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Climate Security and Justice for Small Island Developing States

An Agenda for Action

March 2014

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Executive summary

Small island developing states (SIDS) are a unique group of countries that bear a disproportionate share of the impacts of climate change despite their minimal contribution to its causes. Their vulnerability and lack of resources to adapt raise significant questions for global security and justice in the decades ahead. This policy brief reviews both the challenges that SIDS face because of climate change in terms of adaptation and development, internal displacement and migration, sovereignty and exclusive economic zones, as well as the means they use to advance their cause, such as legal claims to compensation and multilateral diplomacy. The policy brief proposes an agenda for action that identifies political, legal, economic, and other possible ways of addressing the predicament of the SIDS. The authors encourage policymakers to consider the proposals presented here at fora such as the upcoming Third International SIDS Conference, UNFCCC negotiations, other climate summits and discussions on a post-2015 sustainable development framework, with a view to taking concrete decisions for action.

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1. Introduction

As stated in a recent report by the Intergovernmental Panel on Climate Change (IPCC), climate change is “an important factor in threats to human security through (i) undermining livelihoods, (ii) compromising culture and identity, (iii) increasing migration that people would rather have avoided, and (iv) challenging the ability of states to provide the conditions necessary for human security.”¹

Climate change thus hinders the full enjoyment of human rights and the fulfilment of basic human needs. It is recognized as a threat multiplier in that it contributes to higher instability in some of the most volatile regions of the world and adds to tensions in stable regions.²

Thirty-eight United Nations (UN) member states and several other countries and territories are classified as small island developing states (SIDS) by the UN. They are scattered geographically, over the Caribbean, the Pacific, Atlantic and Indian Oceans, the Mediterranean and South China Sea, and they host a total population of more than 66 million.³ SIDS are uniquely exposed to the impacts of climate change. Due to storm surges, coastal flooding and sea-level rise, their populations face risk of death, injury, ill health, and disrupted livelihoods. The risks, according to the IPCC, are identified with high confidence.⁴ The UN Framework Convention on Climate Change (UNFCCC), signed in 1992, recognizes the particular vulnerability of SIDS to the adverse effects of climate change and thus stipulates that their specific needs and concerns should be given full consideration. The Barbados Plan of Action for the Sustainable Development of Small Island States and the Rio+20 Outcome point to the climate-related predicament of SIDS and call for support to be provided.⁵

Leaders of SIDS have increasingly expressed concerns about the security of their nations and the future of their populations. In their various groupings, such as the Pacific Islands Forum (PIF) and the Association of Small Island States (AOSIS),⁶ SIDS have tried to bring these concerns to the attention of global bodies such as the UN Security

Council, the General Assembly, and the UNFCCC. None of these actors have made any related practical decisions, however, let alone implemented concrete measures to allay the fears of SIDS. If one waits for global action to be agreed upon at the level required to reverse climate change, several of the islands and their populations will likely be adversely affected and in some cases destroyed, resulting in a major loss of cultural heritage, human, and natural diversity.⁷

This policy brief focuses on climate change related challenges that are most urgent for SIDS in the context of security and global justice. These challenges are manifested through increasing vulnerability, development slowing or reversal, forced migration, and potential loss of exclusive economic zones and even of sovereignty. The goal is to develop an agenda for action that identifies political, legal, economic, and other possible ways of dealing with such challenges. The policy brief is based on a review of the relevant literature with a reality check provided through an interactive roundtable of experts convened under the Chatham House Rule in The Hague on March 18, 2014. The concrete recommendations are intended to inform deliberations at the upcoming Third International Conference on SIDS, UNFCCC Conference of the Parties (COP) 20 and 21, and discussions about a post-2015 development agenda and sustainable development goals (SDGs).

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2. Challenges and Possible Responses

Adaptation and development

Challenges

The cost of natural disasters is particularly high for SIDS. Pacific island countries, for instance, suffer annual losses worth an estimated US\$284 million on average, with the annual losses for Vanuatu and Tonga estimated at 6.6 and 4.4 percent of their GDP, respectively.⁸ SIDS in general score high on vulnerability. In terms of resilience and adaptive capacity, however, room for improvement is significant.

Although multilateral pronouncements and agreements like the UNFCCC recognize the global challenges that climate change poses, they often fall short on pragmatic financial and other mechanisms to assist the most vulnerable countries in addressing these challenges. Adaptation projects undertaken by SIDS often face the bottlenecks of inadequate data and technical capacity, weak institutional capacity, and limited financial resources. At present, funding for such projects mainly comes from regional and international organizations. Adaptation projects are being implemented within the UNFCCC context by UN entities, which also serve as Global Environment Facility (GEF) implementing agencies, and by multilateral financial institutions and bilateral development assistance agencies. The amounts available from sources such as the GEF, the Green Climate Fund, and the Adaptation Fund would not be enough to fund all the necessary adaptation projects in SIDS, even if they were dedicated exclusively to that end.⁹ Moreover, investment from the private sector is limited because of the high risk involved, such as uncertain returns and a lack of safeguarding policy and regulations.

Terms of trade and development assistance rules are often not favorable to SIDS. Recent agreements concluded between the European Union (EU) and the African, Caribbean, and Pacific (ACP) countries, for example, give preference to agricultural produce, such as bananas from the Caribbean, the mass farming of which is no longer viable for some states because of changing climatic conditions. At the same time, official development assistance (ODA) transfers are often reduced or come to an abrupt end with the graduation of many SIDS to middle-income country status. The special requirements and needs of such SIDS, which continue to face formidable challenges because of climate change, are not taken into consideration in trade, debt relief, and other economic agreements. A coherent rule and policy framework that would deal with SIDS and their needs in a holistic way is clearly lacking on the part of developed country partners, including the EU.

Possible responses

- *Greater national disaster preparedness* is needed under the Hyogo Framework for Action and its anticipated post-2015 successor.¹⁰ Regional and global support arrangements might include repositioning of supplies and readily deployable reinforcements to evacuate areas in advance of disasters or to deal with their aftermath. Societies with similar vulnerability and resilience characteristics can learn from each other, such as peoples of the Arctic and from SIDS.¹¹
- *Special natural disaster insurance* is needed for SIDS, and could be at least partly financed by global climate funds such as the Adaptation Fund and the Green Climate Fund. The private sector should also be involved. Attention should be paid to the fairness of any insurance scheme in that SIDS have contributed very little to the causes of climate change and should therefore not be required to make large contributions to insurance mechanisms. The process of insurance claims should be established so that it does not burden the governance capacity of SIDS, which is already overstretched.
- *Traditional adaptation actions* need to be continued, including sea defenses such as dikes and buffer zones such as mangroves, hurricane-resistant buildings, and drought-resistant crops. Institutional adaptation is also needed, such as revised building codes, land zoning, and water policy updates.
- *Technology development and transfer*, including the transfer of and access to environmentally sound technologies and expertise, are needed to support adaptation and mitigation efforts in SIDS.
- *Better management of marine and other natural resources* is critical to building sustainable “blue economies” and should include knowledge transfer and capacity building to enable SIDS to make the most of available resources. Part of the wealth thus accumulated could be used for adaptation and the rest deposited into sovereign trust funds for securing the well-being of future generations, whether they will be able to stay in their country of origin or move elsewhere.
- *Global partnership* is needed to help SIDS build capacity and resilience to better manage climate change impacts. An example of such partnership is an EU-funded project that aims at

“ Support for adaptation should no longer be seen only as part of development assistance but also be coherently integrated in all relevant policies.”

helping Pacific island nations build a knowledge base, enhancing national capacities to address climate change impacts, and improving regional knowledge sharing and cooperation.¹² Support for adaptation should no longer be seen only as part of development assistance but also be coherently integrated in all relevant policies. In particular, trade and investment deals between SIDS and other countries should take into account the adverse effects of climate change. Funding for adaptation should not only come from public sources but also from business operations.

- *Debt swap for climate finance* could be used to address SIDS debt concerns. Using funds committed for climate change adaptation and mitigation, donors could write off at least part of the multilateral debt of SIDS. Over ten to fifteen years, SIDS could transfer scheduled repayments into a trust fund set up by the central bank of each country to finance adaptation and mitigation projects. Such an approach would allow for a suspension of debt service in times of external shocks through established triggers and grace periods. If broadly applied, countercyclical loans could help avert unnecessary adjustment costs and further debt accumulation.

Internal displacement and migration

Challenges

As SIDS populations face increasing hardship due to natural disasters and other climate change impacts, which undermine development gains and well-being, and as territories are submerged or otherwise rendered uninhabitable, the movement of people is inevitable. Displacement of people within the borders of an existing state is subject to domestic laws and should normally be governed by freedom of movement and settlement. This can be problematic, however, because relocation of significant population groups may upset established communities and lead to cultural and social tension,

radicalization, and conflict. This is particularly a concern for SIDS characterized by a high level of linguistic and cultural diversity, such as Papua New Guinea and the Solomon Islands. Internal displacement can also bring stress to urban areas, when those who lose their livelihoods because of climate change, such as fishermen and farmers, stream into them in increasing numbers.

International law does not grant refugee or regular migrant status to those forced to move across borders because of climate change.¹³ A recent attempt to establish a precedent, in a court ruling concerning a Kiribati national who requested refugee protection in New Zealand on the basis of rising sea levels in his home country, was rejected at first instance and by the country's high court. The judges deemed that the man would not suffer any sustained and systemic violation of basic human rights—such as that to life or to adequate food, clothing, and housing—on his return to Kiribati.¹⁴

Possible responses

- *National adaptation strategies* should provide for an effective transition from protection in place to community relocation within the boundaries of the same state if necessary. Throughout this process, individual and collective rights (including linguistic, cultural, and other rights and sensitivities) of those threatened by climate change should be respected, as should those of communities called upon to provide sanctuary.¹⁵ Diversification of economic activity and capacity building are also necessary to build resilience and preempt internal dislocation.
- For migration across borders, governments, especially in developed nations, are little inclined to pursue the idea of *adding environmental refugees as a possible new category of protected persons*.¹⁶ They may well be forced by developments, however, to do so. There are several policy options:
 - extension of the scope of the Geneva Refugee Convention,
 - broadening of the guiding principles on internal displacement,¹⁷

- creation of a specific legal framework, and
- addition of a protocol on climate-induced migration to the UNFCCC.

Implications for sovereignty

Challenges

A handful of SIDS are directly, gravely, and immediately threatened by sea-level rise, as they hardly stand above water. The potential “drowning” of a legally recognized state presents novel and complex challenges to international law. The entire territory of a SIDS disappearing below the sea line would challenge the established definition of statehood and sovereignty. It would in turn affect privileges of statehood, such as membership in international organizations, diplomatic immunity, trade relations, eligibility for development aid or loans from multilateral financial institutions, access to the international courts and tribunals, and so on.¹⁸ Beyond the effects on the state collectively would be the concrete repercussions for citizens, who would survive the state but be unable to benefit from some or all of the state’s former privileges.

As a subject of international law, a state is supposed to possess the following elements: a permanent population, a defined territory, government, and capacity to enter into relations with other states.¹⁹ Due to sea-level rise, SIDS may lose the permanent population and defined territory. International law addresses the deprivation of nationality following the transfer of rights, obligations, and property from a prior state to a successor state, but does not address circumstances in which a state has disappeared but no successor state exists. In the event that an island state’s citizens migrate to other countries permanently because the state’s land no longer exists, it is unclear under international law whether they will become stateless persons or merely landless citizens of a state that physically no longer exists.²⁰

Possible responses

- No existing legal instrument directly addresses this novel challenge of sovereignty loss through territorial extinction.²¹ SIDS with inundated territories could still retain their sovereignty, for example as *nations ex-situ* based on a political trusteeship system,²² or as *governments-in-exile* that continue to manage resource rents from their maritime zones and protect the rights and interests of their citizens vis-à-vis their new host states (see also points on migration).²³ Legal scholars who defend the deterritorialized state proposal are convinced that international law is already capable of adopting such solutions without extensive legal reform.²⁴ Indeed, even if an island state lost its “effective statehood” on the ground because of climate change, other states would be morally constrained in sanctioning its death, not least because it was their collective action that caused climate change.²⁵
- In any case, the number of low-lying island states under threat of total inundation in the short- to medium-term is small, so *island-specific options* could be considered for them.

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Implications for exclusive economic zones

Challenges

SIDS increasingly see their future within the oceans, their large exclusive economic zones (EEZs) forming the basis for their development. The challenge is to secure these maritime resources and fully capture their value in sustainable ways. Even if only part of a state’s land disappears, a receding coastline or sinking islands can affect the rights of coastal states under the UN Convention on the Law of the Sea (UNCLOS), including the right to an EEZ.²⁶ EEZs that change in size due to sea-level rise and land disappearance may lead to legal disputes related to natural resources such as fish stocks, minerals, and energy sources. In addition, the possible disappearance of entire islands puts in doubt the continuation of their EEZs and of the benefits accruing to the states concerned.

Possible responses

- SIDS need to declare their baselines and demarcate the limits or boundaries (when there are adjacent states) of their EEZs as soon as possible so that their maritime zones can be stabilized and the

associated rights can be maintained despite the possible loss of land.²⁷ In accordance with UNCLOS, demarcation of limits can be done by national legislation—or, for adjacent states, through an interstate agreement. The resulting charts, which can be created using satellite imaging and should show straight baselines and outer limits,²⁸ would be deposited with the UN Secretary-General. The coastal states are required to give due publicity to the charts and lists of geographical coordinates.²⁹ Capacity support can be provided to SIDS for the demarcation of their EEZs by other states and international organizations.

- Small island states are in fact *large ocean countries* if one considers the borders of their maritime zones on the world map rather than their land borders.³⁰ Showing the EEZs as if they were land masses would increase the perceived influence of SIDS and therefore their leverage in negotiations.

3. Climate Justice

Establishing a legal claim to compensation

Challenges

The right of SIDS to a legal claim to compensation for damage suffered because of climate change is currently undefined. The Mission of Palau to the UN in New York has been trying to orchestrate a UN General Assembly resolution that would request an advisory opinion from the International Court of Justice (ICJ). Such an opinion would define “for the first time, states’ obligations and responsibilities with respect to emissions under international law” and could thus contribute to a successful outcome of the climate change negotiations under UNFCCC.³¹ SIDS need to deal with loss and damage, which are “effects that would not have happened in a world without climate change, which have not been mitigated, and which cannot be (or have not been) adapted to.”³²

Currently, liability for loss and damage from climate change has mainly been reflected in legal claims against government and private entities.³³ Such case-by-case litigation for climate change compensation is not only time- and resource-consuming but also not always effective.³⁴ Pending implementation of the November 2013 UNFCCC decision to establish the “Warsaw international mechanism for loss and damage associated with climate change impacts,” no effective mechanism at the national and international level for dealing with loss and damage incurred by developing countries exists. In addition, most developing countries do not have elaborate public systems to deal with loss and damage from natural disasters, and the poor and vulnerable populations of these countries do not have access to private insurance.

Possible responses

- *The International Law Commission* may be the body best suited to address this issue. Although the commission may take a long time to reach a decision, it can lead to the formulation of new provisions under international law, which can in turn eventually be approved by the UN General Assembly.
- An *ICJ advisory opinion*, on the other hand, could certainly serve the purpose of increasing awareness and would send a political message, but that presupposes a favorable opinion from the court. Any recourse to the ICJ would require carefully crafted questions and might still lead to a rejection of the case on the grounds of lack of jurisdiction. Even if the court agreed to consider the case, an inconclusive or counterproductive opinion is still a possibility. However, considering the importance of the views of the highest UN legal body that is the ICJ, an opinion that might result from it would provide guidance to the processes under the UNFCCC, the most relevant and binding legal framework for the plight of the SIDS; such an advisory opinion would thus be valuable, also with an eye upon the upcoming UNFCCC COPs in Lima (2014) and Paris (2015). This would not exclude a well-coordinated involvement of the International Law Commission.
- The *Environmental Modification Convention* (ENMOD) is another legal instrument to potentially force the issue of climate justice and possible liability to the fore. The convention could be used to request on-site inspections of facilities contributing to climate change, such as large-scale power plants, on the grounds that countries suffering the impacts perceive them as “military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party,” something prohibited under ENMOD.³⁵
- *An agreement on a liability and a compensation scheme* needs to be reached to ensure greater certainty and predictability as well as more clearly defined limits of liability.³⁶ Although the effectiveness of loss and damage arrangements under UNFCCC remains to be seen, much can be inferred from the existing compensation schemes under international treaties on transboundary pollution, such as the International Oil Pollution Compensation Funds and the International Nuclear Liability Regime.
- *Fossil fuel-based companies* should be confronted with their responsibilities to respect human rights (in this case the right to life),³⁷ and the significant amounts they spend lobbying against climate action should be used to increase awareness of the climate reality and the dangers it entails for SIDS and beyond.

Deploying multilateral diplomacy

Challenges

Country representatives often discuss climate change at the UN General Assembly, which brings together practically all recognized states of the world and covers a wide range of issues through what are generally soft law resolutions. Climate change has also been brought before the Security Council, which has according to the UN Charter the power of enforcement when it comes to threats to international peace and security. Starting with a thematic debate under the UK Presidency of the Council in April 2007, several climate change-related debates have been held. Although many see climate change as a legitimate security issue, especially for those directly threatened, such as the SIDS, others are concerned that a possible securitization of climate change would subjugate development to the less transparent security agenda dominated by large developed countries.³⁸

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For developing countries and emerging economies, the foremost priority is development and growth, which is expected to lead to poverty reduction and a general improvement in living conditions. Climate and other environment-related considerations come understandably second. In the wake of the financial crisis of 2008 and its consequences, including the debt crisis in the EU, some developed countries have adopted a similar attitude and approach. Thus soft law exhortations about the need to address climate change and the threat it poses continue with limited practical impact in UN General Assembly resolutions and in outcome documents of UN conferences like Rio+20 and the previous two SIDS conferences.³⁹

Possible responses

- *Formal and informal alliances of likeminded countries and other international actors*, like the EU, could be used more strategically to advance the interests of SIDS at fora such as the UNFCCC. The Cartagena Dialogue for Progressive Action is a good example of how an alliance that combines developed and developing countries with a shared interest in securing ambitious global action on climate change can exert significant influence on the negotiations and make a difference in the international arena.⁴⁰
- Climate change should be a central consideration in shaping the *post-2015 sustainable development framework* and in determining the Sustainable Development Goals (SDGs) currently under negotiation at the United Nations.
- *Multilateral institutions such as the EU should ensure that their policies in various areas like climate change, development assistance, trade and investment are coherent*. The Lisbon Treaty stresses the need to foster sustainable development around the world.⁴¹ The EU therefore has a responsibility to ensure coherent policies to that end. Climate change is an issue also affecting the EU, through migration, for example. If not only for this reason, climate change deserves more attention from EU policymakers and more support from EU citizens.

- *The Commonwealth* is another multilateral institution that has been effective in promoting the concerns of small states –about half of its members being small states—⁴² and can help further strengthen the voice of SIDS within the international community.
- Broadly respected nongovernmental bodies like *The Elders*⁴³ could provide an independent voice, generate media coverage and political attention, and amplify and support work on climate security and justice for SIDS.⁴⁴

The role of countries neighboring or otherwise closely connected to SIDS

Challenges

Countries neighboring SIDS in danger, in addition to being potential destinations for migrants, are often called to provide assistance when natural disasters strike. The role of Australia, lying geographically between the vulnerable SIDS in the Pacific and Indian Oceans, is strategic here, especially the role of its armed forces. A perspective on that role is given in the report “Heavy Weather: Climate and the Australian Defence Force,”⁴⁵ with maps showing the vulnerability to sea level rise of regions bordering Australia. The report underlines the need for proactive planning of the Defence Force, in first instance but not exclusively the navy, to deal with climate-induced emergencies in these regions. New Zealand, which lies in the same broad area as Australia and enjoys a similar high level of development, also has a keen interest in the issue of climate change and SIDS,⁴⁶ and is currently cochairing the Preparatory Committee for the Third International Conference on SIDS. Both countries are of course also facing climate change-related challenges of their own.

Possible responses

- The *hydrographic and oceanographic capability of neighboring country navies*, such as Australia’s, can help provide the necessary environmental intelligence for SIDS in the region to plan for adaptation and emergencies.
- *Expatriate groups from SIDS* that reside in countries with strong colonial, political, economic, or social ties with the SIDS could create a significant political lobby to act on behalf of those who remain on their home islands. They could also provide the types of social networks that would facilitate and support distress migration in the event of a climate-related crisis.⁴⁷

4. Moving Forward: An Agenda for Action

In conclusion, a number of measures could be taken to increase the resilience of SIDS to the impacts of climate change and to ensure the well-being of their populations in the years to come. From advancing adaptation and development to addressing internal displacement and migration, to fending against the loss of EEZs and even sovereignty, these measures require the active engagement of SIDS, as well as of other states and multilateral institutions that can mobilize the necessary resources and political will. Legal measures and multilateral diplomacy, including the support of neighboring countries, are indispensable tools in this effort. Throughout, there is need for alliances, increased policy coherence, and imaginative uses of legal and negotiating processes. The table in annex I, extracted from what has been discussed in this paper, provides a list of concrete responses to key climate change-induced challenges faced by SIDS, thus providing an agenda for action.

Annex I.

An Agenda for Action

<i>Challenges</i>	Concrete Responses	
	Action by SIDS	Action by Others
<i>Adaptation and Development</i>	Greater national disaster preparedness under the Hyogo Framework for Action and its anticipated post-2015 successor	Regional and global support including prepositioning of supplies, readily deployable reinforcements, and evacuation arrangements
	Special natural disaster insurance for SIDS, at least partly financed by global climate funds	
	Adaptation measures, including extensive sea defenses, revised building codes, land zoning and water policy updates	Adaptation support no longer part only of development assistance but coherently integrated in all relevant policies and deals, particularly in trade and investment
	Technology development and transfer, including the transfer of and access to environmentally sound technologies and expertise, to support adaptation and mitigation efforts in SIDS	
	Building sustainable “blue economies” through better management of marine and other natural resources for present and future generations	Knowledge transfer and capacity building to enable SIDS to make the best of the marine and other available natural resources
	Debt swap for climate finance to address debt concerns of SIDS	
<i>Internal Displacement and Migration</i>	National adaptation strategies to provide for an effective transition from resilience building and protection in place to community relocation within the boundaries of the same island state, if necessary	Environmental refugees to be added as a possible new category of protected persons, through an extension of the scope of the Geneva Refugee Convention, through an additional UNFCCC protocol, or otherwise
<i>Sovereignty Loss</i>	Exploration of options to continue sovereignty of the few SIDS threatened by total inundation, for example, as nations ex-situ or as governments-in-exile that continue to manage resource rents from their maritime zones and protect the rights and interests of their citizens vis-à-vis their new host states	
<i>EEZ Loss</i>	Declaration of baselines and demarcation of EEZ limits, or boundaries (when there are adjacent states and in agreement with them)	Provision of capacity support to SIDS for the demarcation of their EEZs
	SIDS’ representation as “large ocean countries” through their maritime zones on the world map to increase their leverage in negotiations	



An Agenda for Action (continued)

<i>Challenges</i>	Concrete Responses	
	Action by SIDS	Action by Others
<i>Legal Claim to Compensation</i>	Request to the International Law Commission to address the issue, leading to the eventual formulation of new provisions under international law	
	An advisory opinion by the ICJ, if requested with carefully crafted questions and actually granted, to add weight to the cause of the SIDS and help guide the UNFCCC process towards concrete results	
	Need for clear and effective liability and compensation scheme that covers loss and damage, under UNFCCC or otherwise; to draw on experience of existing compensation schemes on transboundary pollution	
	Use of the significant amounts spent by fossil fuel-based companies lobbying against climate action to increase awareness of the climate reality and the dangers it entails for SIDS and beyond	
	Request on-site inspections of climate change-contributing facilities using the provisions of the Environmental Modification Convention	
<i>Multilateral Diplomacy</i>	Formal and informal alliances of likeminded countries and other international actors to advance strategically the interests of SIDS at fora such as the UNFCCC	
		Coherent policies for the provision of sustainable development support, also to middle-income countries, by multilateral institutions like the EU
		Climate change a central consideration in shaping the post-2015 sustainable development framework and in determining the future Sustainable Development Goals (SDGs)
		Use of intergovernmental bodies like the Commonwealth and nongovernmental bodies like The Elders to amplify the visibility of SIDS, generate media coverage and political attention, and support work on climate security and justice for SIDS
<i>Countries Neighboring or Otherwise Connected to Sids</i>		Use of hydrographic and oceanographic capabilities available to developed countries neighboring SIDS for adaptation and emergency planning
	Creation of political lobby acting on behalf of those who remain on SIDS by mobilizing expatriate groups living in countries with strong colonial, political, economic, or social ties with the SIDS	

Annex II. Participants at roundtable held in The Hague on March 18, 2014

Speakers

H.E. Mr. Gyan Chandra Acharya, United Nations Under Secretary-General and High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States

Ms. Janet Strachan, Adviser and Head, Small States, Environment and Economic Management, Commonwealth Secretariat

Moderator

Mr. Maas Goote, Executive Director, IUCN National Committee of The Netherlands

Other participants

Ms. Janine van Aalst, Legal Advisor, Dutch Ministry of Infrastructure and Environment

Dr. David Connolly, Head of Conflict Prevention Program, The Hague Institute for Global Justice

Mr. John Crump, Senior Advisor Climate Change, Polar and Cryosphere Division, GRID Arendal Ottawa Office

Dr. Wybe Douma, Senior Researcher, EU Law / International Trade Law, T.M.C. Asser Institute

Dr. Jenny Grote Stoutenburg, Associate Legal Officer, International Court of Justice

Dr. Georgios Kostakos, Senior Advisor on Global Governance and Sustainability, The Hague Institute for Global Justice

H.E. Ms. Vilma McNish, Ambassador, Embassy of Jamaica to the Netherlands, Permanent Representative of Jamaica to the European Union

H.E. Mr. Neil Mules, Ambassador, Embassy of Australia to the Netherlands

Dr. Richard Ponzio, Head of Global Governance Program, The Hague Institute for Global Justice

Mr. Michel Rentenaar, Director, Department for Climate, Energy, Environment and Water, Dutch Ministry of Foreign Affairs

Ms. Leida Rijnhout, Global Policies Director, European Environmental Bureau

Prof. Alfred Soons, Professor of Public International Law, Utrecht University

Mr. Tom Spencer, Vice Chairman, Global Military Advisory Council on Climate Change

H.E. Mr. George Troup, Ambassador, Embassy of New Zealand to the Netherlands

Dr. Roberto Valcárcel Rojas, Postdoctoral Researcher, Faculty of Archaeology, Leiden University

Mr. Wouter Veening, Chair / President, Institute for Environmental Security

Mr. Wouter Veening, Chair / President, Institute for Environmental Security

Ms. Jolanda van der Vliet, Lecturer, International Law and Refugee Law, The Hague University for Applied Sciences

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Endnotes

- 1 | Working Group II of the Intergovernmental Panel on Climate Change 2014, *Climate Change 2014: Impacts, Adaptation, and Vulnerability, Technical Summary*, March 31, 2014, 25, <http://www.ipcc.ch/report/ar5/wg2/>.
- 2 | See UN Doc. A/64/350, http://www.un.org/ga/search/view_doc.asp?symbol=A/64/350; EU paper S113/08, 14/03/2008, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/99387.pdf; CNA Corporation, *National Security and the Threat of Climate Change*, 2007, <http://www.cna.org/sites/default/files/National%20Security%20and%20the%20Threat%20of%20Climate%20Change%20-%20Print.pdf>.
- 3 | See UN-OHRLLS, “Small Island Developing States: Small Islands Big(ger) Stakes” (New York: United Nations, August 2013), <http://unohrlls.org/custom-content/uploads/2013/08/SIDS-Small-Islands-Bigger-Stakes.pdf>; see also William J. House, “Population and Sustainable Development of Small Island Developing States: Challenges, Progress Made and Outstanding Issues,” technical paper no. 2013/4 (New York: UN Department of Economic and Social Affairs, 2013).
- 4 | Working Group II, *Climate Change 2014*, 12.
- 5 | See Article 4.8, *UN Framework Convention on Climate Change*, http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf; UNGA, “Report of the Global Conference on the Sustainable Development of Small Island Developing States,” October 1994, http://www.un.org/esa/dsd/dsd_aofw_sids/sids_pdfs/BPOA.pdf; United Nations, *The Future We Want*, Outcome of the UN Conference on Sustainable Development (Rio+20), paras 178–79, <http://www.uncsd2012.org/content/documents/727The%20Future%20We%20Want%2019%20June%201230pm.pdf>.
- 6 | Alliance of Small Island States (AOSIS), “About AOSIS,” <http://aosis.org/about>. AOSIS counts small island states and low-lying coastal countries that share similar development challenges and concerns about the environment, especially their vulnerability to the adverse effects of global climate change among its members.
- 7 | See UNESCO, “Climate Change and World Heritage,” <http://whc.unesco.org/en/climatechange/>.
- 8 | The World Bank, “Helping Small Island States Cope with the Aftermath of Natural Disasters” (Washington, DC: World Bank Treasury, August 2013), http://treasury.worldbank.org/web/documents/PacificIslands_PCRFipilot.pdf.
- 9 | Obijiofor Aginam, “Climate Change Diplomacy and Small Island Developing States” *United Nations University*, December 8, 2011, <http://unu.edu/publications/articles/climate-change-diplomacy-and-small-island-developing-states.html>.
- 10 | See UNISDR, The UN Office for Disaster Risk Reduction, <http://www.unisdr.org/we/coordinate/hfa>.
- 11 | See “Many Strong Voices,” a platform linking coastal communities in the Arctic and SIDS by bringing these regions together to take action on climate change mitigation and adaptation, and to tell their stories to the world, <http://www.manystrongvoices.org/about.aspx>.
- 12 | The project is carried out in Tuvalu, Kiribati, and Nauru and is jointly implemented by the UN Economic and Social Commission for Asia and the Pacific, the International Labor Organization, and the United Nations Development Program. See project factsheet, “Helping Pacific Island Countries Manage the Impacts of Climate Change on Migration,” United Nations Economic and Social Commission for Asia and the Pacific, September 2013, http://eeas.europa.eu/delegations/fiji/press_corner/all_news/news/2013/20131113_01_en.pdf.
- 13 | According to the 1951 Geneva Convention relating to the status of refugees, a refugee is a person who is outside their country of origin because they have suffered (or fear) persecution on account of race, religion, nationality, or political opinion, or because they are member of a persecuted social group or fleeing a war. Deteriorating environmental conditions do not lend anyone to be qualified as refugee because they do not constitute grounds of persecution.
- 14 | Reuters, “New Zealand Court Denies Pacific Man’s Bid to Be Climate Change Refugee,” November 26, 2013, <http://uk.reuters.com/article/2013/11/26/uk-newzealand-kiribati-climate-idUKBRE9AP06020131126>.
- 15 | Robin Bronen, “Choice and necessity: relocations in the Arctic and South Pacific,” *Forced Migration*

- Review* 45 (2014): 7–21.
- 16 | Robert McLeman, “Climate Change Migration, Refugee Protection, and Adaptive Capacity-Building,” *McGill International Journal of Sustainable Development Law and Policy* 4, no. 1 (2008): 1–18.
- 17 | See *Guiding Principles on Internal Displacement*, <http://www.idpguidingprinciples.org>.
- 18 | Achim Maas and Alexander Carius, “Territorial Integrity and Sovereignty: Climate Change and Security in the Pacific and Beyond,” in *Climate Change, Human Security and Violent Conflict. Challenges for Societal Stability*, eds. Jürgen Scheffran, Michael Broszka, Hans Günter Brauch, Peter Michael Link, and Janpeter Schilling (Heidelberg: Springer-Verlag, 2012), 651–66.
- 19 | See the *Montevideo Convention on the Rights and Duties of States*, <http://www.idpsrilanka.lk/Doc/International%20Human%20Rights%20Instruments/Montevideo%20Convention%20on%20the%20Rights%20and%20Duties%20of%20States.pdf>.
- 20 | Maxine Burkett, “In Search of Refuge: Pacific Islands, Climate-Induced Migration, and the Legal Frontier,” *Analysis from the East-West Center* 98, January 2011, <http://www.eastwestcenter.org/fileadmin/stored/pdfs/api098.pdf>.
- 21 | However, there is a precedent of a sovereign entity without territory, namely the Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta. See Maas and Carius, “Territorial integrity and Sovereignty.”
- 22 | Maxine Burkett, “The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era,” *Climate Law* 2, no. 3 (2011): 345–74.
- 23 | Rosemary G. Rayfuse, “International Law and Disappearing States: Utilizing Maritime Entitlements to Overcome the Statehood Dilemma,” *University of New South Wales Faculty of Law Research Series* working paper 52, 2010.
- 24 | Jörgen Ödalen, “Underwater Self-Determination: Sea-Level Rise and Deterritorialized Small Island States,” *Ethics, Policy & Environment* 2013.
- 25 | See Jenny Grote Stoutenburg, “When Do States Disappear? – Thresholds of Effective Statehood and the Continued Recognition of ‘Deterritorialized’ Island States,” in *Threatened Island Nations: Legal Implications of Rising Seas and a Changing Climate*, eds. Michael B. Gerrard and Gregory. E. Wannier (New York: Cambridge University Press, 2013), 57–87.
- 26 | EEZ is an area beyond and adjacent to the territorial sea, within which the rights and jurisdiction of the coastal state and the rights and freedoms of other states are governed by the UNCLOS. See *UN Convention on the Law of the Sea*, http://www.un.org/depts/los/convention_agreements/texts/unclos/part5.htm.
- 27 | On legal means to implement a regime of stable maritime zones, see Jenny Grote Stoutenburg, “Implementing a New Regime of Stable Maritime Zones to Ensure the (Economic) Survival of Small Island States Threatened by Sea-Level Rise,” *International Journal of Marine and Coastal Law* 26, no. 2 (2011): 263–311.
- 28 | The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state. The straight baseline may be substituted for the normal baseline along sections of coast which meet the conditions laid down in Article 7 of UNCLOS. See Office for Ocean Affairs and the Law of the Sea, “Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea” (New York: United Nations, 1989), http://www.un.org/depts/los/doalos_publications/publicationtexts/The%20Law%20of%20the%20Sea_Baselines.pdf. See also Alfred H.A. Soons, “The Effects of a Rising Sea Level on Maritime Limits and Boundaries,” *Netherlands International Law Review* 37, no. 2 (August 1990): 207–32.
- 29 | Charles Di Leva and Sachiko Morita, “Maritime Rights of Coastal States and Climate Change: Should States Adapt to Submerged Boundaries?” *Law and Development Working Paper Series* no. 5 (Washington, DC: World Bank, 2008), http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/L&D_number5.pdf. See also Maas and Carius, “Territorial integrity and Sovereignty.”
- 30 | For example, the EEZ to land mass ratio is approximately 25,060:1 for Tuvalu and 4,244:1 for Kiribati. The data used for calculation is from the World Bank (land area in km² in 2011). See <http://data.worldbank.org/indicator/AG.LND.TOTL.K2>; the Sea Around Us project (EEZ area in km² year unknown), <http://www.seaaroundus.org/eez/>. For visualization of the large ocean countries, see Ian Cartwright and Anna Willock, “Oceania’s Birthright:

- the Role of Rights-Based Management in Tuna Fisheries of the Western and Central Pacific,” paper presented at *FishRights99 Conference*, Fremantle, Western Australia, November 11-19, 2000; Rome: Food and Agriculture Organization of the United Nations, 182-91, <http://www.fao.org/docrep/003/x7579e/x7579eoa.jpg>.
- 31 | Aaron Korman and Giselle Barcia, “Rethinking Climate Change: Towards an International Court of Justice Advisory Opinion,” *Yale Journal of International Law* 37 (Spring 2012): 35-42, <http://www.yjil.org/docs/pub/0-37-korman-barcia-rethinking-climate-change.pdf>.
- 32 | Lisa Craeynest, “Loss and Damage from Climate Change: the Cost for Poor People in Developing Countries,” *ActionAid* discussion paper no. 6, (Johannesburg: ActionAid, 2010), http://www.actionaid.org/sites/files/actionaid/loss_and_damage_-_discussion_paper_by_actionaid_-_nov_2010.pdf.
- 33 | Michael G. Faure and André Nolkaemper, “Climate Change Litigation Cases” (Amsterdam: Friends of the Earth Netherlands, 2007), http://www.banktrack.org/download/climate_change_litigation_cases_analyses_of_issues_to_be_addressed/o_071215_climate_change_litigation_cases.pdf.
- 34 | Craeynest, “Loss and Damage,” 31.
- 35 | See Article I of the “Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques,” <http://www.state.gov/t/isn/4783.htm>.
- 36 | Roda Verheyen and Peter Roderick, “Beyond Adaptation: The Legal Duty to Pay Compensation for Climate Change Damage,” WWF UK *Climate Change Program* discussion paper, November 2008, 28, http://assets.wwf.org.uk/downloads/beyond_adaptation_lowres.pdf.
- 37 | See United Nations, *Guiding Principles on Business and Human Rights* (New York: United Nations, 2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
- 38 | Xander Vagg, “A Clear and Present Danger: The Security Council and Climate Change,” *Flashpoint Blog*, April 1, 2013, <http://americansecurityproject.org/blog/2013/a-clear-and-present-danger-the-security-council-and-climate-change/>; Stephanie Cousins, “UN Security Council: Playing a Role in the International Climate Change Regime?” *Global Change, Peace & Security* 25, no. 2 (2013): 191-210.
- 39 | See United Nations, “The Future We Want.” See also the outcome documents from the first international SIDS conference in Barbados in 1994, UN General Assembly, “Report of the Global Conference on the Sustainable Development of Small Island Developing States,” May 6, 1994, http://www.un.org/esa/dsd/dsd_aofw_sids/sids_pdfs/BPOA.pdf. The second international SIDS conference was held in Mauritius in 2005. See “Draft Mauritius Strategy,” January 13, 2005, http://www.un.org/smallislands2005/pdf/sids_strategy.pdf.
- 40 | Department of the Environment, “Feature: Cartagena Dialogue for Progressive Action,” Annual Report 2010-2011 (Canberra: Commonwealth of Australia, 2013), <http://www.climatechange.gov.au/about-us/annual-reports/annual-report-2010-11/feature-cartagena-dialogue-progressive-action>.
- 41 | See Treaty of Lisbon, *Official Journal of the European Union* 50, December 17, 2007, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:C:2007:306:TOC>.
- 42 | “Commonwealth Foundation Director, Vijay Krishnarayan, Reflects on Why 2014 is a Big Year for Small States,” *Blog from the Commonwealth Foundation*, February 2014, <http://www.commonwealthfoundation.com/blog/small-states-and-commonwealth>.
- 43 | See more on The Elders at <http://www.theelders.org/about>.
- 44 | See Mary Robinson and Desmond Tutu, “Europe Should Lead on Climate Change,” *The Elders*, March 17, 2014, <http://theelders.org/article/european-leadership-climate-change>.
- 45 | Anthony Press, Anthony Bergin, and Eliza Garnsey, “Heavy Weather: Climate and the Australian Defence Force,” *Special Report by the Australian Strategic Policy Institute* 49 (March 2013), https://www.aspi.org.au/publications/special-report-issue-49-heavy-weather-climate-and-the-australian-defence-force/SR49_heavy_weather.pdf.
- 46 | H.E. Ambassador Jim Mclay, “Statement on Behalf of New Zealand to the Preparatory Committee for the Third International Conference on Small Island Developing States,” February 24, 2014, <http://sustainabledevelopment.un.org/content/documents/7137newzealand.pdf>.
- 47 | McLeman, “Climate Change Migration.”





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