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Underwater self-determination: Sea-level rise and deterritorialized Small Island States

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Abstract *Global climate change is likely to become a major cause of future migration. Small Island States are particularly vulnerable since territorial destruction caused by sea level rise poses a threat to their entire existence. This raises important issues concerning state sovereignty and self-determination. Is it possible for a state to remain self-determining even if it lacks a stable population residing on a specific territory? It has been suggested that migrants from disappearing Small Island States could continue to exercise sovereign control over their abandoned territory. Such an arrangement would allow them to retain a measure of self-determination. The question posed in this paper is whether this 'deterritorialized state proposal' is conceptually plausible and normatively acceptable. It is argued that the proposal is conceptually plausible if we adopt a gradual understanding of 'self-determination', but that its normative acceptability is weak even if it is supplemented with compensatory measures.*

Introduction

According to some estimates, climate change-induced sea-level rise might within fifty years cause the physical destruction of a number of Small Island States (Bindoff *et al.* 2007, pp. 413-414; Park 2011, p. 1; Mimura *et al.* 2007, ch. 16). Tuvalu, Kiribati, and the Maldives are oft-cited examples of states facing the risk of having their territories destroyed by rising sea levels (e.g. Barnett & Adger 2003, p. 322; Kelman 2008, p. 20; Yamamoto & Esteban 2010, p. 1).¹ This raises important issues concerning state sovereignty and self-determination; if we assume that the people of a 'disappearing state' has a right to collective self-determination, would it perhaps be possible to preserve this right even after the people have been forced to relocate?² Is it possible for a state to continue its existence, and remain a self-determining entity, even if it lacks a stable population residing on a specified territory?

It has been suggested by some international law scholars that migrants from a disappearing state could retain their collective right to self-determination even after they have been forced to leave their home country. The disappearance of island states, if it happens at all, will be a very slow and gradual process (McAdam 2010, p. 106). Human habitats will be drowned, floods will destroy arable lands, and ultimately it will be unbearable for people to continue to live on these islands. After people have emigrated there will be abandoned territory left behind for a long time. What I will call the 'deterritorialized state proposal' suggests that the people of a vanishing island state could continue to exercise sovereign control over the abandoned territory. When finally the last rock disappears under the waters the territory will, in a sense, continue to exist beneath the face of the sea. The people of a vanishing island state could then

continue to exercise sovereign control over what used to be their territorial waters (Burkett 2011; Rayfuse 2010; Yamamoto & Esteban 2010).

This is indeed a thought-provoking suggestion on how people of vanishing island states could retain some measure of self-determination. But some skepticism about the proposal is warranted. Does exercising control over an abandoned territory in any meaningful sense constitute self-determination? And even if it does, does the deterritorialized state proposal take us any way near what migrants from vanishing states are really morally due? These are the questions for this paper; more specifically I will ask, first, whether the understanding of self-determination embodied in the deterritorialized state proposal is conceptually sound and, second, if the proposal is, or could be made, normatively acceptable.

In the following section I will briefly spell out what I have called the deterritorialized state proposal. I will then present what I believe is the most difficult challenge for this proposal; the 'sovereignty challenge'. A proponent of this challenge would argue that in order for a people to be self-determining they must have the moral and political authority to *establish justice* within a geographic region. If this is correct, the deterritorialized state proposal could never live up to the requirement of preserving the self-determination of a people of a vanishing island state. I will argue however, that the deterritorialized state proposal might survive this challenge if we employ an understanding of 'self-determination' according to which sovereignty is but an endpoint of a continuum consisting of several different ways of institutionalizing self-determination.

I will end the paper by arguing that, even though the deterritorialized state proposal can survive the sovereignty challenge, it still needs to be mended in order to be normatively acceptable. Migrants from vanishing island states can indeed retain a meaningful measure of self-determination, but we must also acknowledge that by becoming deterritorialized these people have lost a valuable part of what self-determination ordinarily entails, namely *independence* from other political units. We need to compensate for this loss of independence by strengthening the *ability* of these groups to continue their existence as self-determining entities. I argue that compensation will take us some way towards making the deterritorialized state proposal normatively acceptable, but that it is impossible to *completely* compensate for the loss of independence.

A Non-Ideal 'Solution': The Deterritorialized State Proposal

In essence, the deterritorialized state proposal makes two claims: 1. the people of a vanishing island state could continue to exercise sovereign control over their abandoned, now uninhabitable, territory, and 2. when the island state eventually becomes completely inundated (if it ever happens) the people could continue to exercise sovereign control over what used to be their territorial waters (Burkett 2011; Rayfuse 2010; Yamamoto & Esteban 2010).

In which ever way the former citizens of a vanishing island state continue their lives after they have left their homeland -- e.g., dispersed over the world, as a cultural community in a new state, or as fully assimilated citizens of new nations -- they, and their descendants, could retain a measure of self-determination by exercising independent and autonomous control over their abandoned territory and/or territorial waters. In practice this control could be exercised by a

‘government-in-exile’ which would be regularly elected by the registered voters of the deterritorialized state (Rayfuse 2010; McAdam 2010, pp. 116-118). This ‘government’ would act as ‘a trustee of the assets of the state for the benefit of its citizens wherever they might now be located’ (Rayfuse 2010, p. 11); it would manage the maritime zones of the state and make sure that the resource rents from their exploitation would be used to fund the continued livelihood of its displaced citizens in a fair manner; it would also continue to represent the deterritorialized state at the international level, and protect the rights and interests of its citizens vis-à-vis their new host state (or states) (Rayfuse 2010, p. 11). Regular elections of a government-in-exile would also help the diaspora of a vanished island state to maintain a sense of internal identity. This is important, some would claim, because a sense of internal identity is a necessary requirement for a collective to remain a legitimate holder of a right to self-determination (Cf. Nine 2010, pp. 362-363).

Sometimes the deterritorialized state proposal will promise more than merely providing people of vanishing states with opportunities to uphold an abstract connection to the native land. Migrants from a submerged state could, for instance, claim sovereign control over their territorial waters as a so called ‘exclusive economic zone’. This would mean that they possess rights over the natural resources of the waters and sea bed in that zone (Yamamoto & Esteban 2010). This might be of great economic importance for some Small Island States where fish license fees paid by foreign operated boats constitute a major source of income (Barnett & Campbell 2010, p. 7).³

But it is not obvious that a Small Island State will continue to exist, as a state, after its population has been forced to emigrate. In accordance with international conventional law,

such a state might actually become extinct (McAdam 2010, p. 110-113; Park 2011, p. 4; Rayfuse 2010). Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States, which is commonly regarded as reflecting customary international law, stipulates that statehood requires: 1. a defined territory, 2. a permanent population, 3. an effective government, and 4. the capacity to enter into relations with other states (McAdam 2010, pp. 110-111; Rayfuse & Crawford, 2012). All of these criteria could prove to be problematic for a people of a vanishing island state who wish to retain sovereign control over their abandoned territory.

But, as Rayfuse (2010) points out, the concept of a 'deterritorialized state' is neither new, nor rejected under current international law. The most famous example of a deterritorialized state is probably the Sovereign Order of the Military Hospitaller Order of St John of Jerusalem, of Rhodes and of Malta (also known as the Order of St John or the Knights of Malta). This order has historically been considered a sovereign international subject, recognized by a large number of states and enjoying the rights of treaty making and membership of international organizations, despite having lost its territory when rejected from Malta by Napoleon in 1798. There are other examples, such as the Papal See which was recognized as a state despite possessing no territory between 1870, when the Papal States were annexed by Italy, and 1929 (Rayfuse 2010, p. 10; Rayfuse & Crawford, 2012; Yamamoto & Esteban 2010, p. 6).

Furthermore, Rayfuse points out that international law also recognizes the notion of functional, or non-territorial sovereignty, as in the context of communities made diasporic by processes of invasion or colonization, or, more recently, in the context of entities such as the European Union. It seems then, that international law already recognizes that sovereignty may be separated from territory. Rayfuse sums up the issue nicely by stating that international law is

‘fully capable of responding to the problem of disappearing states in a way that positively recognizes their sovereign rights without further victimizing them by the loss not only of their territory but of their sovereign existence as well’ (Rayfuse 2010, p. 11).

Legal scholars who defend the deterritorialized state proposal are quite convinced that international law is already capable of adopting this solution without extensive legal reforms. *Some* changes in international law would be needed in order for the proposal to work in practice. According to international law relating to maritime zones, as it is set out in the 1982 Law of the Sea Convention, the outer boundary of maritime zones are ambulatory, and they will move inwards as the territory of an island state shrinks. Should the island eventually disappear, it would lose all of its territorial waters (Rayfuse 2010, p. 3). Some law scholars have suggested that this problem can be solved rather easily by a ‘freezing’ of the outer limits of current maritime zones (see e.g. Caron 1990; Soons 1990).

The initial reaction to the deterritorialized state proposal might be that it is quite difficult to stomach this a ‘solution’ to the problem that, as consequence of climate change, people from Small Island States will be forced to migrate and risk losing their statuses as self-determining nations. Ideally, we would presumably wish for a complete mitigation of climatic changes so that these islands will never disappear. If this cannot be done, another possible solution would be to defend the threatened islands through engineering, e.g., by creating sea defences and new territory in the form of artificial islands (Rayfuse & Crawford, 2012). Such sea defenses and artificial islands could be created either with the purpose of counteracting the disappearance of natural territory of the threatened islands, or one could imagine artificial islands being constructed in new locations for the citizens of vanishing states to move to.

The process of constructing sea defences and artificial islands suitable for human habitation is very expensive however, and the threatened states would need a lot of international support if they were to choose this course of action. In some cases this suggestion might not be too far fetched. The Maldives, for instance, have already built a couple of artificial islands comprising a total area of about two square kilometres (Sovacool 2011, p. 1180).⁴ In other cases however, engineering solutions are by most experts seen as highly unrealistic. In order to defend for instance Funafuti, the atoll island that forms the capital of Tuvalu, it has been suggested that one would need 54 kilometres of sea defenses to protect merely 2.5 square kilometres of land (Lewis 1989).

These alternative ways of action suggest that the deterritorialized state proposal might not be the second or even third best solution. But at the same time it is most probably a quite feasible solution when compared to the alternatives. It is more feasible in the rather weak sense that it is, politically speaking, a more likely course of action. It is, sadly, rather unlikely that the wealthy states most responsible for climate change, or the world society as a whole, would agree to contribute with the extensive funds needed to build artificial islands or sea defenses to protect threatened Small Island States.

The deterritorialized state proposal seems more feasible in this respect, not the least since it has precedence in the above mentioned examples of already existing deterritorialized states. Since the proposal is more feasible, in the sense of being 'a more politically likely course of action', it is of interest to ask whether it is also a *normatively acceptable* solution. And, if it is not, it can be mended in a way that would make it normatively acceptable. The feasibility of the deterritorialized state proposal is thus not really used as an argument in favor of the proposal

when compared with other suggestions, which is how feasibility is often used in political theory. The kind of feasibility I talk about here is *political feasibility*, and the comparatively high political feasibility of the deterritorialized state proposal motivates a further investigation of its normative acceptability (see Räikkä [1998, pp. 28-31] for a discussion of the distinction between political feasibility and feasibility in political theory).⁵

What I mean, more precisely, with ‘normatively acceptable’ will be explicated in the two following sections. I will offer a two-stage interpretation of what normative acceptability means in this context; the first stage assesses whether the deterritorialized state proposal might resolve the requirements of a Lockean proviso pertaining to territorial rights; the second stage asks whether compensation can be offered if the proposal does not fully resolve the requirements of the proviso.

The Sovereignty Challenge and a Lockean Proviso for Territorial Rights

One could criticize the deterritorialized state proposal for relying on a rather weak conception of self-determination. Nine (2010) has presented a quite radical suggestion of what we owe to migrants from vanishing states. Much like the law scholars cited above, she defends the idea that migrants from disappearing states have collective rights of self-determination. But she draws the rather far-reaching conclusion that in order to respect these rights other states ought to surrender parts of their territory to people from vanishing states, so that they may continue their existence as a self-determining people.

In the following I will engage critically with Nine's argument. Her account is one of quite few philosophical treatments of the issue of disappearing states' rights of self-determination. But the main reason for why I focus on Nine's account is that it presents a rather radical proposal, and as such it constitutes a 'hard test' for the deterritorialized state proposal. If it can be shown that it is possible to reconcile the deterritorialized state proposal with the normative principles underlying Nine's account, this would speak in favor of its acceptability. As it will turn out, the proposal does better in this regard than could perhaps be initially expected. But in the end the proposal has problems surviving the test even with some amendments.

For Nine, the right of self-determination is equivalent to the right of self-government. She argues that self-determination requires both autonomy and independence, where autonomy is a group's 'ability to govern itself by adjudicating, legislating, and enforcing laws on its own', and independence means that a group has 'a domain of political control independent of higher or foreign political units to which the group's self-made laws are subject to being overridden or revoked' (Nine 2010, p. 362).

The 'practical foundation' upon which groups can exercise their rights of self-determination is a system where states hold territorial rights. The purpose and ultimate justification of territorial rights is, according to Nine (2010, p. 362), that they protect and promote the self-determination of peoples and peoples' capacities to establish justice for their members within a particular geographical region. If a people is to be self-determining, it must rule itself; and in order for it to rule itself it must have the moral and political authority to establish justice for its members. In

order to be self-determining then, a group which is a legitimate holder of a right to self-determination must have sovereignty over the territory where its members (usually) live. Without territorial rights, a self-determining group may cease to exist *qua* self-determining group (Nine 2010, p. 361-362).

Nine argues that the system of territorial states, since it is a system of exclusive rights over land, is subject to the conditions of a Lockean proviso mechanism. The general point of a Lockean proviso is to ensure that the exercise of an exclusive right over goods does not undermine the very values that justify the right (or the system of rights of which it is a part). Since the foundational moral mandate for territorial rights is 'the establishment of justice through the preservation of self-determining groups' the proviso will be triggered in circumstances when the self-determination of a group is threatened because of the territorial dispositions of other groups (Nine 2010, p. 361-362). Presumably this is the case when the entire or very large parts of a people lose their homeland because of environmental disaster. When this happens, the 'ecological refugee state' is under a threat to lose its status as a self-determining entity. When the territory of a self-determining group is destroyed, its self-determination is threatened with extinction because of the group's lack of access to the territories of other states. In such circumstances the proviso requires that states with territorial rights over viable lands have an obligation to surrender territory to migrants from ecological refugee states (Nine 2010, p. 366).⁶

If Nine's argument is correct, the deterritorialized state proposal is largely unsatisfactory. The kind of self-determination embodied in this proposal is too weak, and on her understanding of self-determination, combined with the notion of a Lockean proviso mechanism for territorial rights, what is required is nothing less than that the people of vanishing states are granted

territorial rights over new territory. The question then is whether Nine's understanding of self-determination is really plausible?

According to some accounts of self-determination there is an important distinction between self-determination and political autonomy (see e.g. Buchanan 1991; Copp 1997). Allen Buchanan has for instance pointed out that political autonomy consists of bundles of individual rights (such as the right of each member to participate in the internal political processes of the group) and of group rights (for example territorial rights, or property rights which afford collective control over some natural resources), and these rights of political autonomy are the instruments through which a group can achieve self-determination. Furthermore, political autonomy can 'take many form and admits of degrees' (Buchanan 1991, pp. 46-47). A failure to properly distinguish between self-determination and the various forms and degrees of political autonomy might, according to Buchanan, lead us to the further conceptual mistake of assuming that 'the value of self-determination cannot be adequately served unless the group has the highest degree of political autonomy, namely sovereignty' (Buchanan 1991, p. 47). This seems straightforward enough if we think of for instance local self-government as a way of institutionalizing self-determination for a group.

If we agree that political autonomy comes in different forms and in different degrees, then the creation of a new sovereign in a territory is but one, very radical, way of institutionalizing a groups' right to self-determination. It would certainly be possible to conceive of arrangements allowing limited forms of self-determination for previously self-determining groups now living on the territory of other states. There are actually some ambiguities in Nine's account on precisely this point. On the one hand, she defines the right to self-determination quite strongly

as a right of independent and determinate self-government, and argues that such self-government is impossible without sovereign control over territory. On the other hand, when she argues that it is insufficient to merely allow ecological refugees the right to immigrate, she says that this is so because in order to be self-determining 'a group *may* have to have territorial rights' (Nine 2010, p. 366, my emphasis). This suggests a weaker connection between self-determination and territorial rights.

There is further support for the weaker interpretation in Nine's discussion of the fact that there in the future might be numerous ecological refugee states as well as other groups which have legitimate claims to territorial rights, and how this presents a problem since there is no unoccupied, viable land on which they could all recreate themselves as self-determining peoples. We will then face a situation of competition between different groups' legitimate claims to territory. Nine (2010, p. 370) mentions herself how a solution to this problem might be found in the fact that the meaning of 'sovereignty' is developing. She points out how there is, for instance, talk of 'limited sovereignty' as in the sovereignty of Native American nations within the sovereign United States. But this quite obviously goes against her strong interpretation of the right to self-determination as independent and autonomous self-rule within a territory.

Leaving aside these internal problems in Nine's account, there are still important differences between hers and Buchanan's ways of defining self-determination. Buchanan sees self-determination as 'the freedom of the group to lead its own distinctive common life, to express its constitutive values through its own social practices and cultural forms' (Buchanan 1991, p. 46). Nine would probably be in broad agreement with this definition, but she would add the crucial criterion that self-determination also involves the group's authority to *establish justice*

among its members. But it seems that at least limited opportunities for establishing in-group justice could be provided for groups even if their members do not reside in the same region. Think for instance of the obligations of cultural diasporas to uphold traditional customs, or obligations of monetary redistribution from richer to poorer members of dispersed religious communities.

It could be replied that these are not really examples of what it means to *establish* justice, but rather just examples of how justice can be *promoted*. In order to really establish justice, it is necessary for a state to be able to exercise coercive control over its citizens. This is not possible without a stable population situated on a geographically defined area over which a state has the authority to exercise sovereign control in the fullest sense. This observation might be correct, but I would maintain that the opportunity to *promote* justice provides a people with rather extensive possibilities to exercise their right to self-determination even if it stops short of full sovereignty.

Admittedly, satisfying the value of self-determination in ways which fall short of granting full autonomy over territory is most often a non-ideal solution. Insofar as the people of a vanishing state want to be given sovereign control of a new piece of territory, that would still be the ideal solution. The question here is whether there are non-ideal ways of respecting self-determination which are acceptable.

Is the Deterritorialized State Proposal Acceptable?

If we stay within the framework provided by Nine, one way to argue that the deterritorialized state proposal is normatively acceptable would be to maintain that it fulfils the requirements of the modified Lockean proviso. Nine's Lockean proviso is triggered when the self-determination of a group is threatened because of the territorial dispositions of other groups. When the people of a vanishing island state have to evacuate, there is no unoccupied land where they can go. They will be forced to migrate to some place where some other group already exercises their territorial rights. This, says Nine, will threaten the collective self-determination of the migrant group. They will no longer be able establish justice within the geographic region where they live, because all of them will now be subjects of a new state (or states). In such circumstances the Lockean proviso requires that the existing system of territorial rights must change and the migrant group be given access to new territory where they can reestablish themselves as a self-determining group.

With a more gradual understanding of the concept of self-determination it is not equally obvious that the change in circumstances facing migrants from a vanishing state constitutes such a radical threat to their self-determination. The deterritorialized state proposal allows them to continue to exercise a measure of self-determination by letting them maintain sovereign control over their territory, albeit not the territory where they now reside. By regularly electing a government-in-exile, the migrant group could also continue to exercise a measure of *political* self-determination, and consequently maintain a sense of internal identity. Furthermore, they would have property rights to whatever resources there might be left in their former territory and territorial waters, and they would be able to make collective decisions

regarding the use of these resources. The deterritorialized state proposal does not require any changes in current territorial dispositions, but as mentioned above, it does require some changes in the legal system regulating territorial rights over waters. The maritime boundaries of threatened island states must be 'frozen' in their current state, lest their territorial waters will become international waters as the territories shrink (Caron 1990; Soons 1990).

As already indicated however, it is also quite clear that the migrants from a vanished island state have lost an important element of their self-determination rights. Since they will be subjects to the powers over another state (or states) the migrant group will no longer possess a domain of political control independent of other political units. They will lose the ultimate moral and political authority to establish justice among the members, i.e. to set up certain agencies which have the authority to make, adjudicate, and enforce a certain set of legal rules which apply to members. This means that they will no longer be able to exercise sovereign control over many issues of importance to them. They will be able to exercise sovereign control only in matters pertaining to their abandoned territory, but even here their self-determination will be more circumscribed than before because exercising this kind of sovereign control through, for instance, a government-in-exile requires the expressed or implied consent of the state in which the government-in-exile is located (McAdam 2010, p. 115). In short, even if a people of a vanished island state can retain a measure of self-determination -- as the deterritorialized state proposal promises -- it will unavoidably lose its *independence* and all the values associated with that.

The upshot is that the deterritorialized state proposal indeed manages to fulfill some of the requirements of the modified Lockean proviso, e.g. migrants from vanishing states are given

access to territories of other states as immigrants, they can retain sovereign control over their former territory, and they can exercise a measure of political self-determination. But the proposal does not succeed in fulfilling *all* of the requirements. The ability for a migrant group from a vanished state to remain a self-determining entity in the full sense is unavoidably circumscribed. Empirically, it is most probably also the case that this will in the long run undermine the capacity of the migrant group to maintain a sense of internal identity as future generations often are prone to adopt the culture and customs of the country where they are born rather than those of their parents.

This shortcoming of the deterritorialized state proposal, i.e. that it does not resolve all the requirements of the modified Lockean proviso, tells against its acceptability. But we might ask whether this shortcoming can be compensated for in a way that would make the proposal acceptable. More particularly, we are asking whether we can somehow compensate migrants from vanished states for their loss of independence. These compensatory measures would not strictly be part of the deterritorialized state proposal as it was described above, but they would rather be measures that must be added to the proposal in order to improve its normative acceptability.

There are different forms of compensation which might be relevant in this context. Goodin (1989) distinguishes between 'means-replacing compensation' and 'ends-displacing compensation'. Means-replacing compensation intends to provide people with equivalent means for pursuing the same ends as they had before they suffered a loss, or as they would have pursued had they not suffered the loss. Ends-displacing compensation is compensation

that helps people pursue some *other* ends in a way which leaves them subjectively as well off as they would have been had they never suffered the loss (Goodin 1989, p. 60).

Ends-displacing compensation in this context seems quite straightforward. If it is their wish, migrants from vanished states should be given citizenship in democratic welfare states and of course receive all benefits associated with citizenship in their new home countries. Briefly put, these migrants ought to be treated on a par with so called Convention refugees.⁷ This would hopefully make them at least as well off as they were before they were forced to leave their country of origin. There are details that need to be sorted out, for instance how the burdens of accepting these migrants ought to be distributed between wealthy states. But I will leave those issues to the side in this paper and focus instead on the issue of means-replacing compensation.

As stated earlier self-determination has two sides -- autonomy and independence. Autonomy is the ability of a group to govern itself, while independence is the requirement that a group possesses a domain of political control independent of higher or foreign political units (Cf. Nine 2010, p. 362). Some measures of means replacing compensation could focus on compensating for the loss of independence by promoting autonomy. Autonomy understood in Nine's strict sense, as the ability of a group to govern itself by adjudicating, legislating, and enforcing laws on its own, would also be circumscribed as migrants from vanished states become subjects of new states. This also warrants compensation. However, I would suggest a wider understanding of autonomy which does not focus exclusively on the legal aspects of self-determination but which also takes into account a wider set of resources that a group can use when determining its collective aims and when acting on these aims effectively. These resources are mainly institutional and financial, but they can also be of other kinds.

Means-replacing compensation would entail providing a migrant group with such autonomy-strengthening resources. In practice this would include resources that allow the group to effectively control their abandoned territory (e.g. financial resources to create a navy), the institutional resources needed in order to create and maintain an effective government-in-exile, physical or economical resources for extracting natural resources from the abandoned territory, and institutional resources needed for efficient distribution of the rents yielded from these natural resources.⁸

In order for these measures to properly function as means-replacing compensation they must leave the migrant group at least as well off as they would have been had they not suffered their loss of independence. They must also leave the group identically situated with respect to the ends they had before their loss (Goodin 1989, p. 60). Here it becomes apparent that it is impossible to fully compensate migrants from vanished states through means-replacing compensation. Some ends that the migrant group had before they were forced to evacuate will simply be impossible to achieve given their new circumstances. All we can do is to use measures of means-replacing compensation to help them achieve *some* of their ends, and to provide them with the autonomy-strengthening resources they need to continue their existence as a self-determining group with the ability to formulate new collective aims.

Conclusion

This paper has explored a novel suggestion on how a people who have been forced to abandon their state due to environmentally caused territorial destruction can retain a measure of self-

determination. This suggestion -- the deterritorialized state proposal -- maintains that it is possible for such a migrant group to remain a self-determining entity by continuing to exercise sovereign control over its abandoned territory and territorial waters. I have defended this suggestion against the charge that it relies on too weak a conception of self-determination. Self-determination is a gradual concept, and full sovereignty is but the endpoint of the scale. It is quite possible for a people to be self-determining 'to a degree'. Novel suggestions such as the deterritorialized state proposal might provide the institutional tools needed for a people to retain a measure of self-determination even after it has been forced to abandon the home country.

The deterritorialized state proposal is not unproblematic however. I have also argued that in itself it is not normatively acceptable even as a non-ideal solution because it ignores the loss of independence that migrant groups from vanished states will suffer. But by supplementing the proposal with compensatory measures which strengthens the autonomy of the group and by giving these migrants a legal status on a par with Convention refugees the deterritorialized state proposal becomes more attractive. In the end the deterritorialized state proposal, paired with extensive compensatory measures, could prove to be a feasible solution which the affected parties might find acceptable. It should be observed however, that since the deterritorialized state proposal must be supplemented with costly compensatory measures in order to become acceptable, this will reduce some of the initial advantage it had in terms of political feasibility when compared to other alternatives.

Finally, I would like to emphasize that while the issue of vanishing island states does provide food for thought in a discussion on how self-determination and sovereignty should be

understood, this is decidedly not the main reason for why the issue ought to be addressed by philosophers, legal scholars, policy-makers and others. As I pointed out at the outset, within a not too distant future this might become a very real problem for a number of states such as Kiribati, the Maldives, the Marshall Islands, Tokelau and Tuvalu, and their people will then have to relocate. As the president of Kiribati, Anote Tong, pointed out when he addressed the General Assembly of the United Nations on September 25, 2008, such large scale evacuations require long-term planning, so that when people migrate they can do so “with dignity”.⁹ One important part of such planning is to begin devising, discussing and assessing different proposals on what ought to be done, and what can be done, for migrants from disappearing states. Given the reluctance of the international community to support proposals that require great sacrifice, turning an eye to more feasible non-ideal suggestions such as the deterritorialized state proposal might be the best way to proceed. Notwithstanding the fact that deterritorialized statehood might be seen as a sub-par ‘consolation prize’, all things considered.¹⁰

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¹ A caveat is in place here. It is currently a matter of debate among geoscientists whether Small Island States consisting of coral atolls really will disappear, and whether, if they do, the main cause is really sea pollution effecting the corals rather than sea-level rise (see Pilkey & Young [2009] for an introduction to the debate). I cannot, of course, in any way contribute to that debate. The discussion in this paper is conditional upon the assumption that Small Island States are potentially threatened by climate change.

² It might be seen as a controversial assumption that self-determination is a value worth preserving. Since this paper assesses a proposal which assumes that it is, I will not venture into the philosophical discussion on the value of self-determination but simply make the same assumption. In Heyward & Ödalen (2015) we defend an institutional instrument which grants special rights to the *individual* migrant from a disappearing state, rather than to the collective. See also Risse (2009) for a discussion about the individual human rights of migrants from disappearing island states. A complete account of what these migrants are owed needs to combine individual rights with collectivistic measures such as the deterritorialized state proposal.

³ Cases in point here are Tuvalu and Kiribati where fish license fees account for over 40 per cent of their GDP (Barnett & Campbell 2010, p. 7).

⁴ Only one of these, Hulhumalé, is created for purposes of human habitation. The island is still under construction and currently has a population of about 20.000 people. It is set to house approximately 100.000 people by 2030 (Cf. Sovacool, 2012).

⁵ In this paper I follow the general discussion of the deterritorialized state proposal and focus mainly on low-lying island states. This focus is understandable since these states, according to most estimates, would be affected early and severely by sea-level rise. But if the international community fails to mitigate climate change, more states and more people would be affected. Bangladesh is, for instance, frequently mentioned as an example of a low-lying and highly populated country which in the future might suffer the same kind of fate as the Small Island States (Cf. Höing & Razzaque, 2012; Walsham, 2010). I see no principled reasons for restricting the deterritorialized state proposal to only Small Island States. But if Bangladesh and other large countries are brought into the discussion, the political feasibility of the proposal might be questioned. Nevertheless, since the deterritorialized state proposal is quite

undemanding when compared to other proposals, such as for instance free movement for climate migrants (see Heyward & Ödalen 2014), it still looks like a rather feasible proposal, relatively speaking.

⁶ There are some ambiguities in Nine's account, and weaker interpretations of what is required from other states with regard to ecological migrants are possible. At one point, for instance, she says that states with territorial rights over viable lands have an obligation to allow '*reasonable access*' to their territory to the ecological refugee states (p. 366). One can reasonably ask if a requirement to completely surrender territory to ecological refugee states goes beyond '*reasonable access*', and if therefore something less demanding, such as allowing immigration, is all that is required.

⁷ This is not the same as saying that, as some would have it, the definition of refugees in the Geneva Convention ought to be extended to cover environmental migrants. There might be other reasons for why that is not a good idea, for instance that the needs of environmental migrants are substantially different from the needs of people who flee from war and persecution (see the discussion in Biermann & Boas 2010). See Heyward & Ödalen (2015) for a novel way of construing this compensatory measure.

⁸ See Burkett (2011) for the suggestion that one way of institutionally establishing such means replacing compensation would be to create a United Nations office with the "express purpose of facilitating the transition and long-range governance of endangered states" (pp. 364-365).

⁹ See 'Statement by His Excellency Anote Tong, President of the Republic of Kiribati, General Debate of the 63rd Session of the UN General Assembly, September 25, 2008'. Available at www.un.org/ga/63/generaldebate/pdf/kiribati_en.pdf.

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