a state as China, which has a population of nearly 1.5 billion inhabitants (The World Bank: Population China, 2022).

In conclusion, climate change questions the legal status of states according to the Montevideo Convention (1933). The impact of climate change (here: the effect of rising sea level on PSIS) affects two of the four fundamental qualifications for statehood. The changes in these requirements are related: the rise in sea level leads to coastal flooding, agricultural disruption and shoreline erosion (change in the defined territory), forcing people to move (change in permanent population) (IOM, 2008).

5. What is owed?

The results of the latest IPCC report (SAR, 2022) predict that some PSIS like Kiribati will become uninhabitable by mid 21st century, which will cause an increase in the number of migrants. This will lead to the question of what will happen to those who no longer have habitable territory. This chapter discusses two of the possible perspectives on what is owed to climate refugees by the international community. Firstly, we will discuss Arendt's concept of the right to have rights. With regards to the statelessness of climate refugees, this thesis analyzes the 'right to have rights' in the light that climate refugees should be owed citizenship in another state. Then we will discuss the concept of the Nation Ex-Situ as a response to landless nation-states.

5.1 The right to have rights

When a state is no longer in accordance with the principles of the Montevideo Convention (1933), it raises questions about the conservation of the rights of individuals. After a state is no longer recognized as legal authority, its citizens become stateless and they lose their rights under international treaties. Stateless persons have been excluded from international human rights protection, as they would no longer fall under the legal protection of a sovereign state. But how does statelessness affect their human rights? The German political philosopher Hannah Arendt elaborated on the concepts of statelessness and human security. She wrote about these concepts in light of the Armenian and Jewish political refugees in the first half of the 20th century (Arendt, 1951). For this reason, her concepts consider statelessness from a political refuge perspective. However, current and future migrants from PSIS like Kiribati will move for environmental reasons. Therefore, the question arises on whether the concepts designed by Arendt for political refugees will also help to understand the climate refugees' situation. In other words, to what extent can Hannah Arendt's designed concept of 'statelessness' explain the legal status of current and future climate refugees?

In her most influential piece "The origins of totalitarianism", Arendt (1951) shares her own experience of statelessness during and after WWII. She writes about the vulnerability of those who find themselves in a legal and existential state of uncertainty outside the realm of membership in a state (Arendt, 1951). In other words: the statelessness. Arendt proposes recognizing a universal 'right to have rights' as a means of abolishing the denuded form of existence of those who find themselves outside the pale of law' (Oman, 2010). 'The right to

have rights' is a concept that explains that all individuals have the right to be members of a community that grants them rights.

But what does this mean for the rights of the 'statelessness'? Current and future climate refugees are no part of a community that grants them rights and there is little recognition by the global community. Arendt reasoned that in order to have rights, individuals must at least be a member of some kind of organized community. Thus, human rights are only prescribed to those who are part of a community (Arendt, 1951).

Does that mean that the 'statelessness' are also the 'rightlessness'? In some way, Arendt argues in favour of this statement since the stateless are cut off from a law-governed condition. Thus, they are no longer secured of their human rights. The dilemma of the stateless is not that they are not equal in the eyes of the law, but rather that no law exists for them (Arendt, 1951).

Therefore, in the situation of stateless climate refugees, the 'right to have rights' concerns the right to citizenship in a foreign state (Arendt, 1951; Kesby, 2012). Particularly: the membership of a political community. According to Arendt (1951), life is fully lived when one's a member of a political community since individuals can only disclose their unique singularity through public and political action. If you want to obtain equality for individuals, it is the legal political status of acknowledged citizenship which argues for that equality (Kesby, 2012). In other words, the guarantee of citizenship is essential in order to reach equality among both climate refugees and those who do not migrate because of climate change. Thus, climate refugees from PSIS, who have become stateless due to the effects of global climate change, should be provided with citizenship in order to reach an equal position to those who do not suffer from climate change (Arendt, 1951).

5.2 The Nation Ex-Situ

Chapter 3 has shown the plausibility that the impacts of global climate change will generate PSIS uninhabitable within the next 50 – 100 years. Although this will be the fate of only some PSIS, the implications this might have on the evolution of statehood and current international law will be grand. In order to respond to the phenomenon of landless nation-states, international law could provide a new category of international actors, under the concept of the Nation Ex-Situ (Burkett, 2013). Ex-situ nationhood is "a status that allows for

the continued existence of a sovereign state, afforded all of the rights and benefits of sovereignty amongst the family of states, in perpetuity" (Burkett, 2013, p. 346). This new form of governance would ensure climate refugees their right to citizenship, as the political entity remains constant even as its citizens establish residence in other states (Burkett, 2013). From a human perspective, it is important that a state will keep operating whether its territory is habitable or not. The possibility of a nation ex-situ would allow a state to protect the human rights of its citizens since the absence of protection of rights by the state would place the citizens outside the international (legal) system. Further, the continued recognition of 'sunk' states is desirable, since it will prevent climate refugees from losing their cultural identity and initial rights (Alexander and Simon, 2014). However, the introduction of the nation ex-situ will deter the achievement of a long-term solution for this situation when the urgent need for individuals to have legal rights and citizen protection has been fulfilled (Alexander and Simon, 2014).

The prospective landless governance of PSIS requires them to rely on other states. In line with this, the Pacific region collaborated on a regional climate change action plan which stipulates the seriousness of the threat climate change poses to the region through the 50th Pacific Island Forum (PIF) in 2019. This is the strongest collective statement PIF leaders consisting of leaders of Australia, New Zealand, Kiribati and twelve other PSIS, have issued on climate change. Besides the agreement that the region needs strong and collective political leadership to advance climate change action, leaders noted: "the proposal for a UN General Assembly Resolution seeking an opinion from the International Court of Justice on the obligations of States under international law to protect the rights of present and future generations against the adverse effects of climate change" (Pacific Islands Secretariat, 2019).

In line with this PIF, the leaders of Australia and New Zealand have intensified their collaboration on climate change and regional security (SWI, 2022). Further, Australian Foreign Minister Wong said that the government will deepen defence and maritime cooperation and work with the Pacific to expand opportunities in order to strengthen the connections between Australia and the Pacific islands (Hurst, 2022).

6. International law

The protection of the rights of refugees and stateless persons has been a challenge for the international legal community for over 70 years. This chapter will look at the perception of some international law documents that are of importance when it comes to climate refugees and stateless persons. As established by the analysis of Arendt's concepts, climate refugees and stateless persons have in common that they lack proper protection by the international community.

6.1 UN Convention relating to the Status of Refugees

The 1951 UN Refugee Convention is a key legal document when it comes to the protection of refugees. However, this convention is not (yet) suitable for climate refugees. According to the 1951 Convention, a refugee is someone "who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion" (Art. 1.A.2). Although this definition entails a large group of refugees, climate refugees cannot appeal to the 1951 UN Refugee Convention. The definition of 'refugee' excludes refuge for environmental reasons, thus exclusion of climate refugees under the 1951 Refugee Convention. Therefore, this thesis considers the current definition of 'refugee' under the 1951 Convention as 'too narrow', which causes limitations in practice.

6.2 Case study: Teitiota v. New Zealand

A 2020 landmark ruling by the Human Rights Committee (HRC) indicates the limitation of the current UN refugee definition and its failure to provide protection to climate refugees. This ruling sets a clear example of the shortcomings of the current UN refugee definition and therefore its failure to protect climate refugees (Bhardwaj, 2020). In this case, Ioane Teitiota from the Republic of Kiribati applied for asylum in New Zealand due to the threat of the effects climate change faced in Kiribati. The New Zealand Immigration and Protection Tribunal rejected his application, following the narrow 1951 UN definition. Teitiota decided to appeal to the International Covenant on Civil and Political Rights, arguing that deportation back to Kiribati would violate his family's Right to life under Article 6 (1). After a close analysis of Teitiota's case, the Tribunal concluded that Teitiota was not a 'refugee' under the 1951 Convention as he did not face a real risk of being persecuted in Kiribati. Although the final decision was not in favour of Teitiota and his family, it may open

pathways for the application of non-refoulement to people fleeing climate change in their country of origin (Bhardwaj, 2020).

6.3 Principle of non-refoulement

Under international human rights law, the principle of non-refoulement guarantees that no one should be neglected asylum and be returned to a country where they will face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm (UNHCR, 1977). In the case of Teitiota, the Human Rights Committee has considered whether New Zealand is precluded from deporting Teitiota to Kiribati, where he would face risks arising from the harmful impacts of climate change (McAdam, 2020). The HRC decision in the case of Teitiota shows that the adverse climate change impacts are not taken into account under both the legal refugee definition of the 1951 Convention and the principle of non-refoulement of the UNHCR. However, it is gaining momentum now that courts face more similar cases like Teitiota v. New Zealand in the future. This way, they might pave the way for a more inclusive international legal framework on climate change, migration and international human rights.

6.4 Expansion of current refugee definition

Some scholars debated whether we need a new international framework of law in order to help climate refugees (Lister, 2014; Adiraju, 2022) or whether climate refugees could fit under the 1951 Refugee Convention. This section argues that the concept of climate change refugees can be fitted within the logic of the UN Refugee Convention by including climate refuge in the current definition. As such, international law must be amended to explicitly grant the status of ‘refugee’ to climate refugees who are affected by environmental harms (Adiraju, 2022). As an illustration, in the case of Teitiota v. New Zealand (2020), the court looked to the 1951 Refugee Convention and its associated 1967 Protocol for Implementation when deciding on whether to grant legal protections to Teitiota. This case shows that the definition of ‘refugee’ has been applied to deny the climate migrant in question legal protection. Therefore, the definition must be extended in international law to ensure that ‘climate refugees’ are provided with the support they need (Adiraju, 2022). The creation of a new ‘refugee’ definition will pave the way for legal support for those internationally displaced due to the consequences of climate change.

Although the broadening of the qualification for refugee status as laid out in the UN refugee convention would involve some modifications to the current terms of the 1951 Convention, it would not require a fundamental shift in the core principles of the logic. In order to have a chance in feasibility and likelihood of successful adoption of this proposed change, the modification in the definition of refugee by the UN should be rather modest. Lister (2014) appeals for a system that will do the most justice to people given plausibly achievable goals.

7. Who is most capable of bearing responsibility?

Thus far, it is an established fact that there will be millions of individuals who will be displaced from their homes within the next 50-100 years due to sea-level rise as a consequence of climate change. This leads to a query on the ethical implications of the global (legal) community towards those displaced. This action should derive from the unique moral consideration of those displaced since no other form of environmentally induced human migration will be as permanent as migration by sea-level rise (Byravan and Rajan, 2010; Risse, 2009). The question of international political action is especially relevant for PSIS. When the loss of habitable land would happen to a large country, coastal communities would be able to move inland, given adequate government response (Byravan and Rajan, 2010). In this case of internal relocation, a large-scale international response is not as crucial as is the case for PSIS, where international relocation and permanent resettlement will be the only possible 'adaptation' strategy available. Therefore, Byravan and Rajan (2010) argue for a special right of free movement for 'climate exiles', which allows its bearers the right to migrate and settle in a safe country.

7.1 Status of 'climate exile'

Under this new international treaty proposed by Byravan and Rajan (2010), people living in nation-states where long-term sustainability cannot be guaranteed will be given certain rights under the status of 'climate exile'. This status enables climate refugees to relocate in advance of sea-level rise and/or prepares them to start a new life elsewhere through training. Byravan and Rajan (2010) argue that historically large emitters will take responsibility for providing immigration rights, based on their shares of cumulative greenhouse gas emissions (p. 253). In other words, major polluters should take the responsibility for helping out climate refugees.

The status of 'climate exile' will only be granted under certain conditions, also known as an ethical threshold. This threshold is based on the possible limitations of the 'functionings' of those eligible for the status. Functionings are 'an achievement of a person, what he or she manages to do or be, [and] it has to be distinguished from the commodities that are used to achieve those functionings'' (Sen, 1987, p. 7). Sen argues that functionings are often not intentional actions, but rather states of being (1987). For example, the state of being healthy or the state of being free to speak your mind. Those are considered functionings according to Sen's capability approach. Once the impacts of climate change detract people's

functionings and diminish their capacity to fulfil their communal responsibilities, those people will be granted the status of 'climate exile' (Page, 2008; Byravan and Rajan, 2010).

7.2 Distribution of the responsibility

The provision of the status of climate exile brings about obligations for the international community (Byravan and Rajan, 2020). This leads to the question of who should bear the responsibility for the compensation of dealing with the impacts of climate change. First, we should clarify what 'bearing the responsibility of climate change' means. The distribution of who bears what responsibility with regards to climate change impacts, could be divided into two duties: the duty of mitigation and the duty of adaptation (Moellendorf, 2015). Following AR6 (2022), people's obligations under the duty of mitigation consist of cutting back on climate change-inducing activities, such as lowering the emission of greenhouse gases by reducing air travel or using less electricity. Then, adaptation is about providing resources to protect people against the effects of climate change (AR6, 2022). For example, this can be done by adjusting the infrastructure or implementing sustainable aspects in educational institutions.

The implementation of mitigation and adaptation measures produce costs, both monetary and social. Shue (1999) argues that these costs should initially be borne by the wealthy states and the duties of the poor states should be less demanding. In fact, the poor states are under no general obligation to be helpful to the wealthy states in dealing with the consequences of climate change (Shue, 1999, p. 543). However, this statement is quite straightforward: the reality is more complex and there is no simple way to decide on the question of who should bear the burdens of climate change. One can identify at least two principles that address this question: the Polluter Pays Principle (PPP) and the Ability to Pay Principle (APP).

7.3 Polluter pays principle

The idea behind the PPP is that countries should contribute to the costs of managing climate change in proportion to their global cumulative greenhouse emissions and the fact that developed countries should lead the world in terms of this process (Shue, 1999; Page, 2006; Page, 2008; Caney, 2010; Singer, 2016). However, the PPP is confronted with challenges. For instance, there is still much research to be conducted in climate science and information from IPCC reports that the PPP bases its conclusions on, is often not yet complete (Caney, 2010).

In fact, the projections and estimates of the IPCC TAR (2001) are not very precise, but rather diverging numbers. As such, sea levels are expected to rise between 0.09 metres and 0.88 metres between 1990 and 2100 (TAR, 2001, p 16). Also, the report employs a five-point scale (ranging from 95% confidence to 5% confidence) indicating various degrees of confidence in its projections (TAR, 2001, p.37). Therefore, it is hard to specify the results to estimate the extent of harm caused by climate change. Another challenge to the PPP is that some people were excusably ignorant of the fact that their actions may spark serious climate change. As such it would be considered unfair to make them pay since they knew not what they were doing and their ignorance is excusable (Caney, 2010).

7.4 Ability to pay principle

The APP states that the duty to address a problem should be borne by the wealthy and that this duty should increase in line with an agent's wealth (Shue, 1999; Caney, 2005; Caney, 2010; Singer, 2016, Heyward, 2021). Thus, the APP puts emphasis on who can rectify the harm, rather than taking into account who caused the harm. The disregard for the past points out the forward-looking view of the APP, which is in contrast with the backwards-looking principle of the PPP. The advantaged argue that it is 'unfair' to make them minimize their emissions and pay for adaptation measurements, although the adverse effects of climate change are not their direct fault (Singer, 2016; Heyward, 2021). Adopting an APP component would make them bear a burden for something that is unrelated to their actions (Caney, 2010). Further, some might argue the APP on the grounds that burdens should not be borne by the advantaged when their wealth did not contribute to hazards of climate change in any way, but rather they obtained their position through clean development (?)

7.5 Hybrid model

As these shortcomings of the PPP and APP show, there is no simple way to decide on the question of who should bear the responsibility of addressing climate change. This section introduces a hybrid model, which aims to develop a query of who should bear the burdens of addressing climate change. The hybrid model has been introduced in order to reduce the shortcomings of the PPP and the APP and to elaborate on the concept of who has to bear the burdens with regard to climate change (Caney, 2010; Moellendorf, 2012; Moellendorf, 2015). This hybrid model provides a theoretical framework in which we could address climate change whilst taking into account the limitations of the PPP and APP. An improvement of the hybrid model in comparison to the PPP and APP is that the hybrid view can determine who

should bear responsibilities with regard to the protection of the rights of climate refugees and who should fund adaptation and mitigation measures. According to the hybrid model, the global poor are highly vulnerable to the hazards of climate change and therefore their adaptive capacity needs to be advanced (Caney, 2010). *Thus, the global poor themselves are excluded from bearing the costs and they can find support for this in the hybrid model.* Moreover, the hybrid view neglects the PPP approach to some extent, claiming that the poor do not have to bear the adaptation costs themselves, regardless of their level of pollution.

7.6 Specifications

Once the principle of providing fair rehabilitation for climate exiles is accepted, some questions will arise. One of the questions that Byravan and Rajan (2010) address, is to who we would assign obligations to take responsibility for providing the right to citizenship in a new state for climate-induced migrants. In other words, who are the duty bearers and how should we distribute responsibilities justly?

Generally, duty bearers can be individuals, who have universal obligations (e.g. do no harm) and obligations that are based on different roles people play in society. Further, both non-state (e.g. corporations and international organizations) and state agents can bear rights and responsibilities. The common responsibilities of states may differ since an equal distribution of costs would be unfair to developing countries, as indicated by the hybrid model (Caney, 2010). Developed countries should take the lead in bearing the responsibility. Also, a distribution of costs in which the abilities of developing, poor countries are taken into account is important. If this would not be the case, it could interfere with their development, rather than try to stimulate their growth. This consideration of fairness in responsibilities should be built into the international climate change law.

7.7 Common But Differentiated Responsibilities

This consideration of fairness expresses itself in the principle of Common But Differentiated Responsibilities (CBDR), which was formalized in the United Nations Framework Convention on Climate Change (UNFCCC) of Earth Summit in Rio de Janeiro in 1992. CBDR is the first international legal instrument to address climate change and attempted to address the negative impacts on the global environment. The CBDR principle recognizes that all states have a joint obligation to address environmental destruction, but it denies equal responsibility to all states with respect to environmental protection (Eckersley,

2015). The principle balances the states' need to take responsibility for environmental problems but also recognizes the differences in economic development between states.

The 2015 landmark decision by the Hague District Court on the Urgenda v. The Netherlands case represents the first time a national court has applied the principle of CBDR as a tool to interpret a state's climate obligations under domestic law (Ferreira, 2016). The case of Urgenda v. The Netherlands case may serve as a starting point for more productive and extensive use of CBDRs in future climate litigation. The final decision of this case was that in order to meet its standard duty of care towards the plaintiffs (the Urgenda Foundation, representing current and future generations of citizens threatened by the risks of climate change), the Dutch government had to "limit the joint volume of Dutch annual greenhouse gas (GHG) emissions, or have them limited so that this volume will have reduced by at least 25%-40% at the end of 2020 compared to the level of the year 1990" (Hoge Raad, 2019). Many applauded this decision, but there was also some heavy critique. Some argued that the Court had overstepped the boundaries of its role within the governmental separation of power (Nollkaemper and Burgers, 2020). Further, until this decision, CBDRs had remained outside the purview of environmental law jurisprudence at the national level. The application of CBDR in the Urgenda case helped to establish the role of leadership of developed countries in climate action.

8. Discussion

This thesis builds on previous studies on migration and the status of climate refugees (Barnett and Adger, 2003; Nurse and Moore, 2005; Byravan and Rajan, 2010; Atapattu, 2020) by adding an analysis of what is owed to climate refugees (Arendt, 1951; Kesby, 2012) and what parties from the international community are best fitted to bear that responsibility (Page, 2008; Caney, 2010; Eckersley, 2015).

This thesis shows that the current international community is dealing with a gap. A gap between what law provides and what the world in general and specifically climate refugees need. The only way to close this gap is to either increase human empathy to pursue the alarms and pieces of advice that reports by the IPCC have established over the past decades. This means that the international community should adhere to the duty of mitigation, by avoiding and reducing emissions of greenhouse gases into the atmosphere to prevent the planet from warming to more extreme temperatures in order to diminish the chances of dangerous sea-level rise that threatens PSIS.

Another option to close the gap is to increase smart practical thinking on what the international community can accomplish in order to support those who have been negatively affected by the adverse impacts of global climate change. This thesis argues that there are two main options for helping out those people on an individualistic and collective level. First, some argue that climate refugees should be granted citizenship in other countries in order to preserve their rights as a citizen (Arendt, 1951; Kesby, 2012). As an illustration, this thesis analyzed the case of Teitiota v. New Zealand (2020) which shows that climate refugees should be considered as individuals in order to grant them their right to citizenship since the HRC looked at the individual situation of Teitiota.

The second option looks at the possibility of the concept of ex-situ nationhood. This could be considered a more collective perspective since it focuses on the conservation of a state as a whole. However, the principles of territory and population of the Montevideo Convention are not strictly adhered to, since ex-situ nationhood allows for governance from abroad. Further, ex-situ nationhood identifies the question of the moral rights that states have on territory. In general, states think that they are entitled to territory and they consider that as their own, but on what grounds is that established? Further research should look at this.

After the analysis of the possible solutions to help climate refugees, this thesis concludes that there is not yet a clear model on who should bear the responsibility. Therefore, this thesis introduces a hybrid model, which is a combination of the PPP and the APP model (Caney, 2010; Moellendorf, 2015). The outcome of the hybrid model indicates that those who gained from climate change in the past should bear responsibility for climate change by issuing citizenship or providing territory in order to enforce ex-situ nationhood.

9. Literature

Adiraju, S. (2022, February 7). *What is a "Refugee"? Expanding the UN Refugee Convention in the Face of Climate Change*. Columbia Undergraduate Law Review. https://www.culawreview.org/journal/what-is-a-refugee-expanding-the-un-refugee-convention-in-the-face-of-climate-change

Arendt, H. (1951). *The Origins of Totalitarianism*. Schocken Books.

Atapattu, S. (2020). Climate change and displacement: protecting 'climate refugees' within a framework of justice and human rights. *Journal of Human Rights and the Environment*, *11*(1), 86–113. https://doi.org/10.4337/jhre.2020.01.04

Australia, New Zealand leaders say 'in lockstep' on Pacific, climate. (2022, June 10). *SWI*. https://www.swissinfo.ch/eng/australia--new-zealand-leaders-say--in-lockstep--on-pacific--climate/47663108

Barnett, J., & Adger, W. N. (2003). Climate Dangers and Atoll Countries. *Climatic Change*, *61*(3), 321–337. https://doi.org/10.1023/b:clim.0000004559.08755.88

Bhardwaj, C. (2020). Ioane Teitiota v New Zealand (advance unedited version), CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020. *Environmental Law Review*, *23*(3), 263–271. https://doi.org/10.1177/14614529211039469

Byravan, S., & Rajan, S. C. (2010). The Ethical Implications of Sea-Level Rise Due to Climate Change. *Ethics & International Affairs*, *24*(3), 239–260. https://doi.org/10.1111/j.1747-7093.2010.00266.x

Caney, S. (2010). Climate change and the duties of the advantaged. *Critical Review of International Social and Political Philosophy*, *13*(1), 203–228. https://doi.org/10.1080/13698230903326331

Eckersley, R. (2015). The common but differentiated responsibilities of states to assist and receive 'climate refugees'. *European Journal of Political Theory*, *14*(4), 481–500. https://doi.org/10.1177/1474885115584830

Ferreira, P. G. (2016). 'Common But Differentiated Responsibilities' in the National Courts: Lessons from*Urgenda*v.*The Netherlands*. *Transnational Environmental Law*, *5*(2), 329–351. https://doi.org/10.1017/s2047102516000248

Fraser, D., & Caestecker, F. (2013). Jews or Germans? Nationality Legislation and the Restoration of Liberal Democracy in Western Europe after the Holocaust on JSTOR. *Law and History Review*, *31*(2). https://www.jstor.org/stable/23489485?seq=1

Hoge Raad. (2019). *Staat moet uitstoot broeikasgassen met 25% verminderen vóór eind 2020*. https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2006

Houghton, J. T., Ding, Y., Griggs, D. J., Noguer, M., der Linden, P. J., Dai, X., Maskell, K., Johnson, C. A., & Intergovernmental Panel on Climate Change. (2001). *Third Assessment Report on Climate Change 2001: The Scientific Basis*. Cambridge University Press.

Hurst, D. (2022, May 23). Australia to stand with Pacific islands on climate crisis and 'respect' region, Penny Wong says. *The Guardian*. https://www.theguardian.com/australia-news/2022/may/23/australia-to-stand-with-pacific-islands-on-climate-crisis-and-respect-region-penny-wong-says

Intergovernmental Panel on Climate Change, Solomon, S., Qin, D., Manning, M., Marquis, M., Averyt, K., Tignor, M. M. B., Miller, H. L., & Chen, Z. (2007). *Fourth Assessment Report on Climate Change 2007: Mitigation of climate change*. Cambridge University Press.

Internal Displacement Monitoring Centre. (2016). *Global Report on Internal Displacement (GRID)*. https://www.internal-displacement.org/globalreport2016/

IOM. (2008). *Migration and Climate change*. International Organization for Migration. https://olibrown.org/wp-content/uploads/2019/01/2008-Migration-and-Climate-Change-IOM.pdf

Johnson, C., Affolter, M. D., Inkenbrandt, P., & Mosher, C. (2021). *Anthropogenic Causes of Climate Change*. Geosciences LibreTexts. https://geo.libretexts.org/Bookshelves/Geology/Book%3A_An_Introduction_to_Geology_(Johnson_Affolter_Inkenbrandt_and_Mosher)/15%3A_Global_Climate_Change/15.05%3A_Anthropogenic_Causes_of_Climate_Change#:%7E:text=The%20Theory%20of%20Anthropogenic%20Climate%20Change%20is%20that%20humans%20are,understanding%20of%20anthropogenic%20climate%20change

Kesby, A. (2012). The Right to have Rights as Citizenship. *The Right to Have RightsCitizenship, Humanity, and International Law*, 67–91. https://doi.org/10.1093/acprof:oso/9780199600823.003.0004

Lee, S., & Bautista, L. (2021). Climate Change and Sea Level Rise. *Frontiers in International Environmental Law: Oceans and Climate Challenges*, 194–214. https://doi.org/10.1163/9789004372887_008

Moellendorf, D. (2015). Climate Change Justice. *Philosophy Compass*, *10*(3), 173–186. https://doi.org/10.1111/phc3.12201

Nollkaemper, A., & Burgers, L. (2020). *A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case*. EJIL: Talk. https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/#:%7E:text=The%20District%20Court%20ordered%20the,level%20of%20the%20year%201990%E2%80%B2

Nurse, L., & Moore, R. (2005). Adaptation to Global Climate Change: An Urgent Requirement for Small Island Developing States. *Review of European Community and International Environmental Law*, *14*(2), 100–107. https://doi.org/10.1111/j.1467-9388.2005.00430.x

Oman, N. (2010). Hannah Arendt's "Right to Have Rights": A Philosophical Context for Human Security. *Journal of Human Rights*, *9*(3), 279–302. https://doi.org/10.1080/14754835.2010.501262

Pacific Islands Forum Secretariat. (2019). *Fiftieth Pacific Islands Forum*. https://www.forumsec.org/wp-content/uploads/2019/08/50th-Pacific-Islands-Forum-Communi

Page, E. A. (2008). Distributing the burdens of climate change. *Environmental Politics*, *17*(4), 556–575. https://doi.org/10.1080/09644010802193419

Risse, M. (2009). The Right to Relocation: Disappearing Island Nations and Common Ownership of the Earth. *Ethics & International Affairs*, *23*(3), 281–300. https://doi.org/10.1111/j.1747-7093.2009.00218.x

Rosenhaft, E. (2021, September). *Strangers in Their Own Land: Romani Survivors in Europe 1945*. The National WWII Museum | New Orleans. https://www.nationalww2museum.org/war/articles/romani-holocaust-survivors-1945

Sen, A. (1987). *Commodities and Capabilities*. OUP India.

Taylor, P. J. (1994). The state as container: territoriality in the modern world-system. *Progress in Human Geography*, *18*(2), 151–162. https://doi.org/10.1177/030913259401800202

United Nations High Commissioner for Refugees. (1954). *Convention Relating to the Status of Stateless Persons*. Https://Www.Refworld.Org/Docid/3ae6b3840.Html. https://www.refworld.org/docid/3ae6b3840.html

United Nations High Commissioner for Refugees. (1961). *Convention on the Reduction of Statelessness*. Refworld. https://www.refworld.org/docid/3ae6b39620.html#:%7E:text=Refworld%20%7C%20Convention%20on%20the%20Reduction%20of%20Statelessness&text=Adopted%20on%2030%20August%201961,in%20accordance%20with%20article%2018.

The World Bank: Population China. (2022). The World Bank. https://data.worldbank.org/indicator/SP.POP.TOTL?locations=CN

The World Bank: Population Kiribati. (2022). The World Bank. https://data.worldbank.org/indicator/SP.POP.TOTL?locations=KI

World Population by Country. (2022). World Population Review. https://worldpopulationreview.com/

Zadeh, A. Z. (2021). *International Law and the Criteria for Statehood*. https://arno.uvt.nl/show.cgi?fid=121942