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Karen N. Scott, 'Statehood under Water: Challenges of Sea-Level Rise to the Continuity of Pacific Island States' (2019) 33 *Ocean YB* 624 Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

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repercussions for the future of international whale conservation. This campaign was so successful that in less than one decade, it had dramatically altered Western perception of whales and had even bled into the negotiation of international treaties, including Articles 65 and 120 of UNCLOS. Despite the critical role of sharks in ocean ecosystems, and the many biological and ecological lines of inquiry that are far from complete, society still struggles to look beyond the villainous persona created for sharks by Hollywood and sensationalized broadcasting. At the conclusion of the book I was left with the impression that before we can achieve the creative yet pragmatic solutions that the authors proposed, sharks must first have their own conservation “moment” to shift societal perception.

*International Law of Sharks* hits the mark as a timely and important contribution to the expanding corpus of shark-centric legal literature, the ongoing debate and discussion surrounding the future of marine living resources, and contemporary issues in international environmental governance and sustainability. Its principled and pragmatic prescriptions for enhanced shark conservation are a welcomed contribution that should appeal to students, scholars, and practitioners in various disciplines. This is essential reading for those who want to know more about what is currently being done, and also what should be done, to save sharks from the most significant extinction threat they have ever faced—us.

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Alejandra Torres Camprubí, *Statehood under Water: Challenges of Sea-Level Rise to the Continuity of Pacific Island States* (Leiden/Boston: Brill Nijhoff, 2016), 278 pp.

Camprubí's monograph *Statehood under Water: Challenges of Sea-Level Rise to the Continuity of Pacific Island States* constitutes a valuable contribution to the growing literature and commentary on the challenges associated with changes in geography to international law, in particular, to the concept of the nation State. The prospect of sea-level rise has generated copious commentary since the work of Soons and Caron on the topic in the early 1990s. It has provided the subject matter for a current International Law Association Committee and has recently been added to the agenda of the International Law Commission. An increase in sea-level by a meter or more as projected by the Intergovernmental

Panel on Climate Change represents a significant challenge for many if not most coastal States. For low-lying States such as Tuvalu, Kiribati, and the Marshall Islands in the southwest Pacific and the Maldives in the Indian Ocean, however, it represents a threat to their very existence, described by Camprubí as the “sinking island paradigm” (p. 3). It is the threat to statehood itself that is the subject of this monograph, which aims to “identify how climate change impacts, and sea-level rise in particular, affect each of the dimensions of the State by degrading them from a physical perspective” and examines “the effects that the transformation of the State as a physical entity may correlatively have on its continuity as a political entity with legal attributes” (p. 8).

As Camprubí correctly and eloquently concedes “[w]hether one philosophically and ethically chooses either to uphold or to discourage the State’s central role in the international order, one thing is clear, that it applies to all – the State ‘is’. Qua socio-political reality, it cannot be denied. Qua legal concept, it cannot be by-passed” (p. 4). Nevertheless, in addressing the disappearance of a material substratum of statehood (rather than a redistribution of power) (p. 6), Camprubí issues a challenge to the predominant view that recognizes a single State form, the “territorial state” (p. 2) and, in particular, the assumption that State creation and extinction are part of “one singular process” (p. 6). Notwithstanding the few clues international law provides in respect of State extinction (p. 6), Camprubí “seeks to pinpoint the elements of ‘normativity’ and ‘topicality’ that are likely to guide this new stage in the regulatory and explanatory agenda informing the law on statehood” when confronted with extreme environmental change.

Although Camprubí focuses on sea-level rise as the existential threat to statehood, she situates her work more broadly in the emerging discipline of the Anthropocene, building on the work of Vidas and others, acknowledging that “one of the outstanding attributes of the Anthropocene is that it may challenge the foundations on which the present international legal order is built, since the onset of the Anthropocene alters the generally stable conditions of the Holocene, upon which the stability of the international legal order relies” (p. 274).

The monograph adopts as its structure the traditional Montevideo criteria of statehood, and chapters are divided into the challenges of de-territorialization (Chapter 1), de-population (Chapter 2) and government failure (Chapter 3). The fourth criterion – capacity to enter into relations with other States – is sensibly dealt with in Chapter 3 as part of the external sovereignty of governments. The monograph closes with a short concluding chapter.

Chapter 1 – “The Challenge of De-Territorialisation” – provides an insightful description of the evolution of territory as a component of statehood and the

“territorialisation of nationhood” (p. 17), from its Greek, Roman, and Medieval antecedents to modern patrimonial, constitutive, and post-colonial theories of territory. It begins with an examination of partial de-territorialisation – in respect of maritime spaces – and analyzes the effects of coastal geographical changes on maritime rights, including loss of or changes to baselines and the status of islands under Article 121 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (prior to the Annex VII Tribunal decision in the South China Sea Arbitration between the Philippines and China issued in 2016). The helpful overview includes several very useful tables setting out regional maritime features, their potential vulnerability, and the legal implications of sea-level rise to Pacific maritime boundaries. Camprubí follows a well-trodden path in setting out various options canvassed by other commentators responding to the threat of sea-level rise including physical protection of the coasts and legal fixing or “freezing” existing baselines. But it is the four States that are at risk of total de-territorialization that are the primary focus of the chapter. “The fundamental question is not how Kiribati, Tuvalu, the Marshall Islands may preserve – in theory and in practice – their international legal personality despite having been deprived of their spatial dimension, but why should their continuity be assured in these extreme circumstances” (p. 104) or, to put the question another way, “what is the function of the State?” (p. 104). By-passing this fascinating but somewhat philosophical question Camprubí largely confines her discussion to the *how* rather than the *why*, and explores options for re-territorialization such as cession or purchase of land from another State or even merger, creating a de-territorialized State using precedents such as non-State sovereign entities (e.g., the Holy See and the Order of Malta) and developing a trustee mechanism to preserve a so-called “water state” (p. 112).

Chapter 2 addresses the challenge of de-population. It analyzes climate-induced displacement of Pacific islanders within the context of three important factors: “(1) whether the displacement is national or transnational (spatial variable); (2) whether the continuity of the State itself may be at risk as a result of partial or total en masse transnational displacements (contextual variable); (3) whether either of the two previous factors is subject to change and progress over time, transforming the displacement situation itself, as well its political consequences, into the continuity of the State (temporal variable)” (p. 121). Camprubí considers the sometimes fraught relationship between migration/displacement and adaptation, and explores the practice and principle of both preventive and reactive relocation in the Pacific, including the role of global and regional funding mechanisms. With the aid of another helpful table setting out plans and specific actions developed by Pacific States, Camprubí concludes that relocation is dealt with unevenly across Pacific States (p. 148). She critically assesses the well-worn path of climate “refugees” and the potential

for global and regional action within the framework of refugee law, human rights law and the development of a designated mechanism under the 1992 United Nations Framework Convention on Climate Change. Camprubí criticizes both practice and commentary relating to relocation as being one dimensional, with proposals relying on one legal avenue only (p. 164) and imposed from the top down (p. 205).

In seeking to respond to these criticisms, Chapter 2 concludes with the development of a proposal “to conceptualise the legal framework of climate-induced displacement in multiple and complementary layers of protection, so as to address the issue through an integrative and pluralistic scheme” (p. 149). The scheme proposed is designed to reflect “the fundamental connection between climate-induced displacement and the progressive de-territorialisation of Pacific Island States” and seeks to “relocate the human and territorial pillars within the ultimate issue of ... the continuity of Pacific Island’s statehood” (p. 149 and pp. 165–204). Importantly, Camprubí recognizes that while seeking to “guarantee the basic living conditions of its population, the State itself becomes simultaneously the subject of the protection of its own continuity as a distinct independent political entity” (p. 167) and consequently “the fate of Pacific islanders is bound to the fate of their Pacific Island State” (p. 167). The multi-layered scheme for relocation as developed by Camprubí comprises an integration of law and principles drawn from human rights law, international environmental law, international migration law, principles relating to internally displaced people, the international refugee regime, and the regime relating to statelessness as well as domestic law in these areas (Table 5, p. 166). Camprubí’s application of these principles within the Pacific region is not uncritical, and she rightly acknowledges the limitation of an approach that depends in part on the implementation of human rights instruments not widely ratified in the region.

In the final substantive chapter Camprubí explores the challenge of government failure. Government is described as the political dimension of the State and the depository of sovereignty (p. 208). The chapter explores how the adverse impacts of climate change “challenge the governmental capacities of Pacific Island States” and “how the active participation of Pacific Island States in the international sphere operate as a determining variable of the question of their continuity of states” (p. 211). It acknowledges the inherent circularity of the argument; that the capacity of governments to protect their citizens from the impacts of climate change (effective government) depends on the existence of the State itself (p. 211). Camprubí canvasses notions such as “vulnerable,” “failed,” and “collapsed” States as well as governments in exile, with particular emphasis on the latter. Whilst the concept of the government in exile represents an interesting possible option for the continuation of Pacific Island States without territory or population (or at least without a

population located within a designated territory), Camprubí notes that this prospect would represent a significant departure from past practice given that its application to Pacific States would not be temporary and would not result from competition between *de jure* and *de facto* governments within a territory (p. 227). Camprubí concludes that the problem of government is effectively a problem of statehood (p. 228). Complementing the internal face of sovereignty Camprubí also discusses the external capacity and role of Pacific States in the particular context of climate change negotiations.

Rather confusingly, questions of responsibility and compensation for climate change damage are also canvassed in Chapter 3, without directly linking the issue to the issue of statehood. The final part of Chapter 3 also appears misplaced. It comprises a discussion of recognition, and the options for recognizing the continuity of States that are impacted by de-territorialization or de-population. Coming at the end of the chapter exploring government failure, the discussion risks blurring the very distinct issues of recognition of States and recognition of governments. It would perhaps be better placed in a stand-alone chapter or in the concluding chapter.

This monograph is well researched and elegantly written and makes a significant contribution to the literature in this important field. In the concluding chapter, Camprubí reminds us that the Anthropocene is forcing us to reconsider the “correlation between physical reality and legal construct – two equally constitutive elements of the notion of statehood” (p. 274). She concludes that the three dimensions of statehood (territory, population, effective government) are not equally affected by climate change (p. 275), and while de-territorialization is the “source of the overall threat to Pacific Island States, the challenge of de-population lies at the heart of the future of these States” (p. 276). In this work Camprubí eruditely exposes the limits of the traditional approach to statehood, and cogently argues that we need to turn to the “meta-legal realm” (p. 277) to respond to this challenge. Surprisingly, in a work of 278 pages, the concluding chapter is a mere five pages and unfortunately fails to bring together the arguments and proposals developed in the preceding chapters around a “meta-legal” approach. Regrettably, this does somewhat undermine the thesis as a whole. Ultimately, and sensibly however, Camprubí leaves open the question of whether Pacific Island States will continue, notwithstanding de-territorialization or de-population or both.

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