Climate Change and Challenges to Self-Determination: Case Studies from French Polynesia and the Republic of Kiribati

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ABSTRACT. This Essay examines the nexus of climate change (including related natural phenomena such as ocean acidification) and self-determination, particularly for low-lying atoll states and other entities at the front lines of climate change. The Essay begins by briefly surveying the current state of international law and literature on self-determination. The authors adopt a view of the right of peoples to self-determination as a jus cogens norm, which all members of the international community are obligated to respect and uphold for all peoples. The Essay highlights the linkages between that view of self-determination and the enjoyment of several core human rights that are dependent on a healthy environment. Prominent among these is the right of a people, under international law, to freely dispose of their natural resources as they see fit, in pursuit of that people’s economic, social, political, and cultural development. The Essay then unpacks this argument by examining two case studies. The first case study centers on French Polynesia, where people’s vulnerabilities to climate change and related natural phenomena hamper their right to freely dispose of their natural resources. The second case study examines the Republic of Kiribati, where climate change and related natural phenomena pose a risk to the Republic’s status as a state, at least under a classic conception of international law, because they have led to a defeatist narrative regarding the Republic’s future. Left unchecked, this conception risks becoming a self-fulfilling prophecy, undermining the people of Kiribati’s right of self-determination. However, the Government and the people of Kiribati have resolved to resist defeatist narratives that undermine their sovereignty.

INTRODUCTION

Climate change and related natural phenomena, along with their associated costs, have been discussed from many angles, including increasingly from a
human rights perspective. But one right that has not been as thoroughly explored, despite being heavily implicated by climate change, is the right of peoples to self-determination. The right of peoples to self-determination is a fundamental right in international law,amounting to a *jus cogens* norm. All members of the international community are obligated to respect and uphold this norm for the benefit of all peoples, regardless of those peoples’ colonial status.

A healthy environment is crucial to the full exercise of the right to self-determination, particularly for the peoples of island nations. A key component of self-determination is the right of peoples to permanent sovereignty over their natural resources. In addition, self-determination includes the attainment of economic, social, and cultural development in a manner that is dependent on the enjoyment of several core human rights, many of which are themselves dependent on a healthy environment. But these core human rights—and, by extension, the right of peoples to self-determination—are threatened by climate change and related natural phenomena. As sea levels rise, fresh-water sources turn salty, the ocean acidifies, and storms of historic intensities rage, island nations may become unlivable, and their peoples may be forced to emigrate. In exchange for acceptance by host countries, these peoples may very well lose their right to self-govern. The existential threats of climate change and related natural phenomena risk generating a discourse of defeatism that insidiously undermines the permanent sovereignty of peoples over their natural resources and, by extension, the right of those peoples to self-determination.

Upholding the *jus cogens* norm of the right of all peoples to self-determination will therefore require countries around the world to address climate change and associated phenomena that are increasingly preventing full expression of this right. It will also require new conceptions of self-determination in the event that rising sea levels erode the physical territories to which self-determination has historically been tied.

This Essay considers two case studies to explore the effects of climate change and related natural phenomena on the right to self-determination: one of French Polynesia, and the other of the Republic of Kiribati. The former is currently inscribed by the United Nations (U.N.) as a non-self-governing territory; the latter is an independent state with a history of colonial rule. Both entities grapple with various challenges to their ability to exercise permanent sovereignty over their natural resources, including for the related purposes of socio-economic

development and self-determination. But climate change and related natural phenomena pose particular challenges to their respective efforts.

I. SELF-DETERMINATION AS A JUS COGENS NORM

In general international law, the international community accepts and recognizes certain norms from which no derogation is permitted. These so-called jus cogens norms are primarily derived from customary international law—that is, the widespread practice of states undertaken from a sense of legal obligation—as well as from treaty provisions and general principles of law. Through a brief summary of existing law and literature, this Part examines the status of the right of peoples to self-determination as a jus cogens norm under international law.

In the wake of World War II, states adopted the U.N. Charter, which emphasizes “respect for the principle of equal rights and self-determination of peoples.” In connection with measures to promote international economic and social cooperation, Article 55 of the Charter deems the “creation of conditions of stability and well-being” to be a prerequisite for the enjoyment of the right of self-determination.

Additionally, in discussing the trusteeship system established by the Charter to administer and supervise non-self-governing territories and trust territories placed thereunder by international agreements after World War II, Article 76(b) underscored that a key objective of the trusteeship system is to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement.

The language in the Charter provided the foundation for later efforts by the international community to concretize self-determination as a right under international law, particularly through declarations by the U.N. General Assembly (UNGA). In the December 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, the UNGA acknowledged that all peoples have the right to self-determination and identified modes and measures through

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4. Id. art. 55.
5. Id. art. 76(b) (emphasis added).
which this right could be operationalized and implemented, particularly by member states of the UNGA, with respect to non-self-governing territories and trust territories under the U.N.’s purview.6 A decade later, the UNGA adopted, by consensus, the Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations. This resolution stressed that “the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations” embraces the right of all peoples “freely to determine, without external interference, their political status and to pursue their economic, social and cultural development.”7 The resolution also established the duty of every state “to respect this right in accordance with the provisions of the Charter.”8

The international community has also taken steps to recognize and concretize the right to self-determination outside the context of the UNGA. This was particularly evident in the 1966 adoption of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which are both generally considered by the United Nations to be core international human rights instruments.9 Article 1(3) of both instruments recites the right of all peoples to self-determination, as defined in the 1960 UNGA Declaration on the Granting of Independence to Colonial Countries and Peoples.10 Both the ICCPR and the ICESCR tie this right to, among other things, the right of all peoples to, “for their own ends, freely dispose of their natural wealth and resources.”11 And both insist that in “no case may a people be deprived of its own means of subsistence.”12 Both instruments and the relevant UNGA resolutions underscore the right of all peoples to self-determination as including, among other things, their right to pursue economic, social, and cultural development, including in connection with the dispensation of their natural resources.

8. Id.
11. ICCPR, supra note 10, art. 1, ¶ 2; ICESCR, supra note 10, art. 1, ¶ 2.
12. ICCPR, supra note 10, art. 1, ¶ 2; ICESCR, supra note 10, art. 1, ¶ 2.
The right to self-determination has also been repeatedly recognized and applied by the International Court of Justice (ICJ). The Court has applied this right particularly in the context of post-World War II decolonization and the adoption of the U.N. Charter. In discrete passages in its advisory opinions on Namibia (South West Africa), Western Sahara, and the Chagos Archipelago, the ICJ has recognized the right to self-determination as a fundamental human right. The Court has found this right to be applicable to, among other things, the process of decolonization and the freedom of all peoples to determine their political status and pursue their own economic, social, and cultural development. The right extends to peoples in non-self-governing territories and trust territories.

Additionally, the ICJ has affirmed that respect for the right of peoples to self-determination is an obligation *erga omnes*, meaning that each member of the international community has an obligation to the rest of the international community to respect the exercise of the right of peoples to self-determination. Indeed, this right is arguably a peremptory norm of international law (*a jus cogens* norm), establishing a sort of heightened obligation *erga omnes* from which there can be no derogation. Further, the ICJ has stressed that the “right [of peoples] to self-determination under customary international law does not impose a specific mechanism for its implementation in all instances.” This right, then, is both expansive and flexible, and takes into consideration both the specific needs and circumstances of the peoples seeking to exercise the right and the obligations of the international community in supporting that exercise.

The concept of self-determination remains the subject of some considerable debate among international-law practitioners, scholars, and jurists, including in terms of the concept’s precise definition and the instances in which the concept

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16. See, e.g., id. at ¶ 180; Case Concerning East Timor (Port. v. Austl.), Judgment, 1995 I.C.J. 90, ¶ 29 (June 30); see also Case Concerning the Barcelona Traction, Light and Power Company, Ltd. (Belg. v. Spain), Second Phase, 1970 I.C.J. 3, ¶ 33 (Feb. 5).


19. The international community’s obligations can be fulfilled in various ways, including through the UNGA and other multilateral processes.
applies. James Crawford, for example, considers self-determination to be a “principle concerned with the right to be a state.” By contrast, as this Part indicates, the U.N., the ICJ, and various human rights instruments take a more expansive view of self-determination that is not limited to the creation of new states, secession, or some other form of “external” self-determination, but also includes “internal” or “softer” forms of self-determination. In this Essay, we take the view that self-determination includes the right of a people, whether or not they already constitute a state, to choose freely their own political system and pursue their own economic, social, and cultural development.

II. SELF-DETERMINATION IN THE FACE OF CLIMATE CHANGE

This Part argues that the right to self-determination is a conglomerate right requiring, among other things, the full enjoyment of multiple subsidiary rights, including social, cultural, and economic rights. More specifically, the social and cultural rights to life, adequate food, water, health, an adequate standard of living, and a healthy environment poses mortal dangers to human populations, thus threatening their right to life. This Part argues that the right to self-determination is a conglomerate right requiring, among other things, the full enjoyment of multiple subsidiary rights, including social, cultural, and economic rights. More specifically, the social and cultural rights to life, adequate food, water, health, an adequate standard of living, and a healthy environment poses mortal dangers to human populations, thus threatening their right to life.

20. JAMES CRAWFORD, BROWNLIE’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 130 (2019).


22. See, e.g., Convention on the Rights of Persons with Disabilities arts. 25(f), 28(1), Dec. 13, 2006, 2515 U.N.T.S. 3 [hereinafter CRPD]; CRC, supra note 21, art. 24(c); ICESCR, supra note 10, art. 11. Rising global temperatures undermine agricultural production at lower latitudes and raise the potential for widespread food shortages, especially in poorer regions of the world. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, SUMMARY FOR POLICYMAKERS OF IPCC SPECIAL REPORT ON CLIMATE CHANGE AND LAND APPROVED BY GOVERNMENTS A.2.8, A.5.6 (2019), https://www.ipcc.ch/site/assets/uploads/sites/4/2019/12/02_Summary-for-Policymakers_SPM.pdf [https://perma.cc/DNB2-RCJT].

23. See, e.g., CRPD, supra note 22, art. 28(2)(a); CRC, supra note 21, art. 24(2)(c); Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, art. 14(2)(c), 1249 U.N.T.S. 13 [hereinafter CEDAW]. Climate change exacerbates droughts, floods, and the intrusion of saltwater into coastal water wells in low-lying islands, thereby undermining the right to water. See INTERGOV’TL PANEL ON CLIMATE CHANGE, SUMMARY FOR POLICYMAKERS OF IPCC SPECIAL REPORT ON GLOBAL WARMING OF 1.5°C APPROVED BY GOVERNMENTS B.2.2 (2018), https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments [https://perma.cc/DRQ2-MNSF] [hereinafter IPCC 1.5].

24. See, e.g., CRPD, supra note 22, art. 16(4); CRC, supra note 21, art. 24; CEDAW, supra note 23, art. 12; ICESCR, supra note 10, art. 12; International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, art. 5(e)(iv), 660 U.N.T.S. 195 [hereinafter
of living (including adequate housing), the productive use and enjoyment of property, and cultural practices and traditions are all necessary precursors to the full enjoyment of the right to self-determination. Therefore, undermining any one of these subsidiary rights undermines the right to self-determination. From this perspective, rampant anthropogenic greenhouse gas emissions—resulting in climate change and ocean acidification that have profoundly negative effects on the social, cultural, and economic rights of many peoples globally—violate the right to self-determination.

And indeed, anthropogenic greenhouse gas emissions threaten each of these subsidiary rights. Rising global temperatures, a warming and acidifying ocean, greater intensity and frequency of storms, sea-level rise, and other effects of anthropogenic greenhouse gas emissions threaten natural environments, endanger human life (including on coastlines), imperil food and water systems, and undermine the ability of peoples to enjoy suitable standards of living, including the enjoyment of cultural practices and natural-resource-based economic sectors. The right to a healthy environment, or at least to the resources therein, as recognized in a number of nonbinding instruments and by multiple international

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25 See, e.g., CRC, supra note 21, art. 27(3); CEDAW, supra note 23, art. 14(2); ICESCR, supra note 10, art. 11; ICERD, supra note 24, art. 5(e)(iii). Sea-level rise, tropical cyclones, and other impacts of climate change threaten coastal settlements, particularly in low-lying islands and atolls where populations have little choice but to establish households on the coasts. See INTERGO’TL PANEL ON CLIMATE CHANGE, SUMMARY FOR POLICYMAKERS OF IPCC SPECIAL REPORT ON THE OCEAN AND CRYOSPHERE IN A CHANGING CLIMATE APPROVED BY GOVERNMENTS A.9 (2019), https://www.ipcc.ch/site/assets/uploads/sites/3/2019/11/03_SROCC_SPM_FINAL.pdf.

26 See, e.g., ACHR, supra note 21, art. 21; Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 1, Mar. 20, 1952, E.T.S. 9. Climate change, biodiversity loss, and other major stressors on the natural environment pose particular challenges to indigenous peoples and local communities, who traditionally own, manage, use, and/or occupy about a quarter of global land area, including as community property. See Rep. of Plenary of Intergov’l Science-Policy Platform on Biodiversity & Ecosystem Servs. on Work of its Seventh Session, at 6, U.N. Doc. IPBES/7/10/Add.1 (May 29, 2019).

27 See, e.g., ICCPR, supra note 10, art. 27. Cultural and traditional practices that are connected to land and sea are undermined by climate change and other harmful impacts on the natural environment.

and human rights courts, is also implicated in the overarching right to self-determination and is clearly adversely affected by climate change.

The U.N. Human Rights Council (UNHRC) has explicitly stated that “environmental damage can have negative implications . . . for the effective enjoyment of human rights.” In a landmark set of fourteen mapping reports, John H. Knox, the independent expert (later special rapporteur) on human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, analyzed the U.N. human rights bodies and mechanisms, international human rights treaties, regional human rights systems, and international environmental instruments to fully assess the connections between human rights and a healthy environment. Knox’s reports established “overwhelming support” for the above UNHRC statement, noting that “[v]irtually every source reviewed identifies rights whose enjoyment is infringed or threatened by environmental harm.”

Another key component of the right to self-determination is the right to permanent sovereignty over natural resources. This requires, among other things, that all peoples have the right “for their own ends, [to] freely dispose of the[] natural wealth and resources” within their respective territories. While this particular right has been stressed with respect to territories and peoples experiencing decolonization (a process that usually requires, among other things, suitable access to natural resources in order to enhance institutions in a progressive manner and facilitate self-determination), it is a right held by all peoples, regardless of colonial status. Indeed, it has been argued that this right applies not

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29. See, e.g., Gabčíkovo-Nagymaros Project (Hung./Slovk.), 1997 I.C.J. 7, 91 (Sept. 25) (Weeramantry, Vice-President, writing separately) (“The protection of the environment is . . . a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself.”); Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 173 (Aug. 31, 2001) (affirming the collective rights of the Awas Tingni indigenous peoples to enjoy and utilize their environment and its resources); Human Rights Committee, E.H.P. v. Canada, Comm. No. 67/1980, para. 7, U.N. Doc. CCPR/C/OP/1 (Oct. 27, 1982) (recognizing environmental harms as potentially violating the right to life, as established in the ICCPR).


32. Id. ¶17.

33. ICCPR, supra note 10, at 173; ICESCR, supra note 10, at 5; see also G.A. Res. 1803 (XVII), Permanent Sovereignty over Natural Resources (Dec. 14, 1962) (establishing rights and restrictions for national sovereignty over natural resources).
just to peoples who remain under foreign or colonial authority, such as non-self-governing territories, but also to so-called “post-colonial” peoples who are currently independent but nevertheless have colonial histories.\textsuperscript{34} A healthy environment is necessary in order for peoples to enjoy the right to permanent sovereignty over natural resources. A people cannot exercise sovereignty over natural resources when the environment that bears those resources is not healthy and is therefore less capable, or entirely incapable, of producing those resources. Therefore, the right to sovereignty over natural resources, too, is threatened by climate change and related natural phenomena.

III. THE INTERSECTION OF SELF-DETERMINATION AND CLIMATE CHANGE: CASE STUDIES

Upholding the \textit{jus cogens} norm of the right of peoples to self-determination will require each state to work to address climate change and related natural phenomena that are increasingly hampering the full expression of this fundamental right. We believe this obligation is particularly incumbent on states that have some degree of control over the well-being of peoples of non-self-governing territories and communities, especially if those territories and communities are challenged by climate change and related natural phenomena. This obligation is in line with the "sacred trust" conferred onto states with a degree of control, as reflected in Article 73 of the U.N. Charter. But all states are under an obligation \textit{erga omnes} to assist in the full expression of the right.

The interplay between self-determination and climate change is particularly vivid in two case studies: that of French Polynesia, a self-governing country within the French Republic, currently inscribed with the United Nations as a non-self-governing territory; and that of the Republic of Kiribati, a sovereign and independent state that was, at one point in its history, under British colonial authority. The two case studies will examine the extent to which the adverse effects of climate change and related natural phenomena (including ocean acidification) undermine the right of the peoples of French Polynesia and Kiribati to self-determination. The case studies are addressed in turn.

A. French Polynesia

French Polynesia, an overseas community within the French Republic located in the South Pacific Ocean, is comprised of 121 islands grouped in five culturally distinct archipelagoes. The community is populated by 276,300 people and comprises over five million square kilometers of exclusive economic zone, an area as large as Western Europe. The islands of French Polynesia did not form a political unit prior to French rule in 1901.

France ruled French Polynesia as an overseas territory from 1901 until 1958, when the French government held a referendum on independence among all its overseas territories. Rather than voting for full independence, the people of French Polynesia voted to join the French Community. There has not been any

35. See 1958 Const. art. 74, (Fr.) (referring to “collectivités d’outre-mer”).
39. Independence, a status voted upon by a concerned population in France, is a form of self-determination under Article 53(3) of the Constitution of France, as interpreted by a 1975 decision of the Constitutional Council. Conseil constitutionnel [CC] [Constitutional Council] decision No. 75-59DC, Dec. 30, 1975, J.O. 182 (Fr.). The French government has the power to decide whether to organize a referendum and choose how to read its results, but only the concerned population can express its wish to remain in or leave the French Republic. See Semir Al Wardi, Democracy in French Polynesia, in Politics, Development and Security in Oceania 83, 85 (David Hegarty & Darrell Tryon eds., 2013).
other vote of a similar nature organized for French Polynesia since the 1958 referendum.41 However, the topic is regularly discussed among French Polynesians, in particular during local election campaigns,42 and there have been informal and formal requests for a new referendum.43

In 1986, French Polynesia was granted “internal autonomy status” from France,44 a status that recognizes, inter alia, a separate Polynesian identity and the right of the Polynesian people to adopt their own anthem, flag, and currency.45 Since then, the rights associated with French Polynesia’s autonomous status have continued to expand. In 1996, the territory gained control of its

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1946 Constitution of France (“The French Union is made up, on the one hand, of the French Republic which includes metropolitan France, the overseas departments and territories, and on the other hand, associated territories and states.”) (authors’ translation). Article 1 of the 1958 Constitution of France provides that the “Republic and the peoples of the Overseas Territories who, by an act of free determination, adopt this Constitution, establish a Community. The Community is founded on the equality and solidarity of the peoples who form it” (authors’ translation).


42. There are two main political groups in French Polynesia: autonomists and independentists. While the independentists go further than the autonomists in their desire to accede to full independence, even the autonomists do not necessarily embrace the idea that French Polynesia is part and parcel of France. Rather, both independentists and autonomists consider the French State to be an exogenous power. The current autonomous status of French Polynesia reflects this complex relationship. Similarly, the political status of French Polynesia and the “areas of competence” granted to French Polynesia depend on relationships between French and French Polynesian leaders. The management and exploitation of resources can be affected by these interpersonal relationships. For a more in-depth analysis of French Polynesia’s political status and relationship with France, see Al Wardi, supra note 39.

43. While no referendum on self-determination has been organized since 1958, some analysts and politicians see the results of recent elections as indicative of the population’s views on the matter because of the division between the autonomists and the independentists. See Al Wardi, supra note 41, at 312; MOYRAND, supra note 41, at 550; Sémir Al Wardi, Twenty Years of Politics in French Polynesia, 44 J. PAC. HIST. 195 (2009). In June 2013, Gaston Flosse, a longstanding leader of the autonomous party and the newly reelected French Polynesian President, had the French Polynesian Assembly vote to request a self-determination referendum from the then-President of France, François Hollande. The 2013 election campaign had centered on the issues of decolonization and independence. The incumbent, former President and independentist party leader Oscar Temaru, lost the election. Flosse’s referendum request was thus a direct response to the population’s apparent lack of desire for independence. See La Polynésie Française Demande à Hollande un Referendum d’Autodétermination, TAHITI INFOS (June 1, 2013), https://www.tahiti-infos.com/La-Polynesie-francaise-demande-a-Hollande-un-referendum -d-autodetermination_.a75511.html [https://perma.cc/5TEP-TTE6].

44. Id. at 286 (authors’ translation).

45. Id.
exclusive economic zone.46 In 2004, French Polynesia became an “overseas country” within the French Republic,47 a designation that allows French Polynesia to “self-govern[] freely and democratically” by its elected representatives and through local referenda.48 The organic statutory law of French Polynesia further provides that the French Republic guarantees the autonomy of French Polynesia and will facilitate “the evolution of this autonomy, so as to lead French Polynesia in a sustainable economic, social and cultural development, with respect to its own interests, its geographical specificities and its population’s identity.”49 While the French state still retains many oversight powers, in line with the French constitutional principle that France is an indivisible whole,50 the 2004 organic

46. See Loi organique 96-312 du 12 avril 1996 portant statut d’autonomie de la Polynésie française [Law 96-312 of April 12, 1996 on the autonomous status of French Polynesia], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 23, 1996, NS 217 (stating in article 7, paragraph 4 that “French Polynesia “regulates and exercises the right to explore and exploit natural biological and nonbiological resources in internal seas . . . and waters subjacent to the territorial sea and the exclusive economic zone”) (authors’ translation).

47. While French Polynesia was defined as a French “overseas country” in Article 1 of OSL 2004, supra note 36, the French Constitutional Council struck down this categorization as legally invalid because of the underlying Constitutional principle that France is a unified and indivisible state. Conseil constitutionnel [CC] [Constitutional Council] decision No. 2004-490DC, Feb. 12, 2004, J.O. 4420 (Fr.). This decision reaffirms a former Constitutional Council decision. Conseil constitutionnel [CC] [Constitutional Council] decision No. 2000-428DC, May 4, 2000, J.O. 6976 (Fr.). Despite these decisions, many French Polynesians feel themselves to be part of a distinct nation, and many see the French State, referred to as “Hau Fara,” as an exogenous power. See, e.g., Al Wardi, supra note 39, at 86.


49. OSL 2004, supra note 36, art. 1 (authors’ translation).

statutory law and its subsequent amendments introduced novel constitutional autonomy in French Polynesia.\footnote{As provided by OSL 2004, supra note 36, art. 7, to be applicable in French Polynesia, national French laws must expressly state their applicability to French Polynesia. Even if France has expressly stated the applicability of a law to French Polynesia, the French Polynesian Assembly can repeal or change a national French law, insofar as it affects French Polynesia, if the law interferes with matters pertaining to French Polynesia as established by the Constitutional Council. OSL 2004, supra note 36, art. 12. This implementation of the legal principle of “legislative specialty” is one of the additional benefits accorded to French Polynesia by OSL 2004.}

As discussed previously, a key component of the right to self-determination is the right to permanent sovereignty over natural resources and the right of peoples “for their own ends, to freely dispose of the natural wealth and resources” within their respective territories.\footnote{ICCPR, supra note 10, art. 1, ¶ 2; ICESCR, supra note 10, art. 1, ¶ 2.} In French Polynesia, the elaboration and implementation of frameworks, policies, and plans with regard to natural resources demonstrate the French Polynesian government’s ownership in setting its own development path. The organic statutory law of French Polynesia defines its domain as covering all public goods that have no owners on land, including in all rivers, lakes, and aquifers.\footnote{OSL 2004, supra note 36, art. 47.} It also provides that the French Polynesian government enjoys the rights to explore and exploit biological and nonbiological natural resources, including inland waters, soils, and adjacent waters of the territorial seas and the exclusive economic zone.\footnote{Id. art. 47.} The exercise of French Polynesia’s rights and duties—including the rights of exploration and exploitation of biological and non-biological natural resources as well as the duty to support the social, economic, and cultural development of its people—is supported and facilitated by a set of policy frameworks and pluri-annual action plans.\footnote{1 Président de la Polynésie Française, Rapport du Président de la Polynésie Française à l’Assemblée de la Polynésie Française 102-30, 162-70 (2019), https://www.presidence.pf/wp-content/uploads/2018/08/Rapport-du-Président-année-civile-2017-TOME-1.pdf [https://perma.cc/Q28W-2TPQ].} These are adopted by the government and implemented by administrative departments, along with institutional partners, including the French state, townships, civil society, and private stakeholders.\footnote{Id. at 4-14 (providing a table of contents noting the strategies and plans).} Over twenty strategies and policy plans,\footnote{Id.} as well as legal codes and frameworks that regulate and facilitate the management and exploitation of French Polynesia’s resources (including an energy-climate plan, an
offshore-fishing policy, and a framework for sustainable domestic transport), have been developed to date.\textsuperscript{58}

The realization of these development goals, however, faces many challenges, including the adverse impacts of climate change and ocean acidification. Already, French Polynesia has seen an increase in average temperature of one degree Celsius over the past thirty years and a sea level rise of about 1.2 centimeters per year for the past two decades.\textsuperscript{59} In addition, episodes of El Niño have contributed to mass-bleaching events that take a toll on the health of coral reefs.\textsuperscript{60}

As an island country, French Polynesia is particularly vulnerable to climate change and ocean acidification. The tourism sector has focused its marketing on the exceptional beauty of the French Polynesian environment, its turquoise waters and colorful reefs being the main attraction.\textsuperscript{61} Degradation of these ecosystems will diminish the destination’s value.\textsuperscript{62} Fisheries will also be impacted: coastal fisheries will suffer from degradation of coral reefs, and offshore tuna


\textsuperscript{60} Id. at 216.


\textsuperscript{62} Geomorphologically, French Polynesia is home to twenty percent of the world’s atolls, most of them located in the Tuamotu Islands archipelago. Philippe Dufour, Diversité des Atolls de Polynésie Française, INSTITUT DE RECHERCHE POUR LE DEVELOPPEMENT (Fr.), http://www.atolls-polynesie.ird.fr/irdpoly/divatoll.htm [https://perma.cc/3R49-GUZQ]. There are eighty-five atolls in French Polynesia, many of which are inhabited. Id. Intensification of droughts, cyclones, storm surges, ocean acidification, and increase in ocean temperatures are some of the main hazards that face these atolls and their inhabitants.

French Polynesian coral reefs are also suffering from increased ocean temperature and ocean acidification. CREOCÉAN, supra note 59, at 18. These dangers are particularly acute when combined with more localized stressors such as land-based pollution and overfishing. Id. at 18-19. Coral reefs, which cover fifteen thousand square kilometers of French Polynesian ocean floor, provide a habitat for a quarter of all marine life globally as well as protection for the atolls against storm surges and coastal erosion. Id. at 60. The benefits delivered by coral reefs in French Polynesia amount to about six billion FCPF in revenue to the country annually. Id. These ecosystems, however, are some of the most sensitive to the effects of climate change and ocean acidification. Given current trends, coral cover is likely to decrease by up to forty percent by 2100. Id. at 216.
fisheries will have to adapt to changes in the biomass and migration routes of the fish.\textsuperscript{63} The pearl industry could also be hurt by increased sea temperatures and ocean acidification.\textsuperscript{64}

Climate change entails both direct and indirect costs. The economic consequences of extreme events are the most apparent and have already increased in severity and frequency. Twenty-four governmental orders recognizing the impact of natural disasters have been issued in the past ten years, compared to nine in the previous decade.\textsuperscript{65} These orders unblock government funds to help victims of natural disasters and to reconstruct or repair damages to public infrastructure, such as roads, bridges, or ports.\textsuperscript{66} In 2010, category-five Cyclone Oli cost the French Polynesian government at least six billion FCFP (about fifty to

\textsuperscript{63} Since the mid-1990s, offshore fishing, including for tuna, has been exclusively conducted by local companies and fleets, with locally manufactured vessels. In 2018, about twelve million euros worth of fish was exported, representing ten percent of total French Polynesian exports and twenty percent of the total yearly catch. Assemblée de la Polynésie Française, Pacific Islands Parliaments Group – Conference 2019, \textsc{YouTube} (Sept. 11, 2019), https://www.youtube.com/watch?time_continue=5944&v=DngsvhJHPpQ [https://perma.cc/KW8E-BLY4]. While projections show that tuna stocks might be migrating to the waters of French Polynesia due to climate change, they also show that the biomass of these species is likely to decrease. See \textsc{Inna Senina et al.}, \textit{Impact of Climate Change on Tropical Tuna Species and Tuna Fisheries in Pacific Island Waters and High Seas Areas} 3-4 (2018).

\textsuperscript{64} \textit{French Polynesia & ADEME, Plan Climat-Energie de la Polynésie Française} 13 (2012) http://www.polynesie-francaise.ademe.fr/sites/default/files/files/mediatheque/maquette_pce_2015-bdef_dble_page.pdf [https://perma.cc/BNK2-AQGQ] [hereinafter \textsc{Plan Climat-Energie}]. The \textit{pinctada margaritifera} is the French Polynesian pearl oyster. \textit{Gestion Intégrée et Adaptation de la Perliculture en Polynésie Française dans le Contexte du Changement Global: Approche Environnementale, Économique et Sociale – POLYPERL, Agence Nationale de la Recherche}, https://anr.fr/fr/projets-finances-et-impact/projets-finances/projet/funded/project/anr-11-agro-0006/?tx_anrprojects_funded%5Bcontroller%5D=Funded&Hash=f3dbb8492f612b8bfaa07d508f53 [https://perma.cc/C9GZ-4GUT]. \textit{Pinctada margaritifera}, which are as shell-mollusks, are sensitive to temperature and pH levels. \textit{Id.} A decrease in pH slows the growth of the oyster’s shell and alters its internal surface. \textit{Id.} While this does not necessarily directly threaten the survival of the oysters, the warming of the water restricts their metabolism and slows their growth, which in turn could endanger the long-term survival of the species in Polynesia. \textit{Id.} In addition, warming can also impact the availability of food sources for the oysters and can contribute to an increase in pathogen levels that can harm the oysters. \textit{Id.}


\textsuperscript{66} Through Resolution 92-94 AT of June 1, 1992, as amended, French Polynesia has created a disaster-victims’ aid account, which aims to support households in rebuilding homes that have been destroyed or severely damaged. In addition, the resolution requires the government to pay to rebuild and repair public infrastructure.
If further events of similar magnitudes are repeated, they will likely cause French Polynesia significant financial distress. Adapting infrastructure and the economic model can diminish these future costs and decrease the vulnerability of peoples and islands. This adaptation should be conducted through mainstreaming climate-change considerations in all sectors by adopting a climate-compatible, sustainable-development model. This should include shifting to a less fossil-fuel-dependent economic model, diminishing the ecological footprint of public infrastructure, including maritime and coastal infrastructure; and building infrastructure that takes into account climate-impact projections. Such adaptations, however, require significant economic means.

Currently, the development model of French Polynesia is strongly dependent on fossil fuels, particularly for maritime and air transportation. Additional vulnerabilities include French Polynesia’s dependence on imported consumable goods, the country’s vast geography, and the heavy reliance on French Polynesia’s capital, Papeete (which itself is remote from overseas ports), as the main transportation hub for the entire country. In addition to being subject to fluctuations in international oil prices, French Polynesian economic sectors, particularly tourism and exports (for instance, in tuna), could be negatively impacted by international efforts to limit carbon footprints. This could be especially true if French Polynesian transport industries cannot achieve the required technological advances necessary to comply with those efforts.

67. CRÉOCÉAN, supra note 59, at 208.
68. All sectors of the economy depend significantly on fossil fuels for maritime and air transportation as well as for electricity generation. As a result, when international oil prices surge, costs to the local economy increase. See PLAN CLIMAT-ÉNERGIE, supra note 64, at 15-20; see also EXPLICIT, MINISTÈRE DE L’ENVIRONNEMENT, DE L’ÉNERGIE ET DES MINES & PÉTALE PAE TAI PAE UTA, PLAN CLIMAT STRATÉGIQUE DE LA POLYNESIE française 50-61 (2012) [hereinafter PLAN CLIMAT STRATÉGIQUE].
69. PLAN CLIMAT STRATÉGIQUE, supra note 68, at 10. This plan is based on six thematic pillars: (1) sustainable mobility and robust transport systems; (2) diversification and reduced consumption of sustainable energy; (3) energy efficiency, resilience and responsibility of local production systems; (4) adaptation and resistance of infrastructure to climate and energy shocks; (5) strengthening natural and cultural heritage to urban pressures and climate shocks; and (6) integrating emerging risks and challenges into public policy. Id.
70. PLAN CLIMAT-ÉNERGIE, supra note 64, at 13; see also PLAN CLIMAT STRATÉGIQUE, supra note 68, at 50-61.
71. PLAN CLIMAT STRATÉGIQUE, supra note 68, at 50-75.
72. This is an emerging debate in the maritime transport sector in the Pacific, as exemplified for instance in the discussions held during the Pacific Ocean Alliance meeting from October 1-4, 2019 in Suva, Fiji. A report of the meeting will soon be available at https://opocbluepacific.net. The main question discussed during the meeting was whether the region should focus on decarbonizing the transport industry or on improving adequate transport services to
French Polynesians, including economic and political actors, are waking up to the urgent call to effectively engage in sustainable development. Climate change and ocean acidification pose significant obstacles for the French Polynesian people to achieve their ambitions and goals. While French Polynesia has not traditionally been a subject of the international narrative of existential threats posed by climate change (unlike the Republic of Kiribati, discussed below), the challenges posed by climate change on the development and self-determination of the people of French Polynesia are substantial. French Polynesia’s status in the U.N. as a non-self-governing territory undermines its ability to obtain the additional aid assistance available to fully independent states, including from the Green Climate Fund and similar organizations. Self-determination is thus doubly affected. First, climate change and related natural phenomena may undermine the ability of the people of French Polynesia “for their own ends, to freely dispose of the natural wealth and resources” within their territory for economic, social, and cultural development, a core component of the right of peoples to self-determination. This, in turn, compels continued French Polynesian economic dependence on the French state for climate-change adaptation aid and similar assistance and makes any further political and legal powers gained more symbolic than functional. Regardless of whether French Polynesia, alone or with its institutional partners, rises to the challenges presented by climate change and associated natural phenomena, its efforts will only be successful if international partners participate in global mitigation efforts and implement international commitments to achieve sustainable development that leaves no one behind.

B. Republic of Kiribati

Kiribati—including its exclusive economic zone, which is one of the largest in the world—covers over 3.3 million square kilometers, an area larger than remote communities. The tradeoff between environmental consciousness and social equity is particularly poignant given that currently available technology cannot successfully meet both objectives.

73. ICCPR, supra note 10, art. 1, ¶ 2; ICESCR, supra note 10, art. 1, ¶ 2.

74. For instance, total French state expenditures in French Polynesia in 2017 amounted to FCFP 185 billion. French Polynesian government expenditures amounted to FCFP 134 billion, some of which was directly funded by French state expenditures. French Polynesia at a Glance—2018, supra note 37.

India’s landmass.\textsuperscript{76} Kiribati’s land area, however, is proportionately miniscule. It has thirty-three islands, twenty-one of which are inhabited, spread among three archipelagos with a total land area of only 810 square kilometers.\textsuperscript{77} As a collection of atolls, most of Kiribati is coastal. The land area barely rises above two meters on average, reaching three meters at its highest point, and islands average a few hundred meters at their widest.\textsuperscript{78}

Kiribati emerged from the Gilbert and Ellice Islands, former colonies of the British Empire colonized in 1915. In October 1975, with the agreement of the Gilbert Islands, the Ellice Islands separated from the rest of the colony to become Tuvalu. The Gilbert Islands attained full internal self-governance on January 1, 1977.\textsuperscript{79}

After attaining self-governance, the government of the Gilbert Islands proceeded toward independence as part of its exercise of the right to self-determination. In late November 1978, at a constitutional conference in London, it was agreed that, subject to the approval of the United Kingdom (UK) Parliament, the Gilbert Islands should become an independent republic within the British Commonwealth.\textsuperscript{80} On July 12, 1979, the Kiribati Bill was presented to the UK Parliament to enable the Gilbert Islands to achieve independence.\textsuperscript{81} Passage of the bill ushered in the birth of a new state: the Republic of Kiribati.

Relevant to our current inquiry, during the debate in the UK Parliament on the Kiribati Bill, there were extensive discussions of how the government and people of Kiribati would survive without strong economic prospects and without the support of the British government.\textsuperscript{82} The passage of the bill and the forty years of peaceful governance that followed are a tribute to the resourcefulness and hard work of the government and people of Kiribati.

\begin{footnotesize}
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\item[76.] Countries Compared: Total Area in Square Kilometers, NATIONMASTER, https://www.nationmaster.com/country-info/stats/Geography/Area/Total [https://perma.cc/2345-33EM] (noting that India has an area of 3.29 million square kilometers).
\item[77.] The World Factbook: Kiribati, CENT. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/geos/kr.html [https://perma.cc/BT4B-4JMU]. This is roughly equivalent to an area four times the size of Washington, D.C. Id.
\item[80.] 398 Parl Deb HL (5th ser.) (1979) col. 1593 (UK) [hereinafter Hansard Record], https://api.parliament.uk/historic-hansard/lords/1979/feb/19/kiribati-bill-hl #S$LV938Pp_19790219_HOL_226 [https://perma.cc/ZRV9-9YMD].
\item[81.] Kiribati Independence Order 1979 (UK).
\item[82.] Hansard Record, supra note 80, at col. 1593.
\end{itemize}
\end{footnotesize}
The impact of climate change, particularly sea-level rise, is not a new problem for the government of Kiribati. As early as the 1980s, when the consequences of global warming, shifting long-term weather patterns, and sea-level rise began to gain traction in political affairs globally,83 the threats of climate change were a concern for the government of Kiribati. Various reports84 have demonstrated that Kiribati’s crops are becoming less productive, fresh water is becoming increasingly scarce,86 shorelines are eroding,87 and land will become progressively inundated with sea water.88 The plight of the peoples of Small Island Developing States90 due to climate change have been extensively documented.90 These effects range from rising sea levels that can erode and inundate coastal areas,91 to saltwater intrusions that destroy limited freshwater resources and damage food crops,92 to entire islands sinking and whole nations “disappearing.”93 These


85. See, e.g., INTERGOV’T PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014: SYNTHESIS REPORT (2014); IPCC 1.5, supra note 23.

86. See, e.g., John P. Cauchi et al., Climate Change, Food Security and Health in Kiribati: A Narrative Review of the Literature, 12 GLOB. HEALTH ACTION 1 (2019).


89. A list of such states can be found on the U.N. website, Small Island Developing States, UNITED NATIONS, https://sustainabledevelopment.un.org/topics/sids/list [https://perma.cc/7GH3-3ZZB].


92. Id.

physical impacts are well understood by the government of Kiribati, which has promulgated national adaptation policies to address them.94

What has rarely been discussed in climate discourse or media articles is the impact of the narrative of climate change as an “existential threat” on the right of peoples to self-determination. Such a narrative, while well-meaning, is risky and creates policy uncertainty. How can a state decide its future, and the future of its people, if its future is limited and even doomed? How can a people enjoy the right to self-determination, as provided for under the U.N. Charter, if such a right is undermined by the uncertainty of the country’s continued existence? How can the component right to permanent sovereignty over natural resources be exercised if we take this narrative of total demise at face value?

Other commentators have claimed that countries such as Kiribati have no hope of survival in their current, territorially delimitated configuration. This approach implies that emigration is the only option for the people of Kiribati, though the sensitive subject of climate migration does not sit well with the government and people of Kiribati.95 Many scholars have thoroughly discussed this subject,96 albeit with some disdain for the implications it poses for the people of these countries, especially as with respect to the term “climate refugees.”97 We say “disdain” because inaccurate commentaries on climate migration seem to suggest that local communities, in fear for their lives and livelihoods, are opting to emigrate. This is not accurate for much of the Pacific, as the majority of the people do not want to leave their homes “forever” and do not wish to lose connections with their ancestral land.98 The loss of identity and the negative connotations associated with the term “refugee” are viewed with disfavor by impacted communities, including those in Kiribati.99

94. See, e.g., KDP, supra note 75; Gov’t of Kiribati, Kiribati Joint Implementation Plan for Climate Change and Disaster Risk Management (2014) [https://perma.cc/9489-HX3V].
95. Klepp & Herbeck, supra note 90.
96. See, e.g., Rosemary Rayfuse & Emily Crawford, Climate Change, Sovereignty and Statehood, in International Law in the Era of Climate Change (Rosemary Rayfuse & Shirley Scott eds., 2012); Roy Smith, Should They Stay or Should They Go? A Discourse Analysis of Factors Influencing Relocation Decisions Among the Outer Islands of Tuvalu and Kiribati, 1 J. N.Z. & Pac. Stud. 23 (2013).
99. Id.
The legal implications of emigration are equally uncertain. For instance, Ioane Teitiota, a Kiribati national, became the first person to ever apply for asylum as a climate refugee when he made his claim in New Zealand in 2014. The New Zealand court dismissed the case and issued a deportation order against Teitiota, claiming an absence of legal principles that allow for recognition of climate refugees under the framework of the 1961 Convention Relating to the Status of Refugees. Teitiota later filed an individual complaint against New Zealand with the U.N. Human Rights Committee, arguing that the court’s decision violated Article 6 of the ICCPR, which recognizes and protects the right to life. The Committee determined that New Zealand had not violated Article 6. However, in a ground-breaking finding, the Committee acknowledged that “given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.”

Additionally, there is the issue of statehood. A dire problem due to climate change could arise where an island state such as Kiribati, whose freshwater deposits and land have turned salty, can no longer sustain human habitation or economic life. According to Article 121 of the 1982 United Nations Convention on the Law of the Sea, such a landmass would arguably not be entitled to an exclusive economic zone or a continental shelf. In other words, as a coastal state, it could lose much of its territory, a key indicator of statehood under international law. A recent essay by former Australian Prime Minister Kevin Rudd suggests allowing the people of Kiribati, Tuvalu, and Nauru to move to Australia and to obtain Australian citizenship. However, if all the citizens of Kiribati, Tuvalu, and Nauru become Australian citizens, Australia will gain the right to regulate and manage the exclusive economic zones of these sovereign nations.
This suggestion was promptly rejected by Pacific Island leaders, but it provides evidence of how the narrative of the existential threats of climate change can generate discourse in a manner that threatens to undermine state sovereignty and the right of peoples to self-determination. It is inconceivable to contemplate that such a proposal could be seriously considered by the government of Australia, or any government for that matter, as it is highly “neocolonialist.” The former Prime Minister of Tuvalu described the proposal as “imperial thinking” and rebutted that “we [Tuvalu] are a fully independent country, and there is no way I’m going to compromise our rights to fisheries resources, our rights to our immediate resources.” Such proposals erode the international legal corpus that defines the rights of the peoples of Kiribati, Tuvalu, and Nauru to self-determination.

In 2016, the incoming administration of the current President of Kiribati, Taneti Maamau, took an approach that challenges this prevailing narrative of climate change as an existential threat to island nations. President Maamau proposed a plan that would see the country transform, develop, and survive. The plan does not accept climate change as an existential threat. Instead, the plan encourages the people of Kiribati to embrace the challenges that climate change will pose, and turn them into opportunities. It proposes that Kiribati should become the next “Singapore and Dubai” through a range of transformational development projects, mostly premised on marine resources and tourism. Some of the policy actions to realize these goals involve purchasing two jets to boost transportation for tourism, implementing infrastructure projects to upgrade the airport, and laying underwater cable to access high-speed internet. The plan can be viewed as overly optimistic, but it is nonetheless a strong political statement that Kiribati, as a sovereign nation, is not going anywhere. The plan also highlights that Kiribati’s most important resources are its people, and that it plans to develop its human resources to allow for a prosperous future in which the people of Kiribati will continue to live on their own land, in their own homes, on their own terms.

In the context of this Essay, Kiribati’s new approach is aligned with the concept of a people’s right to self-determination as enshrined under international law, particularly with respect to the people’s pursuit of economic, social, and cultural development, including the dispensation of natural resources. It is a political stance premised on international conventions and normative practices of states, as discussed in Part II. In that sense, this new approach dismisses any


conclusion that Kiribati would disappear as a result of climate change, with the understanding that “climate defeatism” can have practical implications on national development. Countries such as Kiribati, which demonstrate cohesive “ontological” cultural identities, will continue to exist as states even if some of their physical territory becomes uninhabitable.

One of the authors has observed that, as a response to the narrative of “sinking islands” and “disappearing nations,” it has become a practice of the government of Kiribati to refrain from entering into discussions and conferences focusing on these topics. This restraint does not necessarily indicate opposition to these conferences. Instead, in the absence of policy measures focused on topics of continued self-determination, and in line with the Kiribati 20-Year Vision policy, the government of Kiribati would simply gain little by attending these conferences. Regardless of the adverse effects of climate change and related natural phenomena, the people of Kiribati have an inextinguishable right to self-determination in all its forms, including in connection with the dispensation of natural resources.

States such as Kiribati can make multiple arguments to this effect. First, Kiribati can argue that, once granted, recognition of statehood cannot be rescinded. Kiribati is a member of the Commonwealth, the United Nations, the Pacific Islands Forum, and the World Bank, among other multilateral organizations. The constitutions of most international and regional bodies appear to make no provision for rescinding membership, and there is no provision within the U.N. Charter for revoking membership for states that no longer exist. The closest the Charter comes to such a mechanism is a process of expulsion, under Article 6, for states that persistently violate the Charter’s principles, but this is distinct from expulsion due to a change in legal statehood status. Kiribati’s right to self-determination is linked to international recognition of its status as a sovereign independent state, a status that should not be altered by ominous projections of climate change.

Second, there is precedent in the international community according to which, once a territory is recognized as belonging to a state, this recognition

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107. Some of these implications include, inter alia, undermining efforts to facilitate adaptation to climate change, creating new identities, and deterring investments in sustainable resource management. See Jon Barnett, The Dilemmas of Normalising Losses from Climate Change: Towards Hope for Pacific Atoll Countries, 58 ASIA PAC. VIEWPOINT 3, 3-13 (2017).

108. This refers to the notion of culture and society, and how people living on small islands stay together and live in extended families, in support of one another. For a vivid description of this concept, see Epeli Hau’Ofa, A NEW OCEANIA: REDISCOVERING OUR SEA OF ISLANDS 2-16 (1993).

109. KIRIBATI 20-YEAR VISION, supra note 106.
cannot be rescinded for any reason.\textsuperscript{110} States including Somalia and Kuwait, for example, have continued to enjoy recognition as such, despite the lack of a competent government, and despite invasion and occupation that effectively eliminated those states’ territory. In such instances, international law “artificially constructs the continuation of the state.”\textsuperscript{111} Kiribati can cite this precedent to counter suggestions that the country will experience sovereign demise due to the impacts of climate change and related natural phenomena on its territorial boundaries.\textsuperscript{112} Arguably, the best possible compromise is one that would allow Kiribati and other similarly situated states to continue implementing their obligations and commitments under existing international conventions, while at the same time allowing such states to continue pursuing their economic, social, and cultural development, with some certainty that their right to exist is not undermined, and with the recognition that such development is integral to the continued exercise of the right of those peoples to self-determination.

For over forty years, the government of Kiribati has demonstrated conviction as it exercised the right to self-determination, despite initial reservations by the UK Parliament. It should continue to exercise that right, in pursuance of a prosperous, healthy, and peaceful future, in full exercise of permanent sovereignty over natural resources, without being hamstrung by narratives of climate-change defeatism. The international community must respect that right, in line with its status as a \textit{jus cogens} norm.

\textsuperscript{110} As described under Article 1 of the Montevideo Convention on the Rights and Duties of States, 165 L.N.T.S 19 (1936).


\textsuperscript{112} There are a number of conceptions of international law and disappearing states which cannot be covered in this Essay due to space constraints, including work on the “deterritorialised State” by Rosemary G. Rayfuse, see Rayfuse, Maritime Entitlements, \textit{supra} note 111; Rayfuse, W(h)ither Tuvalu?, \textit{supra} note 111, and work on the “ex-situ Nation” by Maxine Burkett, see Maxine Burkett, \textit{The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era}, 2 CLIMATE L. 345 (2011), and by James Ker-Lindsay, see Ker-Lindsay, \textit{supra} note 93.
CONCLUSION

Climate change and related natural phenomena, the result primarily of rampant anthropogenic greenhouse gas emissions, challenge the fundamental right of peoples to self-determination. They pose particular challenges for peoples in non-self-governing territories like French Polynesia, who remain deeply reliant on the largesse of administering foreign powers in adapting to climate change and related natural phenomena. They also pose challenges for peoples in fully independent states like the Republic of Kiribati, who find their long-sought-after sovereignty challenged by the physical realities of climate change and related natural phenomena, as well as by the attendant defeatist narrative.

The international community as a whole must uphold the fundamental right to self-determination, which is a jus cogens norm. This will require concerted and effective efforts to mitigate anthropogenic greenhouse gas emissions to the extent necessary to minimize their social, economic, environmental, political, legal, and moral implications for the exercise of permanent sovereignty over natural resources and, by extension, the right of peoples to self-determination. It will also require new conceptions of self-determination in the event that the physical territories to which self-determination has historically been tied are eroded. Otherwise, climate change and related natural phenomena will compromise the satisfactory conclusions of French Polynesia’s and Kiribati’s respective journeys to full self-determination.

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