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DAY 1: STATUS QUO: SHIFTING LEGAL OPTIONS IN A CHANGING WORLD

I. Introductory Session

Michael Gerrard, Columbia Law School

• Introduction to the goals of the conference, its focus on adaptation rather than mitigation, and the multifaceted nature of the threat posed by climate change to low-lying nations.
• Brief description of the Republic of the Marshall Islands (history, population, and geography).

Hon. John Silk, Foreign Minister, Republic of the Marshall Islands

• Primary focus of the RMI is mitigation, but the risk of submerging nations must be addressed in the long term, and a menu of political and practical solutions should be developed, as the UNFCCC process is a work in progress that is mired in competing agendas.
• The adaptation needs for the RMI vastly out-scale the resources of the country. Still, the whole sale relocation of the people of the RMI to another nation, the wholesale abandonment of their nationhood, is no more acceptable to them than it would be to any member state of the UN. Political boundaries and nationhood must be protected in all eventualities.
• “To believe is to care, and to care is to do.”

Dr. Mary-Elena Carr, Earth Institute, Columbia

• Discussed current science regarding sea level rise. Key observations: nations with low elevation over sea level are in particular risk; sea level rise is not only due to climate change; and sea level is experienced by people relative to land. Further, the circulation of winds and currents affect sea level rise, as do the characteristics of land masses where ice is contained and from which water flows to the ocean.
• The rate of contribution from the various sources of sea level rise has increased in recent years, particularly from melting ice sheets and mountain glaciers. Sea level is variable depending on where you are on the planet, but the increasing trend for sea levels is particularly prevalent in the Pacific.
• Regional variability (e.g. the El Niño and La Niña variation events) can affect the whole globe, but the impact is larger locally. Though projections for the tropical pacific are problematic, in part because island nations have smaller land masses, estimates show that after 2100 extreme weather events will double in frequency for island states such as Micronesia.
• Current best projections indicate that there will be an increase in sea levels of at least 1 meter by 2100, but it could very possibly rise by 2 meters.

II. Statehood and Statelessness

Jenny Grote Stoutenburg, University of California Berkeley

• Discussed four thresholds for “effective statehood” in international law, as applied to threatened island nations: defined territory, permanent population, government, and independence.
• The defined territory criterion means that uninhabitable land does not qualify as territory for purposes of statehood. Therefore, threatened island nations may need to maintain a certain amount of territory as habitable by, for example, elevating the territory. Alternatively, an artificial island (though treated different in the law of the Seas) would still qualify as defined
state territory for purposes of “statelessness,” and may also be recognized internationally as defined territory on the basis of fairness.

- The permanent population criterion has been satisfied before the United Nations by a number of people as low as 50. Further, the Vatican is an example of a state that is recognized as such though it only has a “caretaker population”.
- The government criterion is meant to ensure that the state have a representative regime to defend its interests in the international community. Recognition of an island government as a government in exile is possible. Such governments have been recognized in the past, though the reason for exile in this case would be new.
- The question has been posed whether factual independence (i.e. self-sufficiency, where dependence on foreign assistance is the threshold) is required, or if legal independence (i.e. legal autonomy, where recognition as a state by other states is the threshold) is enough. As long as other states continue to recognize the independence of the island nation, the independence criterion will have been met.
- Policy recommendations for maintaining effective statehood including keeping a population nucleus on part of the territory. If not possible, the maintenance of a caretaker population on the residual island would ensure the island state’s continued existence, as non-recognition by other states is unlikely.

Maxine Burkett, University of Hawai‘i

- Discussed the viability of the threatened island states as “nations ex-situ.” To respond to the phenomenon of landless nation states, international law must recognize a new form of statehood: a de-territorialized nation state, or a nation ex-situ.
- Alternative forms of state are not novel (e.g. Sovereign Order of Malta and Tibet). The de-territorialized state may be an inevitable evolution of contemporary citizenship (e.g. the colonial diaspora), and perhaps the territory requirement should be eliminated from the requirement for statehood. The extraordinary circumstances of threatened island nations alone justify this unique departure from the norm.
- The trusteeship structure may be used as a model. Appointed members of the endangered nations, supported by the UN, could serve as the political trustees of the nation on behalf of its displaced citizens. This model is useful for the management and distribution of compensation funds. It is crucial, however, that it be member-driven. The endangered nations themselves should determine the form of both the interim government and the permanent nation ex-situ.

Hon. Philip Muller, Ambassador, RMI

- Presented the political side of statehood and statelessness. Failure of the international community to address climate change with the urgency required shows there is a lack of political will to carry forward the necessary response. The RMI must boost its own resiliency, yet the range of responses is limited where retreat from the coast to higher ground is not possible.
- Cultural traditions place unique emphasis on the land, which is tied closely to how the Marshallese define statehood. Thus, the need to address climate change is not just a threat to statelessness, but also to a collective national identity.

Questions and Comments

- Antonio Lima, Cape Verde (called up by Ambassador Muller) discussed the need for solidarity as island states confront the struggle to both mitigate and adapt to climate change.
• Posited by participant that two other alternative, traditional methods exist to maintain the state: (1) acquisition by accession of territory from another, non-threatened state; and (2) merger with non-threatened state to create a new state. Panelists responded that though these are legally viable strategies, they are not likely to be politically viable and pose additional issues related to relocation and second-class citizenship.

• Posited by participant that recognition of this new type of international personality could create a slippery slope for recognition of new nation states in the future. Panelists responded that boundaries of the nation ex-situ could be clearly defined in a new treaty. States are jealous of their status as such in the international arena and containing such fears would be key to the success of these models.

• What happens if the host nations do not agree to accept resettlement populations within their borders? Panelists responded that host nations have a historical responsibility for GHG emissions; multiple citizenship is recognized; and there are precedents for de-territorialized states, e.g. Western Saharan national liberation movement. Further, the maintenance of exclusive economic zones by the ex-situ state could be used to bargain a profit sharing mechanism.

• Many of the representatives from the island nations continually stress that statelessness is not an option and should not be entertained. Need to concentrate on responsibilities of the world to ensure that the weakest and most vulnerable are not left to fend for themselves

III. Preserving Marine Rights: Fishing and Minerals

Alfred Soons, Utrecht University (moderator)

• The preservation of marine rights over fishing and minerals may be affected by sea level rise inasmuch as coastlines can shift or even disappear.

David Freestone, George Washington University Law School

• Overview of maritime jurisdiction zones and the importance of establishing a baseline for the measurement of those zones outwards, into the sea.
• The default baseline is the normal low water mark, designated in official maps, but the law allows states to set baselines using other mechanisms, such as drawing straight baselines or fixing maritime limits.
• Islands that can sustain human habitation can sustain maritime claims, but “rocks” cannot. In order to maintain status as an inhabited island, threatened coastal states may use physical responses such as retreat or defense (e.g. sea walls). The legitimacy of Japan’s claim to an extended continental shelf due to the enhancement of a rock as an artificial island is disputed.
• Article 5 of UNCLOS provides that the state draws its own baseline. Article 7, in turn, allows you to use the straight baseline notwithstanding the regression of the low water line.
• Some agreed boundaries are fixed as outer limits. But sea level rise is local and episodic around the world. It is improbable that an international convention could be achieved on this because of the difficulty in reaching consensus on maritime issues historically.

Ann Powers, Pace Law School

• Developing countries are expected to suffer the most and the soonest from climate change, yet they have lesser economic capacity, greater institutional weakness, and agricultural dependence which is particularly sensitive to climate variations. In addition, threatened island nations have key characteristics in common: tourism and fishing are key sources of income for island states,
and island states tend to have limited access to fresh water and territory. Adaptive and mitigation initiatives are difficult for these nations because of limited access to financing.

- Case studies: Tuvalu, the Seychelles, the Maldives and Bangladesh. These countries are already impacted by sea level rise and extreme weather events and must figure out how to engage in adaptive measures to protect their population and territories, using limited resources. They are poor nations, with low average per capita incomes, and do not have the wherewithal to engage in the kinds of adaptation techniques that a place like the Netherlands can engage in.

Rosemary Rayfuse, U. of New South Wales

- Basic questions that persist in this area: (1) The normal baseline is the low water mark, though sometimes you may use a straight baseline. If the low water mark line retreats, does your baseline have to retreat? (2) If the island becomes uninhabitable, does it loose its exclusive economic zone? (3) If the island disappears, does it lose all of its maritime zones? (4) How can international law assist island states in retaining their exclusive maritime zones?
- Establishing baselines, and determining the time from which they should be fixed, are key considerations for threatened island nations. Outer boundaries should not be used as the fixed parameter, because as coastlines recede the area of their maritime zones will increase beyond the maximums allowed by law, which would trigger infringement of maritime laws and potential legal challenges. Island nations should fix their zones at presently existing baselines. In this way, no one is gaining anything additional, nor will they lose anything as their coastline recede. This will provide a more equitable basis for maintaining their maritime zone claims in the future.
- Practical alternatives to changes in international maritime laws and conventions include: increasing the use of straight base lines on receding coasts (to be used with caution, as this may trigger antagonism in the international community); establishing the outer-limits of a nation’s continental shelf, where appropriate; creation of bilateral maritime boundary delimitation agreements (making sure to establish baselines based on geographic coordinates, as opposed to potentially receding coast lines); and using provisions of the UNCLOS to amend domestic legislation to provide that maritime zones will be delimited by reference to baselines to be drawn in reference to geographic coordinates contained in subsidiary legislation.
- As customary international law is based on general state practice, threatened nations should be looking to establish through domestic law those principles that they will later want to be enforced in the international arena.

Questions and Comments

- Posited by participant that perhaps the use of the Japanese man-made island for the extension of the country’s outer continent shelf may undermine arguments that could potentially be made by vanishing island nations as to their pre-existing geographical landmass, or of landmasses no longer inhabitable, using similar technologies. Panelists commented that the case of vanishing island nations is different because they have a pre-existing claim to an inhabited land mass.
- Multilateral process should be used for the establishment of what Rayfuse suggested: unilateral action on the establishment of baselines through geographical coordinates. Implementing agreement, for example, would be best. Unilateral action would not be enough in the face of disputes, but it is important to establish unilateral positions as coastal states in order to influence customary international law regarding baselines.
- Question posed by Michael Gerrard: What is the position of the US on the Law of the Seas Convention and how does it affect what we are discussing here today? Panelists responded that the US’s position is that the Convention merely represents customary international law on the issues discussed here.
• Do current laws allow the state to keep its fishery and maritime zone rights if its coastline recedes completely? Only states are entitled to claim territorial seas, exclusive economic zones, etc. What is proposed here is that island states can remain as states even if the island ceases to exist. So the establishment of baselines unaffected by coastline regression is key to ensure that presumptions are maintained in the islands’ favor.

IV. Legal Remedies

Jacob Werksman, World Resources Institute

• Effort to develop principles, rules and remedies to allow the Alliance of Small Island States to address the challenge of sea level rise caused by climate change in a just way. Considers whether there is a cause of action under public international law against developed nations for causing climate change, possible venues and jurisdictional concerns, whether there are processes that could attach remedies, and weaknesses in existing laws to meet this challenge.

• Treaty law, e.g. UNFCCC, provides a baseline of obligations for industrialized countries to take the lead in combating climate change, limit and modify long-term trends in GHG emissions, and assist developing country parties that are particularly vulnerable to climate change in meeting their adaptation goals. Customary provisions of international law also provide some baseline obligations that bolster these, and the U.S. Restatement of Law defines a duty of the state to exercise due diligence to protect the global environment and the environment of other states, including the duty to regulate.

• Defining the level of due diligence that a country such as the U.S. owes a threatened island nation is difficult, as questions remain regarding the level of emissions that is wrongful. Kyoto and local state practice can provide guidance on this point. However, there may be situations that are so egregious that the minimum duty need not be defined before assigning responsibility to prevent harm in third states. Notwithstanding, in the absence of a more clearly-defined duty of diligence, it will be difficult to delineate the extent of the obligations that a country such as the US owes nations impacted by climate change.

• Current venues offer only non-binding results (e.g. advisory opinion from the International Court of Justice, or UNFCCC process of conciliation). A venue is required that could deliver a binding result; looking to the Law of the Sea or some other process to provide this.

Donna Green, University of New South Whales

• Discussed legal resources available to non-state islands in their search for resources to adapt to climate change. Short video shown of the effects of climate change on the islands in the Torres Strait. Relative sea levels in that region are increasing faster than the average sea level rise, and extreme weather events are increasing in frequency. Coastal erosion is presently easy to ascertain, but problems with psychosocial health can be much harder to identify and can affect economic development in the future. The health of both land and sea is important, but there has been no recognition by the Torres Straight government as to this. A major concern is the loss of ancestral land.

• The laws that Torres Strait Islanders could use to assist them include laws aimed at protecting indigenous cultures and laws that are directed at finding persons liable for environmental damage. Tort law has not worked well elsewhere. e.g. Kivalina claim, but they may turn to international and human rights law, as well as to local laws in other countries, which may be good models.
Dean Bialek, Independent Diplomat

• The impacts of ocean acidification as the second largest effect of CO2 emissions. Oceans now 30% more acidic than pre-industrial times (equal to a 0.1 decrease in pH). Affects plankton, corals, shellfish, mollusks and marine species’ metabolism and reproduction. Current trajectory means oceans up to 150% more acidic by 2100. At 450 ppm, coral reefs stop growing, and at 500 ppm they may begin to dissolve.
• The UNFCCC (1992) provides that states must “prevent dangerous anthropogenic interference in the climate system”, which includes atmosphere, hydrosphere, biosphere, and geosphere. Art. 1 addresses sources as well as sinks. Question posed whether pH levels are the relevant “metric” for assessing dangerous interference in the climate system.
• Other international forums create obligations to prevent ocean acidification, e.g. UN CBD (1992) and UNCLCOS (1982). Under UNCLCOS, Arts. 192 & 194 state that states shall prevent, control, and reduce marine pollution (general “no harm” principle). It also provides obligations of specific conduct (Arts. 204-212), such as monitoring risks, assessing potential effects (Art. 204), and adopting laws to prevent, control, and reduce pollution (Art. 207). Art. 212 applies these obligations to pollution introduced from or through the atmosphere. Responsibility, liability and right to compensation is established in Art. 235.
• Contentious legal actions require claimant states, identification of responsible states, identification of relevant legal principles, availability of forums with jurisdiction, demonstration of harm/damage, demonstration of a causal link between activities and damages, and that a particular remedy be sought.
• UNCLCOS dispute settlement process has three major advantages: (1) clear treaty obligations; (2) direct and clear scientific link between the subject matter of the instrument, the harmful activity and the impacts in question; (3) dispute settlement provisions cover all major emitters (except the US) and impacted states. Alternatively, the ITLOS (International Law of the Sea) Advisory opinion process is less confrontational; it would clarify relevant legal principles; create a new impetus for international negotiation; and lay the groundwork for legal action in the future.

Antonio Oposa, University of the Philippines

• The purpose of legal action is to compel action and tell a story. It must be looked at from two dimensions: national & International. Dispute resolution mechanisms of International Conventions and MEAs may be used. Practical issues remain regarding political will, the willingness of lawyers to bring claims, and logistical support. The success of legal actions of this sort is a long way off, but there is a need to tell a story and cause a global uprising. Crisis provides the opportunity to create a revolution.
• The terms of the debate must be reframed. Environmental security is the highest form of national and international security. Legal action can help trigger a shift in the paradigm of the economics of consumption. Conceptions of developed and developing nations must be reframed in terms of consumption, i.e. developed nations termed “over-consuming countries.”

Questions and Comments

• Stuart Beck, of the Permanent Mission of the Republic of Palau to the United Nations, commented on the need for continued efforts to bring claims by island nations to international fora and assert rights to remedies from developed nations, particularly in light of the failure of such nations to promote mitigation efforts at home. Advocacy by eleven island nations succeeded in bringing the issue of climate change before the UN Security Council.
• The right forum depends on the identity of the plaintiff and of the defendant.
• Creation of a new tribunal with broader jurisdiction was proposed. Panelists answered that it is not the subject matter jurisdiction which is lacking, but rather states’ willingness to participate.
• Difficulties in bringing a claim under the Alien Tort Claims Act in the U.S. clarified by Prof. Gerrard. The U.S. Supreme Court has interpreted the Act as only applying to instances of violations of the sort that occurred in the international community in 1979. Also, it is not available against corporations, but only against individuals.

**Day 2: What Can be Done to Help, and How to Do It**

I. Resettlement and Migration Issues

**Brad Blitz, Kingston University London**

- Decisions to migrate are made on partial information and projected outcomes (potential living standards, reduced threat, etc.). Considering environmental migration in other parts of the world (e.g. Bangladesh), these decisions mostly have to do with land and landownership. People migrate, not merely because they perceive a threat, but because there is a trigger. These triggers must be understood in order to analyze alternatives for adaptation.
- In spite of growing consensus that climate change poses a major threat in terms of migration, there has been very little focus on resettlement and the ways in which climate change migration should be managed. We can draw on the idea of de facto statelessness, and use it as a hook to develop an agenda to deal with this problem. However, de facto statelessness is a term that has not yet been defined properly (current definition provided by the UNHCR (2010) is not adequate, as it is drawn from the refugee context), and resettlement politics have traditionally prioritized the concerns of host countries.
- Drawing from the refugee context may be illustrative. Resettlement is the least preferred option in the context of refugees. Repatriation is preferred, and resettlement is done when no other options are available. Resettlement depends on good will of states, as no state is legally required to accept refugees. Wider definition of refugee used in US domestic law can be useful.
- Statelessness was a taboo term for many decades. Considerable work has now been done by convention committees on this theme. Outside the context of Geneva, etc., there are examples of community leadership used to plan for resettlement. Carteret Islands (council of elders mobilized to create non-profit organization that supports relocation of inhabitants to neighboring atolls and islands); Tuvalu and Kiribati (labor migration schemes as a way of increasing migration flows); and the Maldives (moves to re-concentrate migration to larger atolls and increase income of individuals).
- Other examples, such as Monserrat and Tibet, provide creative ways of preserving cultural attachment while the land is unavailable to the people, and increase cohesiveness while looking for ways to return. Need to explore more communitarian ways of authority, to envision the transition to diaspora, and provide better information and advocacy to respond to resettlement and manage the psychological impacts of migration.

**Les Stein, Columbia Law School**

- The use of domestic land use law for the resettlement of persons displaced by climate change. If there had to be migration to another country, can the link between people and culture be maintained in the host country? This analysis considers the movement of a group of people on a large scale (at once or over time), in one direction (to a host country), and as a result of the willingness of a host country to accommodate them as a group. No domestic law for in globo move would have to be developed if the people come individually.
• If a host country decides to accept such a large group, international law requirements must be met as to adequate housing. This requirement in international law, however, is not tailored to permanent relocation, and it is not clear what it encompasses.

• Successful migration occurs when there is a development of social capital in the new country, i.e. all factors are present that promote social coherence by reforming connections and social support. Though there is no domestic law that can accommodate the social and cultural needs of a new group, land use regulation can provide a model by applying principles of New Urbanism. Land use patterning can be used to foster a sense of community and create social capital through a process of understanding the social goals and aspirations of those who will live in the area. Central to new urbanism is the idea that cultural aspirations need to be understood through the use of the design charrette method. The new urbanist method was used in Haiti in 2010, and forms of housing were proposed that are a representation of the forms of housing lost. The sociology of the living scenario was taken into account.

• This has to be translated into a regulatory form, i.e. a range of building types contained in a Smart Code land use ordinance. Examples of this can be found in LEED-ND, which is a checklist system that is used by federal HUD and incorporates new urbanist ideals.

• Conclusion: There are no domestic laws that can handle an influx of migrants in a large number and protect and sustain their social and cultural needs. There are no laws in the locker for housing and accepting the social and cultural needs of the migrants. If there is going to be respect for the international human rights requirement for adequate housing to a high standard, then those social and cultural aspirations need to be translated into law. Concepts of new urbanism are the best match to meet this challenge.

Robin Bronen, *Alaska Immigration Justice Project*

• Communities in the Artic are currently being threatened and are relocating due to climate change. “CLIMigration” used to refer to migration triggered by climate change, as refugee is an inadequate concept. It involves permanent community relocation due to on-going ecological change caused by repeated extreme weather events and on-going ecological change.

• Climate change will cause permanent relocation, as it will be the only adaptation strategy available to some groups to respond to climate change. This requires new adaptive governance institutions. Planned relocation must be based in human rights doctrine, yet there is no human rights protocol that currently exists to deal with community-led relocations.

• The community of Newtok is the only US Arctic community that has established a relocating process orchestrated entirely by the community council. Process involved assessment of climate change impacts since the 1980s, identification of potential relocation sites, voting by community for relocation, and acquisition of land for that purpose. Challenges have included the lack of a mandate or statutory guidance for agencies to assist in the relocation process and a lack of technical expertise or knowledge as to relocation by those participating in the process.

• Adaptive governance framework must consider overall relocation policy, including strategies for disaster relief, inclusion of community voices, and technical expertise to rebuild and expand infrastructure. Relocation policies cannot be based on internal displacement models that do not have a place for community-based and community-guided relocation. The disaster relief framework currently focuses on rebuilding for return, so that current laws do not provide funding for infrastructure that is not located at the disaster site itself, and some causes of displacement, such as erosion, do not fall within the definition of disaster.

• Social-ecological signals that indicate the need for relocation must be monitored, such as the repetitive loss of structures and other imminent dangers to the community (e.g. health crisis because of lack of access to potable water).
• Conventions for refugees are not useful in this context because they are based on the breaking of ties with the original community or country. Here, the people want to maintain and foster their cultural and social ties. Further, macro level analysis is not useful, as these issues are ecosystem-specific.

Questions and Comments
• Comment by participant from Bangladesh as to the need for micro level assessment, as the loss of traditional livelihood and food security is the main driver of internal displacement. Panelists emphasize that there is a difference between small island nations and large places like Bangladesh, such that new templates for dealing with this displacement should be developed into the future with a focus on local-level information gathering.
• Ambassador Muller commented on the important distinction between domestic/internal migration and international migration. In the case of the RMI, relocation would involve many other issues regarding citizenship and governance. Further, cultural connections to the land mean that moving to urban environments would be particularly incompatible with social and cultural needs.
• David Freestone clarifies that the World Bank experience is that resettlement initiatives are highly controversial, particularly requirements related to the adequacy of conditions at the relocation site. The basic premise of the policy is that relocation is to be avoided. The problem is that World Bank guidelines were developed from the perspective of involuntary relocation, whereas here we are looking to redraw guidelines from the community-led perspective.
• Development issues that do not have to do with climate change will be exacerbated by it (e.g. Bangladesh). Local government needs to plan the relocation regardless of its causes, and community concerns need to be considered in order to ensure better conditions at the relocation site. Better understanding of why people are migrating will inevitably help to draw strategies.
• Question posed to Les Stein as to the challenge of integrating social structures from the threatened island nations that have no analog in host country domestic law, such as land tenure systems. Responded that personal relationship with respect to the land might not be reflected in the US as they are in the RMI, but there are various devise that exist regarding the holding of land in common, that could replicate it to some degree. Regardless, the principle is that these notions have to be brought in, and tested in various scenarios by using the charette method, as was done for Haiti. There is no perfect one to one relationship, but there are tools to help bring them closer.
• Question posed whether under the UNFCCC and related debates there have been discussions about using NAPAs and NAMAs to fund these programs. Bronen responded that capacity building for local governments regarding climate change is built into the UNFCCC. Les Stein added that no money seems to have been allocated to resettlement strategies thus far, and all has been allocated to national strategies.
• Question posed as to proposed venues for the acceptance of climate change migrants. Blitz responded that such decisions will be made on a narrowly drawn geo-political basis, considering existing ties and opportunities for labor migration, for example. Suggested that if resettlement is to be considered, it should either be closer to home or by countries that are more traditionally supportive of resettlement.
• Blitz commented that the idea of disaggregating individual and group rights is one way to envision a way forward. Looking at World Bank projects in the context of cultural restoration, and focusing on protecting the people by creating a communal base, both symbolic and physical, to provide them with some mooring as they face relocation.

II. Existing Legal Structures
Michelle Klein Solomon, *International Organization for Migration*

- The scale and overall context of migration. The UN estimates that there are 214 million international migrants, that there are another 740 million internally displaced persons, and that in total, there are 1 billion people who have left their habitual place of residence to find residence somewhere else. The population to be impacted by environmental and climate change consequences is estimated at 250 million.
- It is difficult to pin-point climate change per se as the reason for migration. Usually climate change exacerbates existing environmental degradation. The overwhelming majority of people displaced by climate change are likely to be displaced within their own countries. When cross-border migration does occur it is likely to occur south-to-south, or from a lesser-emitting country to a lesser-emitting country. These migrants represent a small portion of the world’s population; it is important not to fuel developing country fears and hysteria about migration potentials and avoid spurring further repressive legislation and xenophobic rhetoric.
- The existing legal framework for refugees does not apply because refugee protection is given in place of the original state (when the state turns on its citizens), it only applies to people who have already crossed borders (it is not grounds for admission into another state), and it is difficult to characterize climate change as persecution since individuals are not targeted by climate change because of their race or membership in a particular group. However, both international human rights law and consular law apply to climate change effects. The biggest issue regarding human rights in this context is implementation, not the scope of applicability.
- The conventions that exist in this area should be explored further and the following should be considered if a new instrument is to be developed: move away from individual refugee status assessments toward a new way that contemplates collective migratory responses to climate change; measuring accountability in order to provide compensation; and usefulness of bilateral agreements as opposed to global ones.

Siobhan McInerney-Lankford, *World Bank*

- World Bank research project entering its second phase in the RMI. Consolidating legal thinking as to climate change, identifying strong policy options, and understanding links between human rights (HR) and climate change. Overview of previous initiatives linking HR and climate change.
- Climate change impacts HR, but not every action to address climate change is itself HR neutral (e.g. the rights of indigenous people). HR impacts borne disproportionately by the most vulnerable, which likely will increase in vulnerability. The application of HR law tied to an equity concern. HR focus on accountability (the identification of duty-bearers in international HR law) and the substantive and procedural standards that HR treaties contain are useful, as well as the value of mobilizing political will.
- Bases for convergence between climate change and HR law include structural considerations underpinning international law (presumption against conflict, avoidance of “fragmentation in international law,” and the ILC proposal for systematic integration), as well as convergence around treaty obligations and principles (e.g. accountability, do no harm, duty to cooperate, equality and HR norms of differentiation).
- Biggest hurdle in promoting an HR outlook is that climate change frameworks are set up to look at aggregate causes and global impacts, they have different objectives, and institutionally there is little to connect them. Theoretically, climate change law is also more forward looking, whereas a HR framework has a retrospective outlook. UNFCCC is horizontal (burden sharing and
cooperation), whereas the emphasis in an HR treaty is between a state and its citizens (individual complaints and redress).

- Legal remedies may not be the most promising avenue in the long term. Political pressure is more useful, as HR still carries strong weight politically. Policy-wise, HR law would require us to inculcate a principle of do no harm, and it would act as the minimum baseline under which actions of any sort (including emissions reductions) would be judged. HR impact assessments must be modified and developed to take climate change into account.

Katrina M. Wyman, *New York University School of Law*

- Consideration of existing immigration laws in destination countries that may be used in the event of large scale migration.
- Existing migration patterns from 4 island nations (Kiribati, RMI, Tuvalu, and Maldives) indicate that the first three are currently experiencing considerable migration, generally directed at the U.S, New Zealand and Australia. Migration into these countries is not occurring on the basis of environmental crisis, but other factors. These migration routes could be strengthened, however.
- Four prong framework for evaluating existing immigration mechanisms asks (1) whether migration is available to citizens of threatened island nations, (3) whether permanent migration is enabled, (3) whether it enables unskilled persons and persons not in the workforce (children and the elderly) to enter, and (4) whether there is a tight cap on the number of migrants admitted. Other possible criteria for evaluating existing immigration mechanisms include whether they provide funding to assist with relocation.
- Some promising mechanisms (e.g. US-RMI Compact, NZ Pacific Access Category, and the US, NZ and Australia worker programs), but even the most promising is not ideal for dealing with large scale migration of the kind here discussed. Regardless, some effort needs to be placed on reforming domestic migration laws in receiving countries. Even if international approaches are favored, immigration politics in destination countries must be grappled with in order to successfully implement an international treaty.
- Gradual migration can help island states, as remittances may assist funding for economic assistance at home and the maintenance of nucleus populations, while diaspora communities may help people settle and integrate. Benefits to destination countries from gradually increased migration include the supplemental labor force for rapidly aging populations, reducing risk of subsequent mass influx, and meeting ethical obligations from having caused climate change. Disadvantages for small island states include potentially undermining the ability to sustain the collectivity, i.e. maintain viable economies. There may also be a division of interest between individuals and the government, whose claim to statehood may be undermined by dropping populations.

Ilona Millar, *Baker & McKenzie*

- There is a push through the UNFCCC process to introduce the loss and damage mechanism for managing risk and compensating those affected by the impacts of climate change.
- The loss and damage mechanism is a process to respond to climate change related risks that cause loss to property and livelihood, in particular natural disasters and slow onset events. It has three main components: (1) risk management and risk reduction (developing planning frameworks and adaptation strategies); (2) risk sharing and risk transfer mechanism (ways of potentially sharing the risk among the international community and transferring it through financial products and insurance); (3) rehabilitation measures for events that cannot be adapted to (may include relocation and/or compensation).
• It allows the possibility to leverage the private sector in order to fund adaptation measures. Builds upon the existing obligations in the UNFCCC, but needs to be elaborated post-2012. It has some legal basis in international law principles to prevent harm and specific provisions in the UNFCCC.

• Types of climate change induced loss and damage insurance include traditional insurance, micro-insurance, and insurance-linked securities. Problems with insurance include high premiums, moral hazard concerns and difficulty of determining pay out for slow-onset events.

• Loss and damage mechanisms have the potential to assist risk preparedness, facilitate risk transfer for natural disaster, and compensate for unavoidable loss. It could also help underwriting migration and to leverage the discussion on the mitigation side.

Questions and Comments

• Caleb Christopher commented that there is an open question around financing regarding replacement values. The RMI has gone through some of that analysis but is looking for models that might provide a track record for assessing long-term risks in the Pacific region. Ilona Milar responded that a catastrophe fund is being raised in Turkey, but no models have been put into effect as to slow onset events. Specific problems include how to establish a mechanism for the fund to pay out, i.e. what will serve as a trigger. For example, when has sea level rise taken place to the extent to which it should trigger a payment? These mechanisms require firm baselines and clear time frames for beginning to measure those baselines.

• To McNerney and Klein: what language would be required and what protection exists for your organizations to be able to assist these countries? McNerney-Lankford responded that from an institutional vantage point, part of the challenge has been encouraging a systematic approach to HR. Tackling issues at a macro legal and policy level. Language that would be most persuasive in a World Bank setting would have to be evidence-based. Klein responded that paragraph 4f of COP 13 is only a place holder for adaptation, but an important one. That language took much negotiation, almost four years. It was important for political palatability that the language not include a clear obligation on states, but rather an encouragement to cooperate. Further, guiding principles could be developed for external displacement, as exist for internal displacement; more legal migration channels could also be opened; mapping hot spots of forced displacement is necessary for targeted interventions; and the use of NAPAs under the UNFCCC to bring climate change community together with the immigration community.

III. A New International Convention

Michel Prieur, Centre International de Droit

• Proposal for a convention on environmentally displaced persons, not refugees, with the objective of guaranteeing the individual and collective rights of such people, providing ecological assistance and solidarity, creating common but differentiated responsibility and effective protection. The general framework of draft convention is to give people specific status as environmentally displaced persons; set up institutions at national level to grant status; and set up an institutional framework for enforcement at an international level.

• Such a convention would have a rights-based approach, guaranteeing the right to return, the right to conserve nationality of origin, the right to preserve unity of families and populations. Status would be recognized through application to national commissions of independent members and appeals to a higher authority at the international level.

• Necessary to have a global, holistic approach that creates synergy between environmental and human rights law.
• Testing implementation of draft convention in 7 states in national immigration law to see how it might be modified for future negotiation.

David Hodgkinson, University of Western Australia
• Examine why a convention might be useful. Currently inadequate protections for the quantity of people to be displaced by climate change, and such displacement is not covered under the refugee convention. Some proposals seek to link to UNFCCC and Kyoto protocol, but these do not address the issue of displacement. UNFCCC cannot easily be amended to include CCDPs. Regulation is currently segmented and there is no coordinated response from governments. A coordinated and preemptive resettlement program is needed.
• Proposal for a single, multilateral, stand-alone conference. Parties would include both developed and developing nations and will discuss causation and adopt a multifaceted, cooperative approach to encompass those displaced internally. Developing state parties will be most in need of displacement assistance. Persons displaced within state boarders would need to share obligations with home state and international community
• Science cannot determine to what extent an event was caused by CC nor can it determine the extent to which human activity is to blame. Therefore, the convention would lay out a series of linkages. A very likely standard (greater than 90%) that certain trends are associated with CC. Adopting the “very likely standard” would address slow onset issues in addition to sudden disaster scenarios.
• The proposal sets out a CCD organization and sets out roles and responsibilities of participants. State parties would manage offers of and requests for assistance and designations both through regional committees that could inform the CCDO and through bottom-up approaches. Developing countries make mandatory payments to a fund for assistance and protection. Common but differentiated responsibility.
• Threatened island nations differentiated by large scale displacement and leaving homelands. Existing legal regimes don’t account for rights at issue (i.e. rights of proximity to the land, rights of self-determination).
• www.ccdpconvention.com

Jane McAdam, University of New South Wales
• A one size fits all approach is insufficient to deal with the phenomenon of climate migration. The many factors at play (long onset; government choosing to relocate people; disaster) impact timing, speed and the kind of response that is needed. Disaster may require speed but not a permanent relocation. By contrast, impacts that take place over a longer time may require relocation on a permanent basis. Need understanding of nature, scale and timeframe of movement.
• There are conceptual and pragmatic difficulties in creating a new international instrument. Treaty proposals are based on ideas of movement that are not based on models seen on the ground (e.g. migration for threatened island nations is likely to be gradual and not an at-once massive migration). It is also empirically flawed to say that climate change alone causes such migratory movement; its role may be stronger or weaker depending on the vast array of factors that inform decisions to stay or to go. CC multiplies existing stressors rather than creating different ones. “Survival migration” may be more apt, as it shifts attention away from a particular cause to multiple causes.
• Further, that a treaty for CC displaced people would require some form of causation, and there is little political appetite for such a treaty. Lobbying for climate displacement treaties may call
more attention to climate change, but messy or alarmist work could discredit climate research. Danger of deriving figures that may be inaccurate.

- Integrity self-determination and statehood need to inform everything. If treaty becomes main focus then may detract from focus on letting people stay in their homes for as long as possible. We should not squeeze everything into a protection paradigm.
- A panoply of responses is needed, not just a conference. Regional efforts also focus on different types and pace of migrations. We cannot merely rely on a remedial treaty.

**Questions and Comments**

- Hodgkinson clarified that signature, ratification and enforcement of a new convention present a range of obstacles to address. However, a convention makes sense because the idea of amending the 1951 refugee convention or adding a new part to the UNFCCC is very problematic. Also, a new convention would focus on CC displaced people specifically. Climate change is key because it is caused by activities that create a duty to mitigate harm. There are also economic and security reasons to enter a convention on the topic, as it is a discrete problem that can be addressed in a clear way, unlike other issues such as poverty.
- Comment that other international standards exist, such as the solidarity principle and preemptory norms. A legal apparatus should be based on existing norms.
- Steven Kass asked how McAdam would feel about a hybrid approach. The aggressive internal adaptation approach endorsed by her, combined with Prieur’s convention as to cross border issues only. McAdam responded that there is a need for multiple levels of approach to the problem. There are people who will qualify for refugee status but need aggressive adaptation policy as well for those who remain. Local people feel that multilateral treaties are a diversion that make it harder to negotiate bilaterally. Prieur responded that international law is evolving and can always improve; there is also a benefit to transforming principles into conventions that apply to states as binding instruments.

**IV. Political Discussion: The Way Forward**

**Miguel Berger**

- On the political side, the way forward is by bringing this to the United Nations Security Counsel. Need to deal with long-term security considerations, and to achieve a concrete outcome.

**Michael Gerrard**

- Identified four categories of questions/issues that have been raised thus far: (1) the need for a new international agreement; (2) statehood, statelessness and maritime boundaries; (3) financing and adaptation measure; and (4) legal liability.
- Posed questions to participants for open discussion.

**Ambassador Phillip Muller**

- Summarized the major points discussed in the conference thus far.
- First, there is recognition that in the short-term, the cause of the problem must be addressed by urgently and dramatically cutting emissions. It also recognized that the UNFCCC is not working and more proactive and adversarial approaches need to be adopted; the most vulnerable countries need to work together to use the law to make major emitters responsible for their actions. Further, there has been recognition that statehood is not static and there are ways to continue statehood despite the loss of land, as long as it reflects the will of the people.
Finally, displacement is already happening in the form of internal displacement resulting from slow onset effects. This needs to be part of long-term international planning, which importantly must consider financing and availability of resources.

Questions and Comments:

• Muller commented that the primary focus must remain the reduction of emissions, to avert the tides of crisis and prevent the islands from sinking. Anything above 1.5 degrees Celsius is unacceptable.
• Hon. John Silk commented that a clearly defined definition of CCDPs would go a long way in alleviating the fears of countries regarding its scope.
• Michelle Klein Solomon commented that there are compelling circumstances that show the need for a treaty, and that it is clear we need to hold the large emitters responsible. However, noted that from a migration perspective, a global instrument in the global arena may not be the most productive way to achieve protection at this time. The productive avenue to pursue in this area is regional-based, issue-specific solutions. Focusing on a multilateral treaty may force parties into defensive, rather than cooperative postures.
• Jane McAdams commented that for the UNFCCC, getting agreement among island states to include adaptation/migration language was difficult. Need to think carefully about what strategies will appeal and which won’t.
• Brad Blitz commented that states have the ability to raise their voices, and show that they are endangered and need solutions. Perhaps in this context, advancing a convention or looking to other instruments in the UN system is a way to increase power and advance negotiations.

**DAY 3: DOMESTIC OPTIONS FOR SMALL ISLAND STATES**

I. Engineering for the Future

Joosueb Lee, Korea Global Green Growth Institute

• “Green growth” concept and the work of the Korea Global Green Growth Institute.
• Overcoming poverty and managing these climate issues are not separate concerns. Green growth is a tool for overcoming the linked challenges of poverty and climate change.
• Korea’s experience with economic growth is not applicable in the 21st century, as it was based on a paradigm of growth that lacks sustainability. A new paradigm should be applied in the developing world today. Korea is looking to change its energy schemes to attend the climate change issue and shift to more sustainable development.
• The Institute has programs in other countries to induce green growth (e.g. Kazakhstan).

Klaus Jacob, Columbia University

• Risk-based planning options for Sea Level Rise, with examples from Majuro, RMI. Posed the following questions: how long and at what costs will Majuro be sustainable? What tools do we have available to make estimates? The methodology is the focus of this presentation, and the data needs to be collected and refined. Showing here a principle that may be useful for understanding adaptation and its limits.
• Considering only the thermal effect (increase in temperature, without accounting for ice dynamics which may influence the rate of melt in Greenland and Antarctica), sea levels will rise dramatically. Tides on the lagoon side of Majuro at normal tides are at 1.2m (3.6ft) above mean
sea level. Seal level rise by the end of the century will be more or less 1m above mean sea level, but sea level plus tide effect will bring that up an additional meter.

- Here, Risk = (Hazards that mother nature provides) x (Assets exposed to those hazards) x (Vulnerability according the type of asset). Hazards are measured as probability per year; Assets are measured as monetary value; and vulnerability is a dimensionless value between 0 & 1, which is, in turn, also related to the hazards.
- Mitigation to achieve a reduction of GHG emissions and reduce warming would directly modify the hazard value. Adaptation, on the other hand, is a planning and land use measure that may involve the movement of assets to a safer place, or the erection of sea walls and dams. Population, e.g., is an asset: if population increases it means an increase in amount of assets present and, therefore, an increase in risk.
- Rare big events are not the biggest contributors to loss estimates. Rare big events likely cause large losses, but resources are first wasted in maintaining infrastructure, as frequent small events occur constantly. When big event occurs there is less ability to cope due to constant investments in maintenance and rebuilding.
- The annualized percentage of losses grows by a factor of 500 or so between current sea levels and the projected increase of 1m in ocean-side sea level. The only possibility for the nation is to reduce the population density of Majuro and leave a remnant population on the island that will remain as a steward population, so that when sea levels go down again in the next cycle, the people can come back.
- No LIDAR digital elevation model (DME) maps available right now for elevations on Majuro. This should be done soon to better analyze the risk of flooding.

Erin Coughlan, Columbia University

- Traditional adaptation responses include protection, accommodation and retreat. This study done as part of the Earth Institute at Columbia uses a hybrid approach of all these ways to adapt. It also looked at adaptation from the national, regional (atoll) and household levels (day-to-day decisions), all of which are affected by policy decisions.
- Adaptation options include the erection of barriers, such as sea walls and beach nourishment. Problem is that they may have a net negative effect if they increase erosion on the island. Natural barriers have been used, e.g. Thailand, to increase viability of coral reefs. However, maintenance of these protection measures is crucial because leaving sea walls unattended or allowing prospective construction by the sea wall can increase erosion.
- Accommodation to climate change at a national level includes adaptive management, which enables the government to respond to change as it happens and implement a variety of approaches. Albon Ishoda will present an example from the RMI. Accommodation at a regional level includes thing such as the use of water bladders that can be used for water storage, desalination plants to supplement potable water supplies, and elevated community shelters for temporary housing in the event of crisis.
- Population development in the inward side of the island is a higher risk because it is more vulnerable to typhoon events. Moving development to the leeward side of the island could help reduce such risk in the future.
- Other measures include vegetation protection to help stabilize soil and avoid erosion, dry waterproofing of homes to reduce water infiltration and reduce damage from flooding, and wet waterproofing that would allow water to pass through during the flood event. Hydroponics and biogas can also be used to grow food in the home, providing sustenance when there is a lack of agricultural land. Water catchment and storage can also be scaled up to more homes to improve potable water security.
Advocating for hybrid approaches that include protection, accommodation and retreat. Not all these measures would be applicable to all countries or the RMI.

Albon Ishoda, Republic of the Marshall Islands

- One of many adaptation strategies is adaptation through sustainable resource management: maintaining healthy ecosystems so that natural processes can strengthen resistance to the impacts of climate change.
- Challenges of enabling and empowering communities. Translating ideas such as “adaptation” and “mitigation” to communities; bringing information down to the community level. Funding opportunities are not readily accessible and are frequently subject to donor conditions. Social implications from impacts of climate change have not been fully understood. Addressing other stressors, the non-climate stressors, that may magnify climate change impacts. There is no one-size fits all; all communities have very specific needs.
- Reimaanlok was developed through comprehensive consultation process involving the resource users, the resource owners, and the resource custodians that are determined by the local culture. Attempt to increase the security of the peoples’ livelihood through protection of the resources.
- The Micronesia Challenge – includes RMI, Federated States of Micronesia, Republic of Palau and US territories of Guam and the Commonwealth of the Northern Mariana Islands. Goal is to preserve 30% of the near-shore maritime resources and 0% of the terrestrial resources across Micronesia by 2020.

Murray Ford, University of Hawai’i

- Coastal Geologist based in Majuro. Overview of atoll island geology - Atoll islands are directly connected to the reef. They are entirely comprised of material that was once a part of the reef. Ocean acidification is impacting the reef, which in turn affects the delivery of sediment to the islands. Atoll islands are widely considered among the most vulnerable landforms on earth with respect to the impacts of sea level rise.
- Approach of treating atolls as homogenous ignores the particular vulnerabilities that are specific to each island. The RMI islands are geologically young. The pyramids of Egypt were built before these islands emerged from the ocean. Sea level rise in the RMI is close to the general trend worldwide, but the variation is high due to ENSO.
- Vulnerability case studies on outer islands. Mapping of village assets (houses, schools and wells), and surveying them relative to sea level in order to create a map of elevations. Island of Jabat was a relatively high island so not as vulnerable; but island of Jeh was more vulnerable, as 90% of structures would be flooded by a 0.5m increase in sea level. This means that allocation of resources for hazard mitigation and climate adaptation should be done based on a sound assessment of vulnerability. Allocation has been occurring on the basis of accessibility of the atolls or their ability to lobby for resources, and not necessarily on the basis of need.
- Questions posed. What are the legal implications of setting national sea level rise for planning purposes at a rate that is in excess of IPCC projections? Is it locally appropriate to plan for 2100? Locally appropriate targets are more useful, as structures on islands such as Majuro not built to last that long. Also, donations for development projects should be conditioned on construction that is adapted to targets for sea level rise and taking into account the requisite level of investment needed to make such construction resilient in flooding events.
• Currently mechanisms exist to greatly alter the shape/size of the island for profit (land reclamation), and have been showed to be profitable. Can mechanisms to place similar value on increasing elevation in order to decrease vulnerability be developed?
• Vulnerability varies at a local scale and needs to be assessed accordingly. How will the islands respond as geological landforms, and how will the islanders themselves respond?

**Questions and Comments**

• Participant commented on the benefits of using mangroves for adaptation. Not only do mangroves serve to sustain sedimentation, they sequester 50% more carbon than tropical forests. Mangrove root systems are anchored to the sand, so that as sea level rises, the mangrove will move, and continue to protect against storms, etc.
• Participant commented that the population of Majuro cannot be moved from windward to leeward side because it is too densely populated. Perhaps would be doable for other islands.
• Comment of participant from Hawai’i regarding the change in the norm for climate variability. This change in variability and increased variability has great destructive power in the short term. The other events that are not termed extreme events, such as winter storms, are becoming more severe. Just this year an atoll in Hawai’i experienced three extreme winter storm events, only one of which received attention. Structures that were present for over 50 years and had survived many storm events in the past were destroyed. Events, in total, killed over 100,000 nesting birds (though no human life lost). In the long term the 1-2m SLR will do away with communities/nations, but these more regular occurrences are having a great impact.
• Question posed as to whether there has been feedback from the people of the RMI regarding their preferences as to different adaptation methods. Albon Ishoda responded that the people of the RMI have not been consulted on the idea of relocation. They are very connected to their land and do not want to leave. The focus has been on building resilience to climate change, to empower communities to make their own decisions regarding how to live on their land. The discussion about relocation is not really happening in the communities they work with.
• Question posed as to projections for sea level rise in the different islands and whether they take into account historical sea level rise. Murray Ford clarified that island geological response to sea level rise is still not completely understood. Also, the idea of drowning islands is relative to buildings, structures and cultures; the islands themselves may or may not persist. Kalus Jacob clarified that though the sea has previously risen, it has never done so at current rates. Further, civilization is killing the elements that help to maintain island growth (corals, creation of sand) by increasing the acidity and temperatures of oceans.

**II. Law and Policy Choices**

**Justin Rose, University of the South Pacific**

• The pacific islands are characterized by legal pluralism, whereby more than one legal order is observable in a given society. Customary law is a more significant influence in directing behavior and solving disputes than state legal systems, though they exist side by side. Where customary law is a significant influence, it almost always has claims over issues that directly relate to climate change concerns (e.g. land, land use, management of natural resources, etc.).
• Direct regulation of government is inherently weak because of lack of administrative capacity in most of the islands, so that the restriction or prohibition of maladaptive behavior is almost impossible. Because of high value placed by locals on customary law, there is little response to government-directed prohibitions or restrictions.
• Alternative to direct command and control regulation would be market-based mechanisms. However, nature of island economies and societies provide limited opportunity for these mechanisms. Local markets are small, with limited competition among market players, they are hard to access, and many of the players/stakeholders exist outside of the cash economy. This is not to suggest that these have no place in the planning process (e.g. taxes on foreign good supplies allows strengthening of local sustainable practices for food security).
• Key strategy, then, is direct regulation by communities. There have been more than 300 protected areas established over the past 20 years, and every single one has been established by communities, and undertaken in cooperation with civil society and government. Community-based approaches are now being applied to climate change adaptation (e.g. community disaster committees, local restoration of mangroves, etc.).
• Networks are surfacing between local level institutions, and local level institutions are looking more and more to government to provide a legislative basis for what they are doing. Closing any gaps in authority by under-pining local customary authority with state authority.
• Core to all jurisdictions' legal responses is the development of climate proofed development, through the use of climate impact assessments. Vanuatu has required that the precautionary principle be applied in all decisions made under their environmental management and conservation act, and it has included in the definition of “significant environmental impact” the impacts of climate change. Vanuatu is also developing legal infrastructure to enable participation in carbon sequestration markets and REDD programs.
• Threats to effective legal responses in the Pacific include a lack of inter-sectoral policy coordination, and the complications of maintaining cooperative relationships between state and customary institutions. Also, from an external perspective, lack of donor coordination is causing inefficiencies in the allocation of funding. Proposal to use Mainstreaming Plus, which is the provision of long term planning support, as opposed to project-based support. This, so that coordination can occur between development-related sectors.

Maketo Robert, Attorney General of the FSM

• Goal of the FSM is to search for international law principles that may support the FSM in its effort to combat the adverse impacts of climate change.
• Overview of geography and population of the FSM. There are 607 islands, of which 586 are low, flat coral islands. The highest elevation of these is no more than 6 ft from sea level. Irrespective of the nature of their formation, both the mountainous and low islands suffer the adverse impacts of climate change. Depending mainly on land resources, the population of the FSM has dwindled within the last 10 years.
• Rights encompassed in the universal declaration of human rights are threatened.

Dr. Chanho Park, Korea Global Green Growth Institute

• Presentation of the Korean green growth act and regulation. Korea has no choice but to adapt to climate change considerations. Green growth involves increasing energy security, creating new engines for growth, enhancing quality of life, and providing international leadership.
• Korea is making plans for GHG reduction targets, and implementing an emissions trading scheme. They have identified 10 core technologies as new growth engines and are promoting the greening of major industries through energy efficiency.
• The need for new regulatory framework for green growth. Conventional environmental regulation (prevention, precaution and polluter pays) supplemented by regulation for green growth that promotes reduction and mitigation, as well as growth and innovation (e.g. less penalties and more incentives).
• There are two kinds of systems that can be adopted: a comprehensive legal system such as the one implemented in Korea or the UK, or an individual legal system where there is separate sectoral regulation.
• Green technology and investment system – support system for green tech development to avoid a “green bubble”. This includes support from public organizations, the establishment of a green investment company and requirement of certification from the government.

Questions and Comments

• How does importance of community institutions inform the propriety of or the method used for broader government responses, or the use of the treaty method? Justin Rose responded that the process is very detailed and island specific. Legal methods are just one tool to deal with the issue of environmental conservation.
• Justin Rose clarified that laws to promote adaptation methods, more so than other laws, have to be tailored to the particular circumstances and specifics of the country. A first step in thinking about how to legally respond to climate change and bring adaptation into law is to conduct an environmental impact assessment decision-making process. That includes decisions about time tables for SLR, e.g., which have to be decided at both the country and individual island levels. The legislation that promotes the development of adaptation policies tends to be kept simple, giving the decision maker discretion in designing policies.

III. Concluding Session

Hon. John Silk, Foreign Minister, Republic of the Marshall Islands

• Overview of general themes of the conference. Climate change imposes an indisputable threat to the security and survival of small island states, such that urgent and dramatic action is needed to cut GHG emissions. Those historically responsible should take the lead, but growing economies must also decouple their growth from carbon. National adaptation efforts need to be sharply up-scaled and tied to finance options. Despite best efforts at emissions reduction, climate change is likely to have migration impacts and larger questions surrounding statehood, dignity and human rights have to be taken into account in designing legal responses to this. Avenues for international legal action may also need to be addressed.
• President of RMI proposed a forum of atoll nations at the UN in September. Need and expect solidarity from piers and flexibility in pursuing discussions.

Ambassador of Finland

• Hope that better understanding will lead to more urgent action. CC has different implications for different parts of the world. Challenges may be different in the north but we share one planet and need to work together. This is a global challenge and it requires global solutions. Need to adapt comprehensive approach and address several levels simultaneously.
• Small countries must be supported in efforts to adapt. Islands need to survive and preserve their culture. We also need to reduce emissions. Each country must implement emissions reductions target.
• Hoping Cancun leads to more concrete steps in Durban. Will be difficult, but the sense of urgency needs to be re-injected. We hope discussion remains lively and small island states get their voices heard. We know this issue will be on the Security Council’s agenda in July. Connection between CC and peace and global security is clear.
Michael Gerrard, Columbia Law School

- Overview of conference themes and lessons. Seas are rising and at some point in time many atolls and islands will be in danger of submersion unless coral reefs can arise (unlikely in the face of acidification). Protective measures and emergency plans must be prepared since extreme events can happen at any time. The peril of statelessness is not imminent, nor is the loss of maritime and mineral rights. There was a consensus that mitigation measures taken thus far are nowhere near where they need to be to remove the threat. One consequence of frustration over this is an interest in litigation options. Even in the absence of judicial remedies, telling the story through litigation can promote political will. Further, migration issues are not one size fits all. There was no consensus on whether we need a new convention on migration, but this requires ongoing attention. Bilateral agreements must continue to be developed. Finally, domestic laws are important on a variety of counts.
- Some thoughts that have been put forward as to next steps: online forum for discussion on these issues; periodic discussions and webinars for a low carbon cost, in order to communicate and disseminate information on these issues; contribution to the UN security council meeting in July; developing a position paper that sets forth the substantive solutions presented here; developing a set of international displacement guidelines, complementary to the internal displacement guidelines that already exist.

Questions and Comments:

- Participant commented that security and climate change are inextricably intertwined. An intellectual center to support countries as they move forward on this issue before the Security Council would be extremely helpful. Last time this was considered by the Security Council nothing happened after the debate, so in order to get a good outcome from this time, it is necessary to receive as much support as possible.
- Ambassador Muller commented that, if nothing else comes out of this process, the momentum generated from this conference is positive. Must continue to mobilize the public and worldwide political will to act on climate change.
- Comment of participant from the UN Permanent Mission to Belize that this conversation has to happen at the UN level. Must pollinate the ideas of the politicians in crafting a response to the challenge of climate change. Creative ways of maintaining the momentum generated here. This has to be brought into the UN, and there are avenues to do that. UNESCO, international law symposiums that occur as well.
- Combine results/thoughts from this conference with the results from conference at the University of New South Wales. Coordinate all these efforts, including what they are doing in Tuvalu, Bangladesh, etc.
- Comment by participant that Finland and RMI are examples of good governance and give hope to us all. Legal mechanisms need to be developed for the further empowerment of indigenous peoples and post-colonial nations, which are not currently recognized by the UN as sovereign nations after decolonization, so that they are better able to confront the challenges posed by environmental crisis.
- Open question posed: The people who refuse to move will not fall under any of the legal paradigms available to support “refugees” of climate change, or climate migrants. What responsibilities should the international community assume over those peoples, what consideration should be given to them in that situation?
- Prof. Williams from Granada, AOSIS representative, commented that AOSIS is proud of the initiative taken by RMI of hosting this conference and taking it to another level. Every measure that we take to save ourselves is an act of responsibility. On behalf of AOSIS, thanks the non-
AOSIS members who have supported the RMI here. Success of the conference is to reinforce the call for urgency regarding the climate change dilemma, particularly in the field of mitigation, as well as in its specific field of migration and litigation. There are many initiatives out there being conducted, but they are disarticulated. Suggestion: Find next opportunity to bring together the rest of the initiatives and plan an activity for 2011, with the support of AOSIS.

• Participant from the University of Quebec in Montreal commented we must not forget to include the West African countries who are experiencing desertification and gender issues related to climate change.

• Ambassador Moses, of Nauru commented that the initiative before the Security Council was born out of the pacific leaders’ mandate. It’s taken four years to get it before the Security Council. The leaders’ mandate back home was crucial. What was shared here at this conference must be relayed back to the Pacific leaders so that they maintain the momentum.

Ambassador Richard Muller, RMI

• Closing remarks. Thanks to all sponsors.