

# THE RISING OF SEA LEVEL AND RIGHTS OF THE COASTAL AND ISLAND STATES

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## ABSTRACT

*Global climate change has already had made a traceable impact on the environment. It is associated with sea-level rise which poses widespread and continuing threats to the low-lying coastal zones. Some low-lying island states such as Kiribati, Tuvalu, Marshal Islands are in danger of being rendered uninhabitable or even completely submerged. The low-lying coastal states like Bangladesh is likely to be the worst affected country by climate change in the 21<sup>st</sup> century and a larger portion of its coastline could eventually become submerged. The loss of significant coastal areas, even all, of the maritime jurisdictional zones would have profound economic and political consequences as jurisdictional rights over the valuable resources within these maritime spaces would also essentially be lost. In addition, the deprivation from maritime resources or confusing maritime boundaries due to sea-level rise would have potentially significant consequences in creating inter-state disputes and it could lead to conflicts and international instability. In this reality, this article examines the legal avenues open to coastal and island states to protect their political, economic, cultural and sovereign rights over the maritime boundaries which are already submerged or which may become submerged beneath the sea.*

*This article argues that although great changes are likely to take place at the geographical level of the coastal zone, and sea-level rise is gradually posing risk to low lying coastal areas, rocks, island, reef, even the entire state, the provisions of demarcating baseline under international regime should be relatively fixed. Utilizing technological advancement to build artificial islands and formulating bi-lateral treaty or agreement with neighbouring countries might be another sort of solution to secure the rights of coastal and island states.*

## INTRODUCTION

In 2012 the Kiribati cabinet approved a plan to buy 6,000 acres of land in Fiji because it felt necessary to relocate its citizens who might be dislocated due to sea-level rise<sup>1</sup>. By 2014, Kiribati had completed the payment against the purchase deal with the Fiji government. As it turns out this was a wise investment—the potential need has become a reality after Kiribati lost 32 pancake-flat coral atolls

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<sup>1</sup> “Kiribati profile- Timeline”, *BBC News*, January 23, 2018, Available at: <<https://www.bbc.com/news/world-asia-pacific-16433905>>, Last visited on June 20, 2019.

beneath the waves<sup>2</sup>. Moreover, the Prime Minister of Kiribati told the United Nations General Assembly that as a country Kiribati was trying to relocate its citizens to another country because all the science had told them the submerging of the whole country was just a matter of time<sup>3</sup>. Another country Bangladesh, a densely populated nation, has lost its island Talpatti, measuring 81 square miles (m<sup>2</sup>) due to sea-level rise.<sup>4</sup>The Inter-Governmental Panel for Climate Change (IPCC) predicts that 27 million Bangladesh people will face the dire consequences of sea-level rise by 2050. The IPCC's fifth assessment report also stresses that land inundation due to sea-level rise poses a risk to the territorial integrity of small island states, and states with extensive coastlines. Sea level rise may cause some transboundary impacts such as sea ice, shared water resources and pelagic fish stocks and this may cause rivalry among states. Therefore, climate change along with sea-level rise arguably represents a major challenge to small island states as well as states with extensive low-lying coastlines. Moreover, the sovereignty, political rights and economic interests of these states over their maritime boundaries are in question. If the land goes under the water, what happens to those state's coastal and marine resource claim? The present research intends to examine the political, economic, cultural and sovereign rights of the coastal states as well as small island states over the maritime boundaries that are already submerged or which may become submerged beneath the sea, and it will look into the effects on the statehood of those states which are predicted to be eventually submerged entirely under the sea.

There is a growing scholarly concern regarding the consequences of climate change, prevention and adaption strategies, as well as protection of environmental security<sup>5</sup>, but little of this research has considered the proper utilization and implementation of laws related to the sea and environment in response to the challenges created by sea-level rise. In addition, assessing the national interest and national loss, along with the right and title of island states and states with extensive coastlines is getting little attention. However, Puthucherril has examined the role of international law related to the sea, environment and statehood and recommends possible solutions to respond to

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<sup>2</sup> Paul Chapman, "Entire Nation of Kiribati to be relocated over rising sea level threat", *The Telegraph*, March 10, 2012, Available at: <<https://www.telegraph.co.uk/news/worldnews/australiaandthepacific/kiribati/9127576/Entire-nation-of-Kiribati-to-be-relocated-over-rising-sea-level-threat.html>>, Last visited on June 20, 2019.

<sup>3</sup> Byravan, S. and Rajan, S.C., "Sea level rise and climate change exiles: A possible solution", 71(2) (2015) *Bulletin of the Atomic Scientist*, at p.21.

<sup>4</sup> Dr Rahman, M., "Climate Change: Disappeared South Talpatti, What next?", *The Daily Star*, April 24, 2010, Available at: <<https://www.thedailystar.net/news-detail-135601>>, Last visited on June 20, 2019.

<sup>5</sup> Joshi et al., 2015; Pedrozo-Acuna et al., 2015; Nicholls et al., 2010; Clark et al., 2016.

the challenges posed by the sea-level rise on the respective territory and maritime estates<sup>6</sup>. He argues that the existing international law in the context of sea, environment and statehood provides marginal rights and privileges to coastal states, but there is no normative guidance for states to manage these new crises.<sup>7</sup> He recommends that new rules of international law could be developed at various levels if coastal states become ready to respond effectively to these challenges.<sup>8</sup> But he completely ignores the legal limits to enact a new law or introduce a new adaptation procedure to combat sea-level rise. Because such action may undermine the national interest of any state and any state may find it difficult to pass any resolution that contradicts with their foundational or constitutional principles.

Examining the possible consequences of sea-level rise and climate change, Yamamoto and Esteban claim that the maritime baseline of the affected country should not be changed due to their geographical alteration because not only geography but also national interests play a major role in claiming maritime rights deriving from straight baselines<sup>9</sup>In this regard, they overlook the provisions of article 121 of the United Nations Convention on Law of the Sea (UNCLOS) which does not provide any right over the exclusive economic zone (EEZ) or the continental shelf for those islands that are submerged underwater.

Thus, two significant research questions arise: (1) What would be the status of an island state if it were submerged? (2) Would the state retain any ability to continue utilizing the resources which had previously been within its EEZ? For example, if Kiribati were to cease to exist, its massive EEZ claim in the Pacific might become high seas and its fish stocks open to all for exploitation. Yamamoto and Esteban examine these questions and argue that though the current international law does not provide any provision to keep a submerged state's status as a conventional state; such state might retain some form of 'de-territorialized statehood if they can rely on other states to host part of their organs of government<sup>10</sup>. This could be a positive development for affected states, but to establish the form of 'de-territorialized statehood the norms and customs of international law would need to be developed, and the specific laws also need to be enacted by proper authority. Apart from this observation, the cultural and

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<sup>6</sup> Puthucherril, T.G., "Rising Seas, Receding Coastlines and Vanishing Maritime Estates and Territories: Possible Solutions and Reassessing the role of International Law", 16 (2014) *International Community Law Review*, at pp.38-74.

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*

<sup>9</sup> Yamamoto, L. and Esteban, M., "Adaptation strategies in deltas and their consequence on maritime baselines according to UNCLOS-the case of Bangladesh and Vietnam", 111 (2015) *Ocean and Coastal Management*, at pp.25-33.

<sup>10</sup> *ibid.*, at p.1.