

Threatened Island Nations

LEGAL IMPLICATIONS OF RISING SEAS AND A CHANGING CLIMATE

Edited by

Michael B. Gerrard

Columbia Law School

Gregory E. Wannier

U.S. District Court for the Central District of California

SARCHI CHAIR LAW



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Mexico City
Cambridge University Press
32 Avenue of the Americas, New York, NY 10013-2473, USA
www.cambridge.org
Information on this title: www.cambridge.org/9781107025769

© Cambridge University Press 2013

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2013

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Gerrard, Michael, 1951–
Threatened island nations : legal implications of rising seas and a changing climate /
Michael B. Gerrard, Gregory E. Wannier.
p. cm.

Includes index.

ISBN 978-1-107-02576-9 (hardback)

1. Sea level – Environmental aspects – Islands of the Pacific. 2. Climatic changes –
Environmental aspects – Islands of the Pacific. 3. Climatic changes – Political aspects –
Islands of the Pacific. 4. Environmental refugees – Legal status, laws, etc. – Islands of the
Pacific. 5. Sea level – Environmental aspects – Islands of the Indian Ocean. 6. Climatic
changes – Environmental aspects – Islands of the Indian Ocean. 7. Climatic changes –
Political aspects – Islands of the Indian Ocean. 8. Environmental refugees – Legal status,
laws, etc. – Islands of the Indian Ocean. 9. Liability for climatic change damages.
10. Islands – Law and legislation. I. Wannier, Gregory E. II. Title.

K3585.5.G47 2013

344.14/2046–dc23 2012029782

ISBN 978-1-107-02576-9 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs
for external or third-party Internet Web sites referred to in this publication and does not
guarantee that any content on such Web sites is, or will remain, accurate or appropriate.

Contents

<i>Contributors</i>	<i>page ix</i>
<i>Preface and Acknowledgments</i>	<i>xvii</i>

Part I: Introduction

1 Overview	3
Gregory E. Wannier and Michael B. Gerrard	
2 Sea Level Rise in a Changing Climate: What Do We Know?	15
Mary-Elena Carr, Madeleine Rubenstein, Alice Graff, and Diego Villarreal	

Part II: Sovereignty and Territorial Concerns

3 When Do States Disappear?: Thresholds of Effective Statehood and the Continued Recognition of “Deterritorialized” Island States	57
Jenny Grote Stoutenburg	
4 The Nation Ex-Situ	89
Maxine A. Burkett	
5 Introducing the Law of the Sea and the Legal Implications of Rising Sea Levels	123
Ann Powers and Christopher Stucko	

- 6 Options to Protect Coastlines and Secure Maritime Jurisdictional Claims in the Face of Global Sea Level Rise** 141
Clive Schofield and David Freestone
- 7 Sea Level Rise and Maritime Zones: Preserving the Maritime Entitlements of “Disappearing” States** 167
Rosemary Rayfuse
- Part III: Resettlement Protections and Proposed Solutions**
- 8 Human Rights and Climate Change: Reflections on International Legal Issues and Potential Policy Relevance** 195
Siobhán McInerney-Lankford
- 9 Protection of Persons Displaced as a Result of Climate Change: Existing Tools and Emerging Frameworks** 243
Michele Klein Solomon and Koko Warner
- 10 “In the Face of Looming Catastrophe”: A Convention for Climate-Change-Displaced Persons** 299
David Hodgkinson and Lucy Young
- 11 The National Immigration Policy Option: Limits and Potential** 337
Katrina M. Wyman
- 12 Domestic Law for Resettlement of Persons Displaced by Climate Change** 369
Leslie A. Stein
- Part IV: Establishing Accountability**
- 13 Could a Small Island Successfully Sue a Big Emitter?: Pursuing a Legal Theory and a Venue for Climate Justice** 409
Jacob David Werksman

CONTENTS

vii

- 14 **Making Good the Loss: An Assessment of the Loss and Damage Mechanism under the UNFCCC Process** 433
Ilona Millar, Catherine Gascoigne, and Elizabeth Caldwell
- 15 **Ocean Acidification: International Legal Avenues under the UN Convention on the Law of the Sea** 473
Dean Bialek and Judah Ariel
- 16 **Securing Planetary Life Sources for Future Generations: Legal Actions Deriving from the Ancient Sovereign Trust Obligation** 531
Mary Christina Wood, Stephen Leonard, Daniel Bartz, and Nicola Peart
- 17 **Transboundary Climate Challenge to Coal: One Small Step against Dirty Energy, One Giant Leap for Climate Justice** 589
Maketo Robert, Leonito (Jun) Bacalando Jr., Jasper Teulings, Kristin Casper, Jan Šrytr, and Kristína Šabová

Index 627

Color plates appear after page 300.