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## Protection of Climate Migrants from Small Island Developing States of the Pacific Region

**Keywords:** climate migration, economic migration, Small Developing Island States, migration policy

**Summary:** One of the negative effects of climate change is the sea-level rise that in combination with other environmental factors poses a threat to the very existence of some small island states situated in the Pacific region. In case of a direct threat of the complete sinking of these territories all their inhabitants will have to be displaced to other countries. The objective of this paper is to discuss migration from small island states as a specific case of climate migration and to identify basic principles on which the international cooperation aimed at providing this category of migrants with effective assistance could rest. The author is of the view that the most adequate and viable mechanisms of international cooperation in this area are bilateral or regional agreements that would constitute a legal basis for long-term migration projects carried out within the broader context of adaptation to climate change.

### Ochrona migrantów klimatycznych z Małych Rozwijających się Państw Wyspiarskich regionu Pacyfiku

**Słowa kluczowe:** migracje klimatyczne, małe państwa wyspiarskie, polityka migracyjna

**Streszczenie:** Jednym z negatywnych następstw zmian klimatu jest wzrost poziomu oceanów, który w połączeniu z innymi czynnikami środowiskowymi stanowi zagrożenie istnienia niektórych państw wyspiarskich regionu Pacyfiku. W przypadku bezpośredniego niebezpieczeństwa całkowitego zatopienia wskazanych terytoriów wszyscy mieszkańcy będą musieli zostać przesiedleni do innych państw. Celem niniejszego opracowania jest ukazanie migracji z małych państw wyspiarskich jako szczególnego przypadku migracji klimatycznej oraz sformułowanie podstawowych zasad, na jakich miałyby się opierać efektywna współpraca międzynarodowa, mająca na celu udzielenie tej kategorii migrantom skutecznej pomocy. Zdaniem autora najbardziej adekwatną formą współpracy międzynarodowej w tym zakresie są porozumienia dwustronne lub regionalne, które stanowiłyby podstawę prawną długofalowych projektów migracyjnych wpisujących się w szerszy kontekst innych działań adaptacyjnych do skutków zmian klimatu.

## 1. Introduction

Already in 1990 The Intergovernmental Panel on Climate Change noted that the effects of climate change will be particularly severe for developing countries, in-

cluding small island developing states (hereinafter: SIDS) of the Pacific region that are facing the threat of being inundated due to sea-level rise and storm surge<sup>1</sup>. Apart from sea-level rise and concomitant flooding, the climate change related hazards that occur in the Pacific region include extreme weather phenomena such as, change in precipitation patterns, droughts, and storm surges from tropical cyclones and hurricanes.

The high vulnerability of SIDS to the effects of climate change and their little adaptive capacities result from a cumulative effect of multiple environmental, geographic, economic and demographic factors that include concentration of population and infrastructure in coastal areas threatened by inundations and/or complete submergence; the considerable population growth<sup>2</sup>; small territory and concomitant scarcity of land that could be used for agriculture and/or inner-state resettlement from endangered coastal areas; destruction of crucial elements of infrastructure situated in coastal areas due to extreme weather phenomena and natural disasters that hinders economic growth; peripheral location, which makes the flow of persons and goods difficult; accelerated land erosion and increasing salination of arable land resulting in serious shortages of water both for consumption and for agricultural purposes; extensive destruction of coral reefs with its ensuing impact on tourism, fishing and protection against major sea-level surges; the limited financial and technological resources<sup>3</sup>.

Furthermore, due to the above factors some SIDS will become inhabitable long before they physically disappear. In such situation the entire population will have to be relocated to other countries<sup>4</sup>. It also should be noted that in case of sovereign island states the complete loss of territory will be tantamount to the termination of their very existence as subjects of international law<sup>5</sup>. The inhabitants of

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<sup>1</sup> Intergovernmental Panel on Climate Change, *IPCC First Assessment Report Overview and Policymaker Summaries and 1992 IPPC Supplement*, June, 1992, p. 55, <https://www.ipcc.ch/report/climate-change-the-ipcc-1990-and-1992-assessments/> [access: 30.05.2021].

<sup>2</sup> For instance, Vanuatu, Solomon Islands and Marshall Islands have population increase rates that apart from some African countries are among the highest in the world. If this rates of natural increase is sustained over a long time, the population of these countries will double in 27 years, which in turn will place a substantial burden to each countries' resources and social infrastructure. See: C. Corendea, *Legal Protection of the Sinking Islands Refugees*, Lake Mary 2016, p. 132.

<sup>3</sup> M.J. Bush, *Climate Change Adaptation in Small Island Developing States*, Toronto 2018, pp. 1-18.

<sup>4</sup> C. Corendea, *op. cit.*, p. 27.

<sup>5</sup> The notion of statehood in international law was defined in Article 1 of the Montevideo Convention on the Rights and Duties of States of 1933. Under this provision, "[t]he state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states". Although the quoted Convention is a regional instrument, the constitutive elements of the state laid down therein are commonly recognised as a customary norm of international law. As far as SIDS are concerned, it is highly probable that their statehood will terminate not at the moment of the

SIDS are thus on the verge of losing everything they have; not only their homes and livelihoods, but also their cultural heritage and their states. In the event their territories are submerged, residents of SIDS will lose their right to self-determination, right to a nationality and all the rights that are derived therefrom<sup>6</sup>. In consequence, the population displaced from territories threatened with submergence will become stateless, unless they are naturalised by the receiving states. Paradoxically, the small island nations are among those least able to take countermeasures against climate changes and the least culpable from the standpoint of contributing to warming trends as their carbon footprint is negligible compared with inhabitants of the Global North (and emerging economies of Global South) who live the profligate life<sup>7</sup>.

Given the lack of possibility of internal migration, the population of sinking island states will have to rely on aid of other countries. However, for the time being, the international community has not recognised the category of climate migrants and in consequence has not created any legal mechanisms for their protection. The objective of this paper is to examine the validity of reasons for granting migrants from SIDS as a special legal status under international law, as well as to formulate basic principles of the effective international cooperation aimed at providing to this category of migrants an adequate assistance.

## **2. Resettlements from SIDS as a special case of climate migration**

Currently, climate change is the main reason for relocation in the world. According to International Federation of Red Cross and Red Crescent Societies within the time span of 6 months (from September 2020 to February 2021) around 10.3 mil-

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complete submergence of their territory, but rather when it becomes completely inhabitable, which will entail the loss of the other qualities of statehood. It should also be noted that the legal effects of the termination of the existence of a state due to environmental factors are not regulated by international law. Specifically, this situation is not covered by general rules applicable to formation and succession of states. In order to fill this lacuna, in scholarly literature some proposals designed to ensure the continuity of international subjectivity of the physically disappeared island state have been put forward. These solutions range from cession of land to displaced communities by other states to forming de-territorialised internationally recognised entities modelled on status of Sovereign Military Order of Malta. See: A. Jakuszewicz, *Endangered Statehood of Sinking Island States: A Legal Challenge to the International Community*, [in:] *Oceania. An Important Part of the Pacific*, ed. D. Zdziech, Kraków 2018, p. 171 *et seq.*

<sup>6</sup> However, it should be noted that the threat of complete disappearance concerns not only some sovereign states, especially Tuvalu, Kiribati and the Republic of the Marshall Islands, but also some dependent territories, in particular Cocos Islands or Tokelau.

<sup>7</sup> S. Atapattu, *Human Rights Approaches to Climate Changes. Challenges and Opportunities*, London 2016, p. 230.

lion people were forced to be internally (i.e. within their home countries) displaced due to disasters related to climate change. By comparison, within the same period the number of people who abandoned their homes due to military conflicts and political instability, which is the second main reason for migration, amounted to 2.3 million<sup>8</sup>. Moreover, the effects of climate change aggravate existing push factors like poverty or wars, which makes the situation even worse<sup>9</sup>. The estimates of the scale of climate migration in the future are very divergent and range from 50 to 250 million in 2050. As far as Oceania is concerned, it is estimated that in 2050 the number of climate migrants will amount to 600 000 on the assumption that the population of this region will reach 20 million<sup>10</sup>. These predictions depend on underlying assumptions on many uncertain variables such as population growth, timing and degree of climate change impacts or the level of economic development that determines the adaptive capacity of a country to climate change. For this reason the exact or even approximate number of people that will have to be displaced in the future as a result of climate change related disasters cannot be estimated. Nevertheless, most scholars agree on the general trend that the 21<sup>st</sup> century will be the time of large-scale forced migrations that will affect millions of people, especially in Africa and Asia<sup>11</sup>. Taking the above into account, the statement that “the international community seems to be on the verge of a massive humanitarian catastrophe in the making”<sup>12</sup> cannot be regarded as exaggerated. As a consequence, the displacement of the population of SIDS, despite its peculiarities, should be seen in a broader context, that is as a part of a global challenge of the international community to find comprehensive political solutions and create effective legal mechanisms designed to ensure adequate protection of climate migrants.

The fundamental issue to be decided when designing mechanisms for the protection of climate migrants is to create an adequate definition of the concept of “climate migrants”. This implies the need to provide rational grounds for granting to climate migrants some special rights that could not be claimed by other groups of migrants, in particular by persons that decide to migrate for solely economic reasons. The creation of an adequate and at the same time politically acceptable definition of climate migrants is fraught with various difficulties. First of all in many cases individual migration decisions of individuals are influenced by a variety of concomitant factors (economic, environmental, political, demographic) that

<sup>8</sup> J. Corbett, *10 Million Climate Refugees in Past Six Months: Red Cross Calls for Urgent International Help*, <https://www.ecowatch.com/climate-refugees-red-cross-2651129063.html> [access: 19.06.2021].

<sup>9</sup> *Ibidem*.

<sup>10</sup> J. Ash, J. Campbell, *Climate change and migration: the case of the Pacific Islands and Australia*, “The Journal for Pacific Studies” 2016, vol. 36, issue 1, p. 58.

<sup>11</sup> C. Corendea, *op. cit.*, p. 25.

<sup>12</sup> S. Atapattu, *op. cit.*, p. 155.

reinforce and complement each other. For this reason, establishing the direct causal link between the effects of climate change and migration in a given case may prove problematic, if not impossible<sup>13</sup>, specifically where the changes in environment that render an area inhabitable occur gradually. Equally difficult to prove would be the fact that a severe weather phenomenon that was the immediate cause of the migration decision in a given case was an effect of climate change. This difficulty, at least for now, also concerns the population of SIDS which has a long emigration tradition. For instance, research conducted in Tuvalu (one of the small island states that is doomed to disappear beneath the ocean<sup>14</sup>) showed that around one third of people born in this country live overseas and the other one third were seeking to emigrate, primarily for economic reasons<sup>15</sup>. “Although resource shortages and predictions of lost landmass affect people’s expectations of future income, thus influencing migration decisions, this will occur along a vector. While for some the decision to migrate will be based more on the “push” factors of climate change, for others it will be based more on the “pull” of economic opportunities or a different lifestyle. Only rarely will climate change provide the sole impetus for moving”<sup>16</sup>.

The detailed presentation of all issues related to creating an adequate definition of climate migrants goes beyond the scope of this study. For the purposes of this paper it is sufficient to indicate the most frequently cited criteria on the basis of which the distinction between economic migrants and climate migrants is made. These criteria include: the causal link between migration and the degradation of natural environment that occurs suddenly or gradually as a result of climate change, forced character of migration and cross-border character of migration. In turn, it is not relevant whether migration is temporary or permanent<sup>17</sup>. When indicating the above criteria, the quoted authors intended to narrow the scope of the definition of climate migrants as much as possible in order to make it politically acceptable and legally feasible. Without questioning the importance of these prudential considerations, it should be taken into account that some of the proposed criteria

<sup>13</sup> A.L. Constable, *Climate change and migration in the Pacific: options for Tuvalu and the Marshall Islands*, “Regional Environmental Change” April 2017, vol. 17, issue 4, p. 1031.

<sup>14</sup> “Every schoolchild in Tuvalu learns to fear “global warming.” It serves as the collective term for spoiled harvests, salty pools and the waves that keep rolling closer and closer, right up to airport runway.” See: A. Roberts, *Islanders Without an Island. What Will Become of Tuvalu’s Climate Refugees?*, “Spiegel Online”, 14 September 2007, <https://www.spiegel.de/international/world/islanders-without-an-island-what-will-become-of-tuvalu-s-climate-refugees-a-505819.html> [access: 15.05.2021].

<sup>15</sup> S.C. McAnaney, *Sinking Islands? Formulating a Realistic Solution to Climate Change Displacement*, “New York University Law Review” 2012, vol. 87, p. 1180.

<sup>16</sup> *Ibidem*.

<sup>17</sup> B. Docherty, T. Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, “Harvard Environmental Law Review” 2009, vol. 33, pp. 361 *et seq.*; D. Hodgkinson *et al.*, “*The Hour When the Ship Comes In*”: *A Convention for Persons Displaced by Climate Change*, “Monash University Law Review” 2010, vol. 69, issue 1, p. 84 *et seq.*

are purely formal so that their application in practice would inevitably lead to unfounded and even arbitrary exclusion of some groups from the category of climate migrants and thus to inequitable denial of international protection to persons in real need, e.g. to internally displaced persons where a given country objectively cannot resolve the resettlement problem on its own. Particularly problematic for the purposes of creating the concept of climate migrants is the criterion of forced character of migration<sup>18</sup> that is a situation in where a person abandons their home in order to avert the imminent danger for their life. Undoubtedly, the forcibility of migration due to the effects of climate change justifies granting to the affected persons the strongest protection including the subjective right to be resettled to other countries. However, It does not mean that actions of international community aimed to provide assistance to climate migrants should be limited to situations of the imminent threat to life<sup>19</sup>. Nor should it be required as a condition for recognition as a climate migrant that a person to leaves their home exclusively as a result of the effects of climate change, although it seems undisputed that this factor should be the main reason for such a decision<sup>20</sup>. Such an approach has been adopted in the Geneva Convention relating to the Status of Refugees, which does not require that “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” was the only motive for leaving the country of residence<sup>21</sup>. It should also be noted that measures taken in life-threatening circumstances would entail a heightened risk of the violation of human rights of the relocated population. The sudden displacement without appropriate preparatory measures might also cause integration problems of the relocated persons into the society of the host country. For these reasons, *ad hoc* assistance activities targeted at climate migrants carried out under pressure in an emergency situation might prove more controversial at political level, which might diminish their effectiveness<sup>22</sup>.

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<sup>18</sup> The concept of forced migration is very broad in the sense that it covers all persons that are displaced against their will for whatever reasons. This category includes for instance refugees under the Geneva Convention Relating to the Status of Refugees, people who are ordered to relocate in connection of the realization of an economic project, people who have to leave their homes due to a military conflict, environmental migrants, i.e. persons who are displaced because of an environmental disaster regardless of whether it was an effect of climate change or was caused by other factors, victims of human trafficking etc. See: S. Atapattu, *op. cit.*, p. 156.

<sup>19</sup> S.C. McAnaney, *op. cit.*, p. 1193.

<sup>20</sup> J. Ash, J. Campbell, *op. cit.*, p. 56.

<sup>21</sup> K.M. Wyman, *Responses to Climate Change*, “The Harvard Environmental Law Review” 2013, p. 173.

<sup>22</sup> A.L. Constable, *op. cit.*, p. 1030.

Furthermore, one should distinguish the concept of climate migrants from the concept of environmental migrants. Whereas the former are displaced because of the direct effects of climate change, the latter are forced to leave their places of residence as a result of a natural disaster, such as an earthquake, tsunami or flood or the environmental degradation caused by factors others than directly related to climate change. Admittedly, in some instances the clear delimitation of both categories of migrants on the basis of the above criterion may be difficult as it is not always possible to establish beyond a reasonable doubt the direct causal link between climate change and a severe weather phenomenon or an environmental impact that gave rise to a particular resettlement. However, this difficulty does not concern the case of SIDS as it has been scientifically proven that sea-level rise and the concomitant adverse environmental impacts are the direct effect of climate change<sup>23</sup>.

It should also be noted that, viewed from the global perspective, most cases of displacements caused by the effects of climate change will have an intra-state character. For this reason, primary responsibility for providing assistance to the relocated persons will inescapably lie with national authorities. In contrast, the population of SIDS will have to be resettled to other countries and this measure will affect all or most inhabitants of a given state. These peculiar features of climate migration from SIDS provide the moral rationale for the enhanced involvement of international community with a view to working out appropriate mechanisms that would ensure special protection of this category of migrants, especially that would enable their social and legal integration in the host countries.

In this context it is noteworthy that despite their small territory and considerable population density some SIDS carry out intra-state relocation programmes designed to displace inhabitants of low-lying coastal areas to the higher land. For instance in Kiribati (a country of the surface of 811 square kilometres consisting of 33 small atolls, most of the which are less than three metres above sea-level and on average only a few hundred metres wide, inhabited by the population of around 115 000) the government realised some relocations from the outlying atolls to South Tarawa, the biggest island of the country. This resulted in the increase in population density on that island so that the government had to carry out another resettlement programme, this time from South Tarawa to other islands. Nevertheless, the inner-state relocations within Kiribati should be regarded as a short-term response as it is predicted that the islands will sink due to the rising seal-level. Furthermore, before their submergence the islands will become

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<sup>23</sup> C. Corendea, *op. cit.*, p. XXV.

inhabitable as a result of the deficits of potable water in low rain periods<sup>24</sup>. Similar programmes of intra-state relocation were also realised in Tuvalu and Vanuatu<sup>25</sup>.

It is also worth mentioning that the realization of intra-state resettlement schemes in the Pacific region, similarly as in other parts of the world, sometimes encounter legal obstacles. This is especially the case with regard to small island states of the Pacific region (except for Tonga), where transactions concerning land are primarily governed by customary law which prohibits the transfer of property rights to land to persons who do not belong to an extended family or a kin<sup>26</sup>.

Furthermore, one should take into account that climate change has multifaceted implications. Apart from its environmental and economic impacts it also has a very profound ethical and human dimension<sup>27</sup>. “In a sad twist of irony, the distribution of climate change impacts is expected to disproportionately affect those who have contributed the least to historical emissions of greenhouse gases” and benefited the least from industrialisation, among which are the SIDS of the Pacific region<sup>28</sup>. For this reason, it is hard not to agree with the view that the actions of the international community in this field should be governed by the principle of common but differentiated responsibility. Under this principle, particular duties of assistance to climate migrants, including the duty to participate in costs of relocation and to receive a certain number of migrants, should be assumed by the developed states. Nevertheless, the principle of common but differentiated responsibility is of limited help since it indicates only a general direction. The determination of concrete duties of a given state that could be regarded as morally fair in light of this principle remains disputable and thus open to negotiations<sup>29</sup>.

<sup>24</sup> The infrastructure of Kiribati is under huge pressure. Many of the houses lack modern sanitation and are frequently not connected to the sewage system (where it exists). In addition, due to limited funds the South Tarawa sewage system was not constructed of sufficient length to take sewage beyond the reef. This results in effluent returning to the atoll with the tide. This, coupled with more extreme weather conditions and extra high tides, has meant that the domestic water supply is already compromised, with ground water at risk and the Tarawa lagoon polluted. See: M. Loughry, J. McAdam, *Kiribati – Relocation and Adaptation*, “31 Forced Migration Review” 2008, p. 51 *et seq.*, <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/climatechange/loughry-mcadam.pdf> [access: 21.06.2021].

<sup>25</sup> S. Park, *Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States, Legal and Protection Policy Research Series*, Geneva 2011, p. 2 *et seq.*, <https://www.unhcr.org/4df9cb0c9.pdf> [access: 3.01.2021].

<sup>26</sup> A.L. Constable, *op. cit.*, p. 1034.

<sup>27</sup> See: e.g. *Encyclical Letter Laudato Si’ of the Holy Father Francis on Care for Our Common Home*, Rome 24 May 2015, especially points 25 and 54 *et seq.*, [http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco\\_20150524\\_encyclica-laudato-si\\_en.pdf](http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_encyclica-laudato-si_en.pdf) [access: 25.06.2021].

<sup>28</sup> A.L. Constable, *op. cit.*, p. 1029.

<sup>29</sup> G.M. Tabucanon, *Migration for Environmentally Displaced Pacific Peoples: Legal Options in the Pacific Rim*, “UCLA Pacific Basin Law Journal” Fall 2012, vol. 30, issue 1, p. 89.



### 3. Forms of cooperation on climate migration from SIDS of the Pacific region and the assessment of their practicability

Under international law as it stands persons affected by impacts of climate change do not have a subjective right to be relocated to another state without this state's consent. As a consequence, where they cross a state border, they can be considered as illegal immigrants and may face deportation. In order to remedy this problem, some scholars suggest adopting an international treaty of the universal character, by virtue of which climate migrants would be granted the status of legal migrants. Such a treaty would cover the population of SIDS and the inhabitants of low-lying coastal areas of other states whose livelihood was destroyed by the effects of climate change. According to this proposal, people who live in territories that are likely to become inhabitable would have a right to be displaced to other countries, unless internal relocation is possible. The quotas of the immigrants to be received and the costs of relocation would be proportionate to the total emissions of greenhouse gases (both the present and the past ones) produced by a given country<sup>30</sup>.

Well-intentioned as this proposal may be, reaching a political agreement on a universal international convention on the protection of climate migrants is highly improbable. This is not only due to the divergence of political and economic interests and perspectives of developed and developing countries, but also due to the persisting misperception of challenges related to climate change as remote and abstract. Indeed, the climate change is a problem that cannot be compared to other global challenges because it mainly concerns the future. "Many people claim that facing this problem will require mobilisation comparable to that required for waging a war; but in this case there are no enemies that could be indicated and confronted. We are facing a danger that seems abstract and volatile although it can engender potentially disastrous effects"<sup>31</sup>.

For this reason, as far as political viability of mechanisms for the protection of climate migrants is concerned, establishing cooperation on bilateral and/or regional level seems more appropriate than efforts aimed at elaborating a universal instrument. Given the smaller scale of potential obligations and the absence of factors of global politics (or at least their smaller impact) during the process of negotiations, initiatives aimed at reaching a bilateral or regional agreement on the protection of climate migrants may have a better chance of gaining political support than an attempt to create a legal instrument of universal applicability<sup>32</sup>. Countries

<sup>30</sup> S. Byravan, S. Chella Rajan, *Providing New Homes for Climate Change Exiles*, "Climate Policy" 2006, no. 6, p. 247 *et seq.*

<sup>31</sup> A. Giddens, *Klimatyczna katastrofa*, Warszawa 2010, p. 10.

<sup>32</sup> S.C. McAnaney, *op. cit.*, p. 1201 *et seq.*

of a given region, for instance the South Pacific states, have a common interest in ensuring security. Therefore, it is more probable that they will be more willing to assume certain obligations to provide assistance to climate migrants, acting in their national self-interest<sup>33</sup>. Furthermore, bilateral or regional international treaties on migration policy are more adequate and flexible than a binding universal instrument in terms of adaptation to country-specific circumstances and meeting country-specific requirements and needs. Within such a framework potential destination countries could work bilaterally with countries vulnerable to climate change with a view to developing and implementing gradual changes in immigration policy in destination countries. Sending countries, in turn, might assist destination countries in selecting participants in temporary permanent migration programs and in preparing temporary or permanent migrants for travel to the destination country. The preparatory actions could include police clearance, health checks or pre-departure orientation programmes<sup>34</sup>.

Examples of international treaties that regulate the issue of migration include Compacts of Free Association between the United States and their former trust territories, namely the tripartite Compact of Free Association between the U.S., Federated States of Micronesia and the Republic of the Marshall Islands of 1983, and the bilateral one between the U.S. Palau of 1994. Under these agreements the nationals of the signatory states acquired the right “to establish habitual residence” and “lawfully engage in occupation”<sup>35</sup> in the U.S. This right has been regarded by the signatory states as “a key feature of the agreements”<sup>36</sup>, although it may be subject to restrictions in the statutes or regulations of the U.S. It is estimated that climate change will be an increasing factor in driving migration from the Freely Associated States in the future, especially where more and more islands that belong to these states become uninhabitable<sup>37</sup>.

Another factor of considerable importance when working out politically feasible mechanisms of assistance to climate migrants are historic ties between some countries, as well as existing patterns of migration. Referring the above to SIDS of the Pacific region it should be assumed that people inhabiting these states will pri-

<sup>33</sup> *Ibidem*, p. 1198.

<sup>34</sup> For instance the Tongan local authorities assume responsibility for recruiting candidates for seasonal work in New Zealand. It is noteworthy that in case a seasonal worker does not return to Tonga after the termination of a temporary migration scheme, the village is blacklisted and cannot send guest workers in the future. See: C. Corendea, *op. cit.*, p. 170.

<sup>35</sup> Article IV, section 141-142 of the Compact of Free Association between Federated States of Micronesia and the United States, as well as Article IV, section 141-142 of the Compact of Free Association between Palau and the United States.

<sup>36</sup> T. Erin, *Compacts of Free Association in FSM, RMI, and Palau: Implications for the 2023-2024 Renewal Negotiations*, “Human Rights Brief” 19 March 2019, <https://icaad.ngo/wp-content/uploads/2019/10/COFA-Policy-Brief-2019.pdf> [access: 25.01.2021].

<sup>37</sup> *Ibidem*.

marily migrate to countries where relatively strong communities of their nationals already live, that is to Australia, New Zealand and the United States<sup>38</sup>. Other factors that encourage migration from SIDS to these countries include their relative geographical proximity and historical traditions dating back to the colonial past<sup>39</sup>.

Apart from establishing cooperation in the international arena national authorities can take one-sided legislative measures aimed at liberalising the domestic immigration law that would facilitate receiving a certain number of climate migrants. The obvious advantage of this approach is that a state in question is able to maintain more latitude and control over its own immigration policy than it would have in the case of signing a binding international treaty. Examples of such one-sided (im) migration policy in the Pacific region include the New Zealand's scheme Pacific Access Category aimed at facilitating migration to this country from some SIDS<sup>40</sup>, as well as programmes of temporary migration for seasonal workers (Australian programmes: Seasonal Worker Programme and Pacific Labour Scheme, the New Zealand's scheme called Recognised Seasonal Employer<sup>41</sup>).

Admittedly, the mentioned seasonal worker programmes targeted at citizens of SIDS are based on economic considerations as their purpose is to meet temporary labour shortage, (especially in agriculture during the harvest time). Nevertheless, they are sometimes perceived as a point of departure for efforts aimed at creating in the Pacific region viable schemes of proactive migration<sup>42</sup>. Advocates of such programmes regard voluntary economic migration from SIDS as a form of adaptation of their populations to climate change. Seasonal workers and persons who have been granted temporary residence permit gain experience of living abroad and thus form a cultural basis for further migratory movements in the future. In turn, persons who have been granted permanent residence permit within preferential migration programmes play a role of a cultural and social link between the communities of immigrants and host societies. In other words, persons with migration

<sup>38</sup> It is noteworthy that at present around 500 thousand persons coming from SIDS live abroad. See: J. Ash, J. Campbell, *op. cit.*, p. 57.

<sup>39</sup> *Ibidem*, p. 54.

<sup>40</sup> Under this programme 400 citizens of some SIDS are awarded permanent residence status. Each year there are 650 places available that are allocated as follows: 75 Kiribati citizens, 75 Tuvalu citizens, 250 Tongan citizens, 250 Fijian citizens, <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/pacific-access-category-resident-visa> [access: 25.06.2021].

<sup>41</sup> For instance, under the New Zealand's programme Recognised Seasonal Employer, 8.000 overseas workers get a visa for 9 months to work in viticulture. New Zealand employers must try and fail to recruit local workers before obtaining permission to hire guest workers from the Pacific islands, pay half of the cost of a return ticket for Pacific islands migrants, guarantee them work for at least 240 hours (30 hours per week) at the minimum wage of 7 US dollars (12 New Zealand dollars) and provide them with housing, health insurance and pastoral care. The guest workers should have passports, police clearance and health checks. They undergo pre-departure orientation before they depart for New Zealand. See: C. Corendea, *op. cit.*, p. 141.

<sup>42</sup> G.M. Tabucanon, *op. cit.*, p. 80.

experience may essentially contribute to the smooth and effective integration of other immigrants into the host society, as well as to their enculturation. This will be of special importance when the worst-case scenario comes true and the entire population of a given state has to be resettled<sup>43</sup>.

Although proposals of liberalisation of immigration policy of potential host states encounter opposition in some sectors of their societies, it can be assumed that due to the declining birth rates coupled with the increasing pace of aging of the populations of the developed countries their governments will be interested in receiving a greater number of migrants for economic reasons. The mentioned demographic trends in developed countries give rise to the increase of labour costs and to deficits of workers in some sectors of economy, which in turn may lead to liberalisation of their immigration policy<sup>44</sup>. For instance, in Australia it has been estimated that farmers need around 22 thousand seasoned workers and that every year they sustain a loss in amount of 700 million Australian dollars because of unharvested fruits<sup>45</sup>.

Taking the above into account some Australian research institutes recommend granting the nationals of SIDS the preferential immigration status. It is argued that this measure not only would rationalise the aid to those countries, but also would improve international relations and ensure security in the region. Liberalisation of migration policy is also viewed as a more effective measures in terms of poverty alleviation in these countries than aid programmes realised *in situ*. For instance, according to the report of Lowy Institute for International Policy allowing just 1 per cent of the Pacific's population, an average intake of under 3000 people, to work permanently in Australia would have a "transforming effect" on the economy of SDIS as it would deliver more benefits to the Pacific peoples by 2040 than Australia's currently realised aid programs<sup>46</sup>. It is also estimated that creating a more open immigration scheme could increase the income of some Pacific Island countries – for the entire population, not just emigrants – by 300 to 400% over the next 25 years. Last, but not least, a structured migration program would prevent forced "last minute" migration in the future<sup>47</sup>.

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<sup>43</sup> *Ibidem*, p. 84.

<sup>44</sup> K.M. Wyman, *op. cit.*, p. 210.

<sup>45</sup> C. Corendea, *op. cit.*, p. 140.

<sup>46</sup> L. Berkelmans, J. Pryke, *The development benefits of expanding Pacific access to Australia's labour market*, 16 December 2016, <https://www.lowyinstitute.org/publications/development-benefits-expanding-pacific-access-australias-labour-market> [access: 25.06.2021].

<sup>47</sup> B. Doherty, E. Ainge Roy, *World Bank: let climate-threatened Pacific islanders migrate to Australia or NZ*, "The Guardian" 8 May 2017, <https://www.theguardian.com/environment/2017/may/08/australia-and-nz-should-allow-open-migration-for-pacific-islanders-threatened-by-climate-says-report> [access: 20.01.2021].

The quoted opinions confirm that the most appropriate approach to climate migration from SIDS is to open up possibilities of migration before living conditions in these countries deteriorate to such an extent that the relocation *en mass* remains the only viable option for survival. Long-term migration programmes (e.g. programmes for seasonal workers or scholarship exchange for students) would provide an impulse to the economic development of the SIDS due to increased capital flows in form of remittances sent by migrant workers to their families that stay in the homeland. Emigration of some low-skilled workers could also bring about the increase in the number of work places in their countries of origin<sup>48</sup>. Furthermore, it could reduce the burden on the environment and minimise the exploitation of increasingly scarce natural resources (such as arable land or potable water)<sup>49</sup>. This, in turn, may prevent and/or ease social tensions caused by potential fights for the scarce resources and thus contribute to maintaining security and political stability in the region<sup>50</sup>.

When developing migration programmes addressed to the population of SIDS, one should take into account that those countries are inhabited mainly by indigenous people who have preserved traditional culture and lifestyle characterised by close ties with nature in both economic (farming and fishery) and cultural (traditional medicine, art, craft, navigation practices, sites of religious worship) dimension. In this connection, there are justified concerns that migration from SIDS and the ensuing assimilation of the resettled population will cause irreversible losses in terms of indigenous heritage and possibly the complete disappearance of some minority cultures<sup>51</sup>. Taking this into account, migration programmes targeted at populations of SIDS should aim not only to provide assistance to individual persons, but also, whenever possible, to create mechanisms for the collective protection of the identity and cultural heritage of the displaced communities. In other words, an important consideration underlying such programmes should be the protection of the islanders as peoples with a common social and cultural identity, history and traditions. An ideal solution would be to relocate the whole population of

<sup>48</sup> There are also more sceptical opinions on the contribution of remittances to the economic development of SIDS. As C. Corendea notes, in Australia and New Zealand wages are at least ten times higher than in SIDS. This means that workers who return to their homeland may be discouraged for taking up a meaningful economic activity. They rather may rest and wait for the next opportunity to earn high and thus minimise development. Furthermore, families who depend on remittances may reduce their work efforts too. See: C. Corendea, *op. cit.*, p. 145.

<sup>49</sup> However, some authors claim that the increase in environmental security of the SIDS is possible only when migration programmes are realised alongside with adaptation programmes. See: J. Ash, J. Campbell, *op. cit.*, p. 58.

<sup>50</sup> J. Ash, J. Campbell, *op. cit.*, p. 54; K.M. Wyman, *op. cit.*, p. 205 *et seq.*

<sup>51</sup> E.J. Techera, *Climate Change, Legal Governance and the Pacific Islands: An Overview*, [in:] R.S. Abate, E.A. Cronc (eds.), *Climate Change and Indigenous Peoples. The Search for Legal Remedies*, Cheltenham 2013, p. 340 *et seq.*

an affected island state to a single third state where it would be granted a degree of self-government. In the absence of political will in this respect, the relocation of smaller communities should be envisaged, whereas the principle of family unity, should be respected<sup>52</sup>.

A worth emulating initiative that was designed to meet the needs of protecting not only individual persons, but also the identity and cultural heritage of the whole nation was the Australian proposal to resettle to Australia all the inhabitants of Nauru presented to the government of that country in 1963. Given the environmental degradation of Nauru caused by extensive phosphate mining, scientists considered the island would be uninhabitable by the mid-1990s so thatre location was regarded as the only reasonable option. It is also noteworthy that the then Australia's prime minister R. Menzies acknowledged that nations that derived large economic benefits from Nauru's phosphate extraction, that is Australia, New Zealand and the United Kingdom, had a "clear obligation ... to provide a satisfactory future for the Nauruans"<sup>53</sup>. Having examined some options for resettlement, Australia indicated the island Curtis, situated a few kilometres off the coast of Queensland. The government intended to acquire the whole land from the private owners and grand to the community the freehold right. Curtis Island was to remain part of Australia and Nauruans were to become Australian citizens. At the same time Australian government offered to grant the Nauruan community the right to wide self-government powers. Therefore, the purpose of the resettlement project was both to ensure the relocated community sufficiently strong economic prospects and to preserve the Nauruans' lifestyle and community values. Although the proposal seemed reasonable and well-intentioned, it was rejected by the Nauruan government. One of the reason for the rejection was the fear of assimilated and loss of the distinctive identity as a people<sup>54</sup>. Although the programme has not been put into practice, It remains to be hoped that as the adverse effects of climate change are becoming increasingly tangible and alarming, the societies and governments of the developed countries will overcome fears related to the influx of the immigrants from the SIDS and will elaborate similar programmes in the future.

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<sup>52</sup> S. Park, *op. cit.*, p. 19.

<sup>53</sup> The statement quoted from: J. McAdam, *How the entire nation of Nauru almost moved to Queensland*, „The Conversation” 14 August 2016, <http://theconversation.com/how-the-entire-nation-of-nauru-almost-moved-to-queensland-63833> [access: 2.01.2021].

<sup>54</sup> *Ibidem*.

#### 4. Concluding remarks

Negative impacts of climate change pose a severe threat to the territorial integrity and in some case to the very existence of some small island states of the Pacific region. Due to effects of the environmental factors coupled with economic problems SIDS have only limited adaptation capacities, which makes them dependant on the assistance of international community. When the Pacific atolls become uninhabitable, the cross-border resettlement will become both urgent and forced. This circumstance provides the sufficient rationale for working out political and legal mechanisms that would cover this group of climate migrants with special international protection. To achieve this purpose, establishing bilateral or regional cooperation seem to be the most appropriate and effective mode of action. The solid basis for such cooperation are historic and economic ties between particular states, as well as the currently existing migration trends.

In order to avoid or at least to minimise serious violations of human rights (including economic, social and cultural ones) of the resettled populations and to adequately face challenges related to their integration into the societies of receiving countries, migration strategies and programmes should be worked out and implemented before the emergency occurs and the relocation takes on the forced character. Furthermore, the migration programmes should be realised within the framework of a multi-faceted long-term cooperation aimed at gradual strengthening of ties between migrants and the receiving societies. With a view to guaranteeing the maximum protection of human rights of the resettled populations, in elaboration of migration programmes should participate all the involved parties. Indeed, “[u]nless relocation plans result from a respectful, considered and consultative process, in which different options and views are seriously considered, they will always be highly fraught”<sup>55</sup>. Last, but not least, the relocation plans should take into account not only the needs of individual persons, but also the interests of the whole social groups, such as members of the extended family, inhabitants of a village, a tribe or even all citizens of the affected state.

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