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CONVEGNO SCIENTIFICO INTERNAZIONALE

FROM NATIONAL SOVEREIGNTY TO NEGOTIATION SOVEREIGNTY
"Days of Law Rolando Quadri"

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"Giorni del Diritto Rolando Quadri"

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THE IMPACT OF CLIMATE CHANGE ON STATE SOVEREIGNTY*

Abstract

Climate change is a global phenomenon that knows no boundaries and therefore has the potential to seriously disrupt traditional concepts of state sovereignty. Climate change leads to extreme weather events such as hurricanes, floods, and droughts. In June 2009, the United Nations General Assembly recognized, in resolution A/64/281, that climate change can have implications for security. When states face serious difficulties in addressing these issues, their ability to maintain sovereignty over their territory can be called into question. Rising sea levels result in the loss of territory for archipelagic states, which can lead to the extinction of statehood and the loss of international subjectivity. Increased climate migration can lead to demands for changes in borders or territorial autonomy, which could threaten the sovereignty of existing states. The first part of the article analyzes the concept of international subjectivity of states and state sovereignty in the classical sense, then examines the issue of deterritorialized states due to the impact of climate change. The article then analyzes how climate migration and the emergence of climate refugees affect state sovereignty. Particular attention is paid to potential demands for territorial and cultural autonomy by climate refugees from climate-deterritorialized states.

Keywords: *state sovereignty, climate change, migrations, climate refugees, cultural autonomy, climate-deterritorialized states.*

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UTICAJ KLIMATSKIH PROMENA NA SUVERENITET DRŽAVA

Apstrakt

Klimatske promene su globalni fenomen koji ne poznaje granice, te stoga imaju potencijal da ozbiljno naruše tradicionalne koncepte državnog suvereniteta. Klimatske promene dovode do ekstremnih meteoroloških događaja poput uragana, poplava i suša, U junu 2009. godine, Generalna skupština Ujedinjenih nacija je priznala, rezolucijom A/64/281, da klimatske promene mogu imati implikacije po bezbednost. Kada se države suoče sa ozbiljnim poteškoćama u rešavanju ovih problema, može se dovesti u pitanje njihova sposobnost da održe suverenitet nad svojom teritorijom. Porast nivoa mora izaziva gubitak teritorije arhipelaških država što može prouzrokovati gašenje državnosti i gubitak međunarodnog subjektiviteta. Povećane klimatske migracije mogu dovesti do zahteva za promenom granica ili teritorijalne autonomije, što bi moglo da ugrozi suverenitet postojećih država U prvom delu članka analizira se pojam međunarodnog subjektiviteta država i državne suverenosti u klasičnom smislu, zatim se sagledava problem deteritorijalizovanih država usled uticaja klimatskih promena. Zatim se u članku analizira kako klimatske migracije i pojava (klimatskih izbeglica) utiču na državnu suverenost. Naročita pažnja posvećuje se mogućim zahtevima za teritorijalnom i kulturnom autonomijom klimatskih izbeglica iz klimatski deteritorijalizovanih država.

Ključne reči: *suverenitet države, klimatske promene, migracije, autonomija, klimatske izbeglice.*

1. Introduction

Climate change has emerged as a critical global challenge of the twenty-first century, with increasingly severe ecological, economic, and social repercussions. It leads to floods, desertification, fires, and a scarcity of food and potable water. As the world contends with rising temperatures, extreme weather events, and shifting ecosystems, one of the most evident effects is the growing number of climate-induced migrations. A large influx of climate migrants can pose a significant challenge to the sovereignty of the state. Beyond impacting individuals and communities, climate change also significantly affects state sovereignty. Sovereignty, a fundamental principle of international relations, traditionally denotes a state's capacity to autonomously govern its territories, people, and resources. However, climate change presents various challenges that can undermine this sovereignty.

As a transnational phenomenon, climate change requires international cooperation and coordination, as it is a common concern of humanity. States often face challenges that transcend national borders, necessitating joint responses at regional and global levels. Given these complexities, it is crucial to consider potential legal and political solutions to address the impact of climate change on state sovereignty.

The first part of this article will analyze the concept of state sovereignty and international subjectivity in the classical sense, followed by an examination of the issue of climate-deterritorialized states resulting from the impact of climate change. It will then explore how climate migrations influence state sovereignty, with particular attention to potential demands for territorial and other forms of autonomy due to these migrations. The article will investigate possible solutions to the challenges that climate change poses to state sovereignty, culminating in concluding considerations.

2. The Concept of State Sovereignty in the Classical Sense

The concept of sovereignty has been present since the emergence of the first states, and the classical notion took its contemporary form following the Peace of Westphalia in 1648 The late nineteenth century was characterized by the growth of the theory (and the practice) of‘absolute sovereignty in Germany, and later in England.[1] The widely accepted perspective that developed after the French Revolution and the American Civil War posits that the bearer of sovereignty is the people, as authority derives from and belongs to the populace. is that sovereignty resides with the people, as the authority derives from the people and belongs to the people. Within political philosophy, however, internal and external sovereignty are generally assessed by different criteria. Claims to internal sovereignty are evaluated based on accounts of political legitimacy focused on the vertical relationship between ruler and ruled. A government’s claim to authority over its inhabitants

[1] A. K. Henrikson, “Sovereignty, Diplomacy and Democracy: The Changing Character of “International Representation” — From State to Self “, Comparative Politics (Russia), 2015, 7-8.

is only justified if that relationship bears the marks of legitimacy. External sovereignty, which entails the right of the people to determine their own foreign policy.[2] The internal sovereignty reflected in the inalienable right of the people to decide on their internal socio-political and economic organization.[3] Sovereignty is defined as the right and attribute of state authority to be the highest and independent within its territory, meaning it is free in decision-making and superior to all other authorities and individuals, and can impose its will upon them. These aspects of state sovereignty have traditionally been considered fundamental to the functioning of the international order. When discussing the concept of classical sovereignty, a key segment is territorial integrity, as sovereign authority has full control over legislation, administration, and the judicial system within its borders. The advocates of this doctrine articulated that sovereignty is not merely the supreme authority – summa potestas i.e. anauthority over which there is no other authority, but also the plenitude potestas, that is, full andmore or less unlimited power.

One of the fundamental principles underlying contemporary international law is the principle of sovereign equality and independence of all states.[4] These two ideas are considered complementary and are often deemed self-evident: equality is implicit in sovereignty, or sovereignty presupposes equality. State sovereignty is a fundamental prerequisite for acquiring international subjectivity. A state that does not possess sovereignty cannot be recognized as an independent entity in the international community, and thus cannot have international subjectivity. However, international subjectivity also contributes to strengthening sovereignty by enabling a state to participate effectively in international relations and protect its interests on the global stage. From the standpoint of international law, however, sovereignty does not refer to unlimited power, but to the fact that it is not subject to any higher authority or obligation to which the sovereign state has not consented.[5] This definition, in itself, does not imply any substantive obligations. It implies the freedom of the state to use the powers at its disposal in a manner it deems appropriate. State integrity and sovereignty should imply freedom from intervention.

However, in the contemporary context, we face challenges that question the absoluteness of classical sovereignty, supported by the argument that today's relations are different, rendering the concept of sovereignty outdated. In line with these tendencies, steps are proposed toward denying or at least significantly limiting sovereignty, which

[2] External sovereignty is, on the other hand, about the horizontal relationship amongst equals, at least equals from the perspective of the normative framework of international relations. Standards of legitimacy for external sovereignty have tended to ignore the internal relationships constitutive of internal sovereignty. Consequently, most accounts of the legitimacy of external sovereignty do not depend on standards of internal legitimacy. This is not to say that there aren't those who challenge the validity of the internalexternal divide. J. Kassner, *Climate Change and Sovereignty An Essay on the Moral Nature and Limits of State Sovereignty,* Springer, New York, 2021, 27.

[3] Đ.Ninčić, „Ideološko-politička suština i pravni izražaji teorije o ograničenom suverenitetu", *Međunarodni problemi* br. 1,Beograd 1969, 9–24.

[4] United Nations, Charter of the United Nations, 1 UNTS XVI, 24 October 1945. art. 2/1.

[5] H. Ruiz Fabri, "Human Rights and State Sovereignty: Have the Boundaries been Significantly Redrawn?" in: P. Alston & E. MacDonald, (Eds). *Human Rights, Intervention, and the Use of Force. Oxford: Oxford University Press,* 2008, 33–86.

gains particular significance in the 20th century with globalization and the gradual proliferation of international law.[6]

States have always voluntarily limited their freedom of decision-making by creating international legal customs and concluding international treaties, and more recently, through other means such as membership in international organizations.[7] These organizations often set standards and requirements that states must meet to participate in the international community, which limits their full sovereignty. A number of experts have linked the need for limited state sovereignty to the protection of human rights, particularly environmental protection.[8] International norms and human rights standards set boundaries for states' actions toward their own citizens and foreigners within their territory. In today's global world, we witness that human rights are becoming universal rights, approaching a form of *ius cosmopoliticum*.[9]

The types of limitations to which sovereignty can be subject in the name of human rights are diverse. The degree of sovereignty limitation justified by the protection of human rights or environmental protection can vary depending on the monitoring mechanisms. While it is generally accepted that protecting human rights necessitates limiting sovereignty in the classical sense, it is important to explicitly establish these limitations. The key aspect of assessing the degree of any sovereignty limitation is undoubtedly the issue of control. This problem is not limited to human rights but pertains to international law as a whole.

International subjectivity is closely related to the question of state sovereignty. Contemporary international law does not contain any legal norm that lists its subjects or even regulates the conditions for acquiring international legal subjectivity, which opens up the possibility of recognizing the subjectivity of entities that now have or will have limited (partial) sovereignty. If we take the concept of sovereignty as a basic element of international legal personality, all international relations would appear as interstate relations, leading to the notion that states are the only subjects of international law.[10] On the

[6] The non-absoluteness of sovereignty does not mean a lack of supremacy, because that would mean that sovereignty no longer exists, but it means that the sovereign is not the highest authority in some matters. D.R. Philpott,"Sovereignty: An Introduction and Brief History", *Journal of International Affairs, 48*, 1995. 353-368.

[7] B.Krivokapić, " Državna suverenost i međunarodno pravo u eri globalizacije", in State Order Sovereignty in the Era of Globalization, Serbian Academy of Sciences and Arts, Beograd, 2019. 359.

[8] Recent humanitarian crises have further called into question the inviolability of sovereignty. The international community widely accepts that states have a responsibility to refrain from committing (or allowing) mass violations of human rights against their citizens (for example, genocide or ecocide), and that in failing to uphold such responsibilities, they forfeit their sovereignty. See more Lj.Tintor, „ Perspektiva ekocida kao međunarodnog krivičnog dela", *Zbornik radova 34. Susreta Kopaoničke škole prirodnog prava - Slobodan Perović Tom I,* 2021,275-292; ICSSR, *The Responsibility to Protect Report of the International Commission on Intervention and State Sovereignty- report,* 2001, 7-12; A. Etzioni, "Defining Down Sovereignty: The Rights and Responsibilities of Nations" *Ethics & International Affairs, 30(1),* 2016, 5–20.

[9] J. Habermas, *L'intégration républicaine : essais de théorie politique*, Paris Fayed, 1998. 164.

[10] C. Berezowski, " Les problèmes de la subjectivité internationale" In: Mélanges Offerts à Juraj Andrassy, Springer, 1968. 31-53.

contrary, if we do not insist on the element of sovereignty, we approach a much broader concept of international legal personality, which is certainly more appropriate given the globalization of society and the challenges facing international law, such as climate change. On one hand, a state is free to undertake activities within its own territory at its discretion, but on the other hand, according to the *no harm* principle, a state must not violate the sovereignty of other states or cause them harm through its activities.[11] Treaties addressing climate change issues, such as the Framework Convention on Climate Change and the Paris Agreement, require substantial international cooperation to achieve their goals of halting temperature rise, which significantly limits state sovereignty. The role of sovereignty is not only relevant in determining whether states can be held accountable for their inaction regarding climate change, but also in considering whether states adversely affected by climate change must accept assistance from other states or other international legal entities. If the stance is accepted that a state, by virtue of its sovereignty, is responsible for ensuring the respect of human rights for its population, then accepting assistance from the international community in combating climate change would not constitute a violation of sovereignty.

3. The Impact of Climate Change on State Territory

In the reports of the International Law Association and the IPCC predicted an average sea level rise of 98 cm by 2100.[12] In June 2009, the United Nations General Assembly recognized, through Resolution A/64/281, that climate change can have security implications.[13] When states face serious difficulties in addressing these issues, their ability to maintain sovereignty over their territories may be called into question. Sea-level rise results in the loss of territory for archipelagic states. If this assumption materializes, many island nations such as the Maldives, Kiribati, and Tuvalu would lose their territories, which would bring their sovereignty into question under contemporary international law since they would lose one of the constitutive elements provided by the Montevideo Convention on the Rights and Duties of States.[14] The constitutive elements are a

[11] Principle of No Harm (also known as the "no-harm rule") is a fundamental tenet in international law, particularly in environmental law, that obligates states to prevent, reduce, and control the risk of environmental harm to other states. See more R.Verheyen, *Climate Change Damage and International Law: Prevention Duties and State Responsibility*, Brill | Nijhof, 2005, 45-90.

[12] International Panel on Climate Change (IPCC) underlined that "the atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen. Greenhouse gases (GHGs) are extremely likely to have been the dominant cause of the observed warming since the mid-20th century. See more ILA, Final Report Committee on International Law and Sea Level Rise - International Law Association, 2024, 3-7.

[13] United Nations General Assembly, Resolution A/64/281, 2009. Climate change and its possible security implications

[14] Their total population is approximately 9 million, and the land area is about 500,000 km² A. Maas, A. Carius, "Territorial Integrity and Sovereignty: Climate Change and Security in the Pacific and Beyond",

permanent population, a defined territory, a government, and the capacity to enter into relations with other states.

When the states most affected by sea-level rise gained independence during the second wave of decolonization between the late 1960s and late 1970s, the danger of losing territory or permanent population due to rising sea levels was not yet sufficiently recognized. Therefore, this situation was not taken into account in the Montevideo Convention. The loss of part or all of the territory, as one of the constitutive elements of statehood, will affect the international subjectivity of these states. In recent times, international law has faced some alternative viewpoints regarding the preservation of de facto or at least de jure statehood of disappearing island states, although these views are primarily focused on finding solutions for the population of these states. Some authors have called for a re-examination of the necessity of the simultaneous existence of all four elements of statehood as provided by the Montevideo Convention.[15] Such a situation could lead to the creation of *sui generis* subjects of international law, such as climate-deterritorialized states.[16] The International Law Association (ILA) established the Committee on International Law and Sea Level Rise to tackle these challenges. Although the committee, in its first mandate, did not explicitly address the issue of state extinction due to sea level rise, it adopted a position that deviates from the traditional understanding of the doctrine of statehood. This stance arises from the inherent bias of international law in favor of stability and order. Thus, the view that a state retains international subjectivity, and thereby sovereignty, has been accepted. Low-lying island states have expressed concern about the challenges that sea level rise poses to their continuity since the late 1980s, even before the United Nations Framework Convention on Climate Change was adopted at the Rio Conference in 1992. Furthermore, although they have very limited land area, Pacific island states have benefited from the so-called expansionist evolution of the international law of the sea towards the distribution of sovereignty and jurisdiction over larger maritime areas.[17] Sea level rise causes the low-water line along the coast, which marks the normal baseline, to retreat, moving inland, and sea level rise can alter the land-to-water ratio as provided in Article 46 of UNCLOS, which will revolutionarily change the boundaries of maritime zones over which states have sovereignty or certain jurisdictions.[18] The open question remains whether, in the event that the territory of that state completely disappears, the maritime zones that were under the sovereignty

In: J.Scheffran, M. Brzoska, H.Brauch, P.Link, J. Schilling, (eds) *Climate Change, Human Security and Violent Conflict. Hexagon Series on Human and Environmental Security and Peace*, 2012. 651.

[15] J.Crawford, " The Creation of States in International Law", *2nd ed Oxford:Clarendon Press*, 2006, 45-61.

[16] As a possible new subject of international law, in addition to climate-deterritorialized states, nature is increasingly being considered. See more Lj.Tintor,"Subjektivitet prirode u međunarodnom pravu- između fikcije i realnosti", *Strani pravni život, Institut za uporedno pravo, Beograd*, br. 2 2022. 305-325.

[17] See more about the legal status of different parts of the sea B.Krivokapić, *Međunarodno javno pravo*, Poslovni i pravni fakultet Univerziteta "Union-Nikola Tesla",Institut za uporedno pravo Beograd, 2017, 797-804.

[18] United Nations Convention for the Law of the Sea (adopted on 10 December 1982, entered into force on 10 November 1994), 1833 U.N.T.S. 397, Article 46.

of that state will become open sea or will these zones belong to neighboring states. Given these problems, in recent years, states have resorted to signing bilateral agreements on national sovereignty, which is questionable how sustainable they will be if the territories are completely submerged.

The instability of a state's territory throughout the history of international law has not proven to be a significant obstacle to state sovereignty and international subjectivity. Maintaining all legal attributes of statehood and continuing to enjoy sovereign equality would distinguish climatically deterritorialized island states from other non-territorial entities, such as the Sovereign Military Order of Malta, which, after losing its territory, was reduced to an international subject with only functionally limited competencies.[19] Sovereignty in the case of the Maltese Order or the Holy See does not include territoriality and statehood. Conversely, the territoriality of a subject of international law does not necessarily entail sovereignty or statehood.[20]

However, even as we move towards redefining the concept of sovereignty and statehood, territory is still regarded as an essential element. The relocation of a "state" after the permanent loss of its entire territory would be legally impossible, as it would thereby lose its statehood and cease to exist as a state. Therefore, it is not surprising that island states, faced with climate change and rising sea levels, have been compelled to institutionalize their joint efforts in combating this common threat.[21] Sovereignty over peoples is a crucial aspect for climate deterritorialized states facing the loss of physical territory due to climate change. Retaining sovereignty over their citizens allows these states to continue to exist as legal and political entities, govern their peoples, and preserve their identity and rights.

Climate deterritorialized states should continue issuing legal documents such as passports, ID cards, and other identification papers to maintain the connection between the population and the state even though there may not be territorial continuity. Accordingly, states could gain recognition for the concept of "virtual territoriality," where they utilize digital platforms to conduct state functions and provide services to their citizens. Citizenship could be preserved for citizens of climatically deterritorialized states. Although these states would lose physical territory, they could retain rights to economic zones, including the right to exploit marine resources in former territorial waters and

[19] R. Rayfuse, International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma" *Envtl Pol'y & L* 2011, 281-285.

[20] D. Lapaš, "Climate Change and International Legal Personality: "Climate Deterritorialized Nations as Emerging Subjects of International Law? "- *Canadian Yearbook of international Law/Annuaire canadien de droit international, 2022, 15*

[21] By the early 1970s, the disappearing island states had formed a group of developing island countries (1972–82) and, later, island developingcountries (1983–92) and, since the beginning of the 1990s, the

Alliance of Small Island States (AOSIS) and small island developing states (SIDS). Small island developing states (SIDS) are a distinct group of developing countries facing specific social, economic, and environmental vulnerabilities. SIDS were recognized as a special case both for their environment and development at the United Nations (UN) Conference on Environment and Development, which is also known as the EarthSummit, held in Rio de Janeiro in 1992. Presently, SIDS represent thirty-nine UN memberstates and nine associate members non-self-governing territories. *Ibid.,* 15-16.

exclusive economic zones, as well as the right to compensation for the exploitation of natural resources of the seabed in those zones. SIDS, resources are intrinsically linked to through revenues coming from fishing licences and the fishing industry.[22] Climate deterritorialized states could retain sovereign rights to preserve cultural and historical heritage, including the protection of language and customs, even if the physical territory no longer exists.

Possible solutions to the problems of these countries could be considered through the introduction of an international fund for territory buyouts. The largest financial burden in this fund should be borne by the countries that are the biggest polluters in terms of GHG emissions. Such a solution could not be considered particularly revolutionary considering that the Loss and Damage Fund already exists.[23] Additionally, some countries like Kiribati have already begun purchasing private land to facilitate population relocation in case of need.[24] The possibility of restoring sovereignty to countries that have lost territory due to the negative consequences of climate change is through the relinquishment of parts of their territory. Relinquishment can be done in various ways, from gifts to long-term leases or concessions.[25] However, it is difficult to imagine that any of the countries today would voluntarily decide to cede part of their territory. In the context of sovereignty, although countries can secure a sufficient amount of land in another country, for example through purchase, according to current regulations of international law, they do not necessarily gain sovereign rights or the right to enact their own laws under Article 1 of the Montevideo Convention. Instead, the buying country will likely only have property in another country in the same way that an individual owns private property abroad, in which case they must respect the laws of the host country. However, if a aditional convention on climate refugees is adopted in the near future, the issue of sovereign rights of countries that are deterritorialized due to climate change may be regulated differently. Another possible solution for maintaining the sovereignty of disappearing states could be the establishment of artificial islands (archipelagos). Nevertheless, the emergence of the European Union in international law has shown that the concept of sovereignty can be completely independent and separate from physical territory. Therefore, the emergence of climate deterritorialized states should not be a revolutionary threat to sovereignty.

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[22] A. Powers, C. Stucko "Introducing the Law of the Sea and the Legal Implications of Rising Sea Levels" In: MB. Gerrard, GE. Wannier, Threatened Island Nations: Legal Implications of Rising Seas and a Changing Climate. Cambridge (eds.) *University Press*, 2013,123-140.

[23] See: Fund for responding to loss and damage, https://unfccc.int/loss-and-damage-fund-joint-inter-im-secretariat 08.06.2024.

[24] Kiribati has so far purchased about 8 square miles on the Fijian island of Vanua Levu for just under $9 million, potentially for relocating its population there one day. However, the Kiribati government has bought the property from the Church of England, although there has not yet been formal recognition of the transfer of sovereignty by the Fijian government. J. Ellsmoor, Z. Rosen Kiribati's land purchase in Fiji: does it make sense? https://devpolicy.org/kitibatis-land-purchase-in-fiji-does-it-make-sense-20160111/ 05.06. 2024.

[25] See: Krivokapić, 2017, 686-699.

4. Climate Refugees as a Challenge to State Sovereignty

Mass migrations represent one of the key challenges impacting the limitation of sovereignty in contemporary international law. For this reason, in 2018, the UN General Assembly overwhelmingly supported the Global Compact for Safe, Orderly, and Regular Migration (GCM) and the Global Compact on Refugees. Unlike traditional forms of migration, which can be driven by economic or political factors, climate-induced displacement is often the result of environmental factors such as floods, droughts, and desertification. The Tetriota case has raised the question of the impact of climate migrations and the emergence of climate refugees, a still undefined category in international law, on state sovereignty[26] The term "climate refugee" was coined by Lester R. Brown, but it gained significance only at the end of the last century. The first definition provided by Essam El-Hinnawi defines climate refugees as "people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption that jeopardized their existence and/or seriously affected the quality of their life".[27] Given the lack of a unified definition, many have attempted to offer an adequate definition. For instance, Norman Myers defined "environmental refugees" as "people who can no longer secure a livelihood in their homelands because of soil erosion, drought, deforestation, and other environmental problems, compounded by pressures of population and poverty".[28] The International Organization for Migration uses the term "environmentally displaced persons," defining it as "persons or groups of persons who, predominantly for reasons of sudden or progressive changes in the environment, are obliged to leave their habitual homes or choose to do so, either temporarily or permanently, and who move either within their country or abroad".[29] Climate migrants (refugees) base their claim for refugee status not only on the dangers that climate change poses to life and property but also on the inability to lead a decent life and enjoy the right to a clean and healthy environment and the right to a safe climate.

However, the fact that developed countries are trying to find solutions to block the mass influx of migrants from developing countries makes it unlikely that a new category of migrants affected by climate change will be deemed worthy of protection. One reason climate refugees are not yet recognized in international law is that, in the case of gradual environmental changes, displacement begins as a voluntary process (to some extent) and becomes forced as the region becomes uninhabitable due to, for example, a lack

[26] Ioane Teitiota (the applicant), a citizen of the small Pacific island nation of Kiribati, applied for refugee status in New Zealand on the grounds that the risks to his life posed by climate change forced him to leave Kiribati. The Immigration and Protection Tribunal denied his application, and this decision was upheld on appeal by the High Court, the Court of Appeal, and the Supreme Court. See more Ioane Teitiota v New Zealand CCPR/C/127/D/2728/2016,UN Human Rights Committee (HRC), 7 January 2020.

[27] E. El-Hinnawi, Environmental Refugees, United Nations Environment Programme 1985, 4.

[28] N. Myers, „Environmental Refugees: a Growing Phenomenon of the 21st Century" *357 Philos Trans R Soc LondBiol Sci.* 2002, 609-613.

[29] L. A. Hiraide, "Climate refugees: A useful concept? Towards an alternative vocabulary of ecological displacement", Politics, 43(2), 2023, 267-282

of drinking water or prolonged periods of flooding.[30] This example demonstrates how thin the line is between those who move "voluntarily" and those who cross state borders out of necessity due to environmental changes. The impact of climate change cannot be cited as a basis for persecution under the current provisions of the Refugee Convention.[31] There are two primary reasons that climate change (even when it indirectly affects someone's health or life)

Is not the sort of thing that can propel migration that fits under the UN's definition of refugees: the lack of an intentional actor and its indiscriminate nature. In allegations of human rights violations, the states are the accused parties, and international law has yet to treat states as the perpetrator causing the land to be uninhabitable due to climate conditions.[32] Additionally, states compelled to accept climate refugess can argue that migration is driven by other causes, such as seeking better economic opportunities. Emphasizing a single factor in migration could result in many developed countries wanting to prevent the establishment of a framework for the protection of people displaced by climate-induced stresses.[33] States also argue that protecting their sovereignty from mass migrations means that people affected by weather events caused by climate change do not cross borders but are internally displaced, leaving them under the protection of their home state. Another argument against climate migrants is that their protection would not be temporary, as with refugees, but permanent, which would significantly affect population structures.

The first significant steps toward filling the legal gap faced by climate refugees were attempted in 2012 through the Nansen Initiative. This state-led consultative process established a non-binding agenda for the protection of persons displaced across borders in the context of disasters and climate change, which was endorsed by 109 states in October 2015.[34] One solution to the problem of climate refugees might be reintro-

[30] J, McAdam, ''Swimming against the tide: why a climate change displacement treaty is not the answer" *Int J Refug Law 23(1):* 2011, 2–27.

[31] "A refugee is any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." UN General Assembly, Convention Relating to the Status of Refugees, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951, Article 1.

[32] In order to count as refugees under the UN's definition, climate refugees would have to flee as a result of a rights violation that is arbitrary and discriminative. That is, while the impacts of climate change may be felt by the most vulnerable in society, it is hard to establish that the impacts of climate change are selective to the individual or their recognizable group. S. A. Kolmes, S. K. Kolmes, P. H. Lin, "What Lies Ahead: How Aid for Climate Refugees Must Focus on Human Rights and Human Health", *Environment: Science and Policy for Sustainable Development, 64(3)*, 2022, 7–16.

[33] J. McAdam, "Protecting People Displaced by the Impacts of Climate Change" *The UN Human Rights Committee and the Principle of Non-refoulement American Journal of International Law* Volume 114 Issue 4, 2020, 708.

[34] See: Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (Protection Agenda) in October 2015.

ducing documents like the Nansen passport to provide urgent assistance to climate refugees.[35] When applying the principle of non-refoulement to refugees whose reason for flight is linked to the environment, additional challenges arise. Todić believes that certain amendments to the Refugee Convention's non-refoulement principle section would be desirable to better protect the lives of climate refugees.[36] The development of international consensus resulted in the adoption of the UN New York Declaration for Refugees and Migrants in September 2016. This marked a timely acknowledgment of the "adverse effects of climate change, natural disasters (some of which may be linked to climate change), or other environmental factors," in combination with other factors, as drivers of migration.[37]

According to the latest statistics from the Internal Displacement Monitoring Centre, over 376 million people worldwide have been forcibly displaced due to floods, storms, earthquakes, or droughts since 2008, with a record 32.6 million in 2022 alone.[38] The number of people who could become climate refugees due to food shortages and other adverse effects of climate change could rise to over 200 million annually by 2050.[39] This number of climate migrants would undoubtedly impact the host states' reception capacities. In this context, the President of Kiribati, Anote Tong, noted in his address to the UN General Assembly in 2008 that "such large-scale evacuations require long-term planning, so that when people migrate, they can do so with dignity".[40] The burden of receiving climate refugees could be proportionally distributed according to each country's annual emissions. Preliminary legal adjustments to new climate realities could consist of a series of international agreements allowing states affected by climate change to retain their sovereign status.[41] Their resource needs would be ensured through legal guarantees and resettlement agreements for all citizens, supported by the broader international community.

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[35] The Nansen passport was an identification document for refugees and stateless persons introduced in 1922 under the auspices of the League of Nations. This passport aimed to assist people who had lost their nationality due to political changes, wars, and revolutions, enabling them to legally travel and seek asylum in other countries.

[36] D. Todić, "Izbeglice i promene u životnoj sredini u međunarodnom pravu", *Strani pravni život, Institut za uporedno pravo Beograd, br.3*,2019, 10.

[37] E. Fornalé, "Collective Action, Common Concern, and Climate-Induced Migration", In: S. Behrman, A. Kent eds. *Climate Refugees: Global, Local and Critical Approaches*, Cambridge University Press; 2022,107-126.

[38] A. Bilak et al., *Global Report on Internal Displacement 2021*, Internal Displacement Monitoring Center 2021.

[39] It should be emphasized that the exact number of how many of these will be internally displaced persons due to climate change and how many will have to leave their home country is unknown. UNHCR, The climate crisis is amplifying displacement and making life harder for those already forced to flee, https://www.unhcr.org/what-we-do/build-better-futures/climate-change-and-displacement 07.06.2024.

[40] Statement by His Excellency Anote Tong, President of the Republic of Kiribati, General Debate of the 63rd Session of the UN General Assembly (25 September 2008), online: <www.un. org/ga/63/general_debate/pdf/kiribati_en.pdf>.06.04.2024.

[41] S. Byravan, R. Chella, "Providing New Homes for Climate Change Exiles" *Climate Policy*, Vol. 6, 2006, 247-252.

Looking back at the colonial period, it is clear that the settlement of people during colonialism provides an example of how sovereign authority can be separated from specific territory and transferred to a mobile population of settlers. This interpretation separates the concept of political authority from territory. In other words, by analogy, climate refugees (migrants) do not conquer territory as an extension of their home country but transfer their sovereignty and political authority to new territories. This would mean that climate refugees create a new sovereignty, not tied to their original territory, but carried with them and adapted to new circumstances. The arrival of a large number of climate refugees can lead to changes in host countries' migration policies. States may be forced to adjust their laws and regulations to manage the influx of refugees, potentially leading to a loss of control over their borders and the implementation of policies under international community pressure. We have already seen such a situation during the previous migration crisis in the Western Balkans and the European Union. A sudden influx of refugees can destabilize the host country's political system, especially if the local population perceives refugees as a burden or threat. This can lead to the rise of populist and nationalist movements, destabilizing the government and threatening political stability, and even the sovereignty of the state.

5. The Right of Climate Refugees to Autonomy Versus State Sovereignty

Given that many climate refugees are forced to leave their countries involuntarily, there are interpretations suggesting that their right to self-determination is thereby violated, as well as their right to a free and genuine choice about their status and future.[42] If climate refugees are relocated to another territory, it is likely that these communities in that area could demand various forms of autonomy (territorial autonomy or cultural autonomy). Self-determination is a fundamental right with many potential manifestations, and what is appropriate must be determined by the people exercising that right. All peoples can continue to strive for a greater degree of self-determination in the future. However, the question remains open as to whether climate refugees, given their status in relation to their home state or host state, have the same rights. Expanding the right to substantial autonomy or self-determination to climate refugees could lead to this right being granted to a group of people not based on shared ethnic origin but on shared lived experience. The experience of displacement is dislocating and limits the affected population's capacity to participate in the ongoing process of self-determination. On the other hand, ideas that are key to self-determination—such as political representation, the collective capacity to shape social, economic, and cultural destinies can empower people in particularly vulnerable circumstances.

In such conditions, international law would need to redefine the interpretations of concepts of territorial autonomy and the right to self-determination from a uniform

[42] Western Sahara, Advisory Opinion, 1975 I.C.J. Rep. 12, para 54–55.

state model based on state territory. Instead, the law now must begin to accept the changing character of state sovereignty by recognizing alternative forms of statehood in response to worsening climate conditions. Climate refugees who are purposefully relocated from deterritorialized states should be provided with participation in intergovernmental and international agreements, and protection of the right to political self-determination through regular elections of a government in exile. These governments of deterritorialized states would have the obligation to manage foreign assets and resources in the interest of their displaced citizens. Furthermore, the government would continue to represent the state without territory at the international level and protect the rights and interests of its citizens in relation to their new host state(s) based on diplomatic protection.

Beck argues that the increasing frequency and severity of climate-related disasters will require greater international cooperation.[43] Such cooperation should be built on existing legal frameworks, such as the International Covenant on Economic, Social and Cultural Rights and the UN Declaration on the Rights of Indigenous Peoples, which proclaim the right to self-determination and autonomy.[44] One possible solution is the application of ius personae to climate refugees, although the realistic possibility of accepting such a solution in contemporary international law is minimal. The situation of climate refugees would be even more difficult if members of a sinking state were dispersed across multiple countries. Then, members of the climate deterritorialized state, even though they would have refugee status, would find themselves in a similar situation to peoples who have not succeeded in establishing national states (par example Roma, Kurds).

If the idea is accepted that climate refugees should enjoy at least cultural autonomy if they cannot enjoy territorial autonomy, they can certainly base their claim on Article 27 of the Universal Declaration of Human Rights, which provides that everyone has the right to freely participate in the cultural life of the community.[45] Article 27 of the International Covenant on Civil and Political Rights provides a specific right for minorities to enjoy their culture.[46] While Article 15 of the International Covenant on Economic, Social and Cultural Rights expresses the universal right "to participate in cultural life".[47] Although this right is guaranteed at an individual level, for its full realization it is necessary for it to be exercised in a group. Anaya, former United Nations Special Rapporteur on the Rights of Indigenous Peoples, emphasized that Article 27 in practice protects both group and individual interests in cultural integrity.[48] Due to a justified fear of

[43] U. Beck, "Living in the world risk society." *Economy and Society 35* , 2006, 329–345.

[44] *Ibid.*

[45] UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948, Article 27.

[46] UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966, Article 27.

[47] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, United Nations, Treaty Series, vol. 993, 3, 16 December 1966, Article 15.

[48] S. J. Anaya, "International Human Rights and Indigenous Peoples:The Move Toward the Multicultural State", *27 Arizona Journal of International and Comparatiue Law,* 2009, 22.

real assimilation, some indigenous peoples generally reject migration as a form of adaptation to climate change because they believe that ties to their territory are an essential part of their culture. Whether we choose to view autonomy as an evolving right or a limited State grant, it is important to ask the question of how the internationalization of minority rights is linked to the flexibility of autonomy. The Paris Agreement on climate change, while acknowledging the link between climate change and migration, does not guarantee any rights or specificities to this group of people. Climate refugees could be granted autonomy similar to that of indigenous peoples. This autonomy would include the right to establish "safe spaces" where they can live according to their own ways. This would entail the right to free, prior, and informed consent, the right to self-governance, the right to enter into treaties and agreements, as well as the legal obligation of the state to respect, protect, and promote their language and culture.[49] However, it is unrealistic to expect host countries to voluntarily grant such extensive rights to climate refugees, as doing so would significantly constrain state sovereignty. Granting climate refugees the same level of autonomy as indigenous peoples would imply acknowledging state responsibility for causing climate change.

One potential solution for the status of climate refugees could be the application of the principle of the personality of law. This principle was applied in medieval law and referred to a legal regime that applied to individuals based on their affiliation with a particular group, nation, or social class, regardless of territorial boundaries. Analogously applying this principle could provide specific rights and protections to people affected by climate change, especially refugees coming from climate deterritorialized states. Although the application of the principle of the personality of law to climate refugees would be complex and require significant international cooperation, it could provide a framework for addressing the urgent issues faced by climate refugees. States would have to adapt their legislation to enable the application of personal law for climate refugees. To ensure the implementation of this form of autonomy for climate refugees, international institutions or bodies with the authority to oversee and enforce these norms would need to be established. These bodies might have a certain degree of jurisdiction over national policies concerning climate refugees, which would present a challenge to the traditional concept of sovereignty. States would need to reform their asylum systems to include specific provisions for the autonomy of climate refugees, which could entail changing existing administrative structures.

The implementation principle of the personality of law as a form of autonomy for climate refugees from climate deterritorialized states could create political pressures within and between states. States that oppose taking on obligations towards climate refugees could conflict with states that support these principles, potentially affecting international relations and cooperation. Given the challenges involved, it is unlikely that this principle will ever be applied to climate refugees. Applying the principle of personal rights to climate refugees would completely redefine the contemporary understanding of state sovereignty.

[49] S. Wiessner, "Indigenous sovereignty: A reassessment in light of the UN declaration on the rights of Indigenous peoples", *Vanderbilt Journal of Transnational,* 41, 2008, 1141–1176.

6. Conclusion

The concept of state sovereignty has significantly evolved throughout history. The impact of climate change could completely redefine the understanding of sovereignty. Climate change provides an ideal basis for external interventions and the infringement of sovereignty in order to ostensibly protect human rights, which have been compromised due to the negative effects of climate change. The predicted rise in sea levels will lead to the loss of territories of archipelagic states, which will require the adoption of some of the proposed creative solutions in order to preserve statehood and adapt to the new reality, embodied in the future existence of climate deterritorialized states. In the future, a form of virtual sovereignty will probably have to be accepted. One of the more realistic solutions is the establishment of an International Fund for Land Buyouts dedicated to these states. To successfully address the issue of climate migration, it is essential to recognize the status of climate refugees as one of the most vulnerable groups. This can be achieved either through a more extensive interpretation of the existing Refugee Convention or by adopting a separate Convention or Protocol. It remains to be seen how willing the international community is to legally recognize climate refugees, especially due to fears of mass migrations and the economic challenges that accompany this type of migration.

It is also necessary to establish an international framework for coordination and sharing of responsibilities among countries regarding the acceptance and assistance of climate refugees. To preserve national sovereignty, states need to implement measures for climate change adaptation and mitigation. Over time, the success or failure in mitigating the consequences of climate change and global warming will reveal the implications these changes will have on state sovereignty in practice.

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