

# Climate Change Policies and Migration Issues of New Zealand and Australia

Eka Higuchi

Lecturer, Tohoku University of Community Service and Science

## 1. Introduction

30 years ago<sup>1</sup>, the international community raised concerns about the impact of global warming and has since then confirmed the need to strengthen countermeasures. However, as of 2019, the World Meteorological Organization (WMO) reported that the sea level rise caused by climate change was accelerating, in addition to the rise in temperatures caused by greenhouse gas emissions<sup>2</sup>. The Paris Agreement, adopted in 2015 under the United Nations Framework Convention on Climate Change (UNFCCC), establishes the target of keeping the impact of global warming at a level of +1.5 °C as compared to pre-industrial levels. In order to provide a stimulus for global action, the Intergovernmental Panel on Climate Change (IPCC) accepted the IPCC Special Report on Global Warming of 1.5 °C in October 2018, and, further, adopted the Summary for Policymakers of the same report<sup>3</sup>. Currently, much attention is being given to how policymakers are reflecting this scientific knowledge in domestic climate change policies in the context of ocean policy.

This paper examines policies of two maritime nations, New Zealand and Australia, which have a deep relationship with Pacific Island states. These nations are confronted by the issue of environmental refugees fleeing from problems such as sea level rise and unusual weather conditions. Therefore this paper presents the current situation of the policies of the two countries with a focus on migration issues, and then assesses the situation in comparison with relevant global trends.

## 2. New Zealand's Climate Change and Ocean Policies

### 2.1 New Zealand's Climate Change Policy

The policy assessment prepared by Climate Action Tracker (CAT), a rating organization for global warming countermeasures, shows how New Zealand's climate change policy is positioned globally.

Under Prime Minister Ardern of the Labour Party, New Zealand submitted the *Climate Change Response (Zero Carbon) Amendment Bill* (2019) to revise the existing *Climate Change Response Act* (2002), with the aim of integrating laws related to climate change, to realize the goals of the Paris Agreement. As of November 2019, this *Bill* is under the deliberation of the House of Representatives<sup>4</sup>. CAT assesses New Zealand's policy as being "insufficient" (third from the bottom of six rating levels<sup>5</sup>) for the realization of the goals set out in the Paris Agreement on the grounds that this *Bill* is not a policy

<sup>1</sup> UN General Assembly Resolution 44/207 (1989).

<sup>2</sup> WMO "United In Science", (2019), p.6.

<sup>3</sup> Ministry of the Environment, "Announcement on the Intergovernmental Panel on Climate Change (IPCC) Special Report on Global Warming of 1.5 °C (Results of the 48th General Assembly), October 7, 2018" <https://www.env.go.jp/press/106052.html> (Accessed on November 1, 2019).

<sup>4</sup> New Zealand Parliament, Bills (Proposed laws) "Climate Change Response (Zero Carbon) Amendment Bill" [https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL\\_87861/climate-change-response-zero-carbon-amendment-bill](https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_87861/climate-change-response-zero-carbon-amendment-bill) (Accessed on November 5, 2019).

<sup>5</sup> Climate Action Tracker "New Zealand," <https://climateactiontracker.org/countries/new-zealand/> (Accessed on November 5, 2019). The "insufficient" assessment refers to the standard that if the international community were to implement policies at a similar level as this policy, global warming is expected to reach a level of up to 3 °C by 2100 (which is insufficient towards the achievement of the Paris Agreement's goal of maintaining global warming at below 2 °C). The same rating has been applied to the EU and Australia. Japan's policy is assessed one rank below, as "highly insufficient."

for the realization of substantial emissions reduction, and that New Zealand has hardly any policies in place for the implementation of the *Bill*. However, as the *Bill* concerning the emissions of greenhouse gases do not incorporate a perspective on the oceans, there is a need to separately consider climate change countermeasures that are also ocean policies.

We can refer to Cabinet paper in July 2018, *the Framework for climate change policy and key upcoming decisions*, as a climate change policy document that includes an ocean policy. This *Framework* focuses in particular on the assumption of sea level rise, and explains that New Zealand's "security is interdependent with that of the Pacific: climate change is a risk multiplier," and that New Zealand is "the destination of choice for Pacific migrants." Furthermore, it sets out the vision for New Zealand's leadership as follows: "Leadership also means providing support to the Pacific and building the region's capacity for mitigation, adaptation and participation in the design and implementation of the international rule set<sup>6</sup>." New Zealand's relations with Pacific Island states are also highlighted in the international conference "Our Ocean 2019," as it there registered<sup>7</sup> a partnership with the Pacific Community Centre for Ocean Science (PCCOS) as well as for the Pacific Ocean fishing industry.

## 2.2 Relationship with Pacific Island States

New Zealand has a free association relationship with Niue and the Cook Islands, and overseas territories such as Tokerau, a self-governing dominion. It also has close diplomatic relations with the Independent State of Samoa, formerly a domain as mandated by the League of Nations, and other Pacific Island states. New Zealand therefore gives strategic importance to its diplomatic influence with Pacific Island states<sup>8</sup>. In view of these circumstances, New Zealand has continued to provide support towards the resolution of climate change challenges faced by Pacific Island states, including sea level rise and unusual weather conditions<sup>9</sup>.

## 2.3 Policy for Accepting Migrants Displaced by Sea Level Rise

An acceptance of climate refugees (environmental refugees) is one of the issues in diplomatic policy associated with sea level rise brought about by climate change. New Zealand has in place a framework for accepting migrants from Pacific Island states as well as for building capacity locally in the affected areas. Under New Zealand's *Pacific Access Category* (PAC) program, there is a permanent residency quota for 650 migrants from Fiji, Tonga, Tuvalu, and Kiribati in total to New Zealand every year<sup>10</sup>, while a quota of 1,100 is allocated for Samoan migrants under the *Samoan Quota Resident Visa* (SQRV<sup>11</sup>). As age restrictions (18 to 45 years old), language proficiency skills, income, and other criteria are currently imposed on potential migrants under these programs, the number of migrants that is actually certified is smaller than the number of places that have been allocated. According to data for 2019, only 269 migrants were certified under the PAC program, as well as 416 migrants were certified under the SQRV program<sup>12</sup>.

<sup>6</sup> Cabinet Paper "Framework for climate change policy and key upcoming decisions," para. 23.

<sup>7</sup> Our Ocean 2019 Commitment, <https://ourocean2019.no/wp-content/uploads/2019/10/20191025-Commitments-1616.pdf> (Accessed on November 15, 2019), p.5.

<sup>8</sup> Radio New Zealand "NZ's foreign minister announces next steps in 'Pacific reset' aid strategy," (2 July 2018), <https://www.rnz.co.nz/international/pacific-news/360841/nz-s-foreign-minister-announces-next-steps-in-pacific-reset-aid-strategy> (Accessed on November 5, 2019).

<sup>9</sup> New Zealand Foreign Affairs & Trade, "Our relationship with the Pacific" <https://www.mfat.govt.nz/en/countries-and-regions/pacific/> (Accessed on 2 November, 2019).

<sup>10</sup> Ministry of Business, Innovation & Employment "Information about Pacific Access Category Resident Visa," <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/pacific-access-category-resident-visa> (Accessed on November 5, 2019).

<sup>11</sup> Ministry of Business, Innovation & Employment "Moving from the Pacific Islands" <https://www.newzealandnow.govt.nz/choose-new-zealand/compare-new-zealand/pacific-islands> (Accessed on November 5, 2019).

<sup>12</sup> Ministry of Business, Innovation & Employment "News and notifications" <https://www.immigration.govt.nz/about-us/media-centre/news-notifications/2019-pacific-access-category-ballot-results> (Accessed on November 5, 2019).

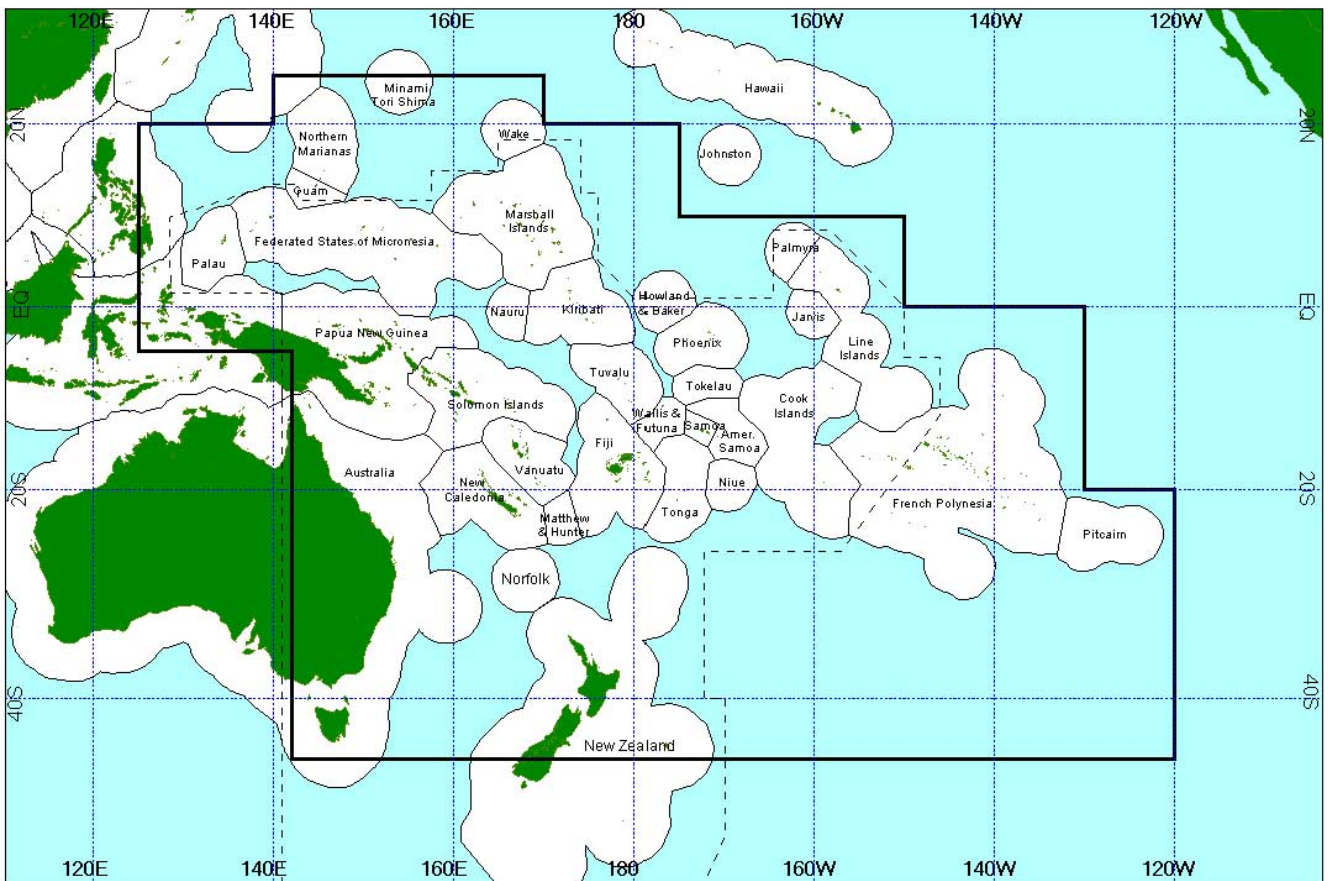


Figure: Pacific Island states (Source: FAO “Regional Information on Pacific Island Fisheries”)

These quotas allocated to migrants were primarily established for migrants for employment; New Zealand does not have a dedicated framework with a particular focus on accepting migrants known as “climate refugees.” However, Prime Minister Ardern recognizes that allocated quotas for accepting migrants from the Pacific Island states are already serving as a framework for migrants displaced by climate change<sup>13</sup>.

In contrast to this position, the cabinet paper named *Pacific climate change-related displacement and migration: a New Zealand action plan* submitted by Minister of Foreign Affairs Winston Peters in May 2018 recommends the consideration of a humanitarian visa for climate change-related displacement from the Pacific Island states<sup>14</sup>. However, no significant actions have been taken since towards realization of this plan.

### 3. Australia’s Climate Change and Ocean Policies

#### 3.1 Australia’s Climate Change Policy

Australia conducted a domestic review in 2017 on its climate change policy<sup>15</sup>. According to the review, Australia recognized its international contributions on climate change, such as the Asia-Pacific Rainforest Partnership, the International Coral Reef Initiative, and the International Partnership for Blue Carbon<sup>16</sup>. Its domestic policy achievements in the energy and economic sectors are also recognized positively in the review, while at the same time acknowledging the need for further ambitious initiatives

<sup>13</sup> Video file [1:14:23-] <https://www.facebook.com/climatereality/videos/1618758938190744/> (Accessed on November 6, 2019).

<sup>14</sup> Pacific climate change-related displacement and migration: a New Zealand action plan (2 May 2018), para. 37.

<sup>15</sup> 2017 Review of Climate Change Policies (December 2017).

<sup>16</sup> *Ibid.*, pp. 12-14.

towards the achievement of the goals set out in the Paris Agreement<sup>17</sup>.

In contrast to the review, CAT's assessment of Australia's policy is "insufficient," as it was for New Zealand. According to CAT, Australia's climate change policy "is further deteriorating"<sup>18</sup>. For example, the Australian government has turned its back on global climate action by dismissing the findings of the IPCC Special Report on Global Warming of 1.5 °C<sup>19</sup>, and in December 2018 Australia announced that it would not continue contributions to the Green Climate Fund (GCF), which had been ongoing since 2015<sup>20</sup>. CAT also indicated that although Prime Minister Morrison (conservative coalition government of the Liberal and National Parties) was reappointed in May 2019, it appears that no major progress has been made with regard to climate change policy<sup>21</sup>.

On the other hand, in the field of maritime policy, which CAT does not evaluate, Australia has a track record with some positive aspects. For example, Australia's Bureau of Meteorology and the Commonwealth Scientific and Industrial Research Organization (CSIRO) are engaged in monitoring the oceans and climate around Australia, the disclosure of information on scientific assessments, and reports once every two years<sup>22</sup>. Australia's ocean policies related to climate change have also been registered under the international conference "Our Ocean 2019"<sup>23</sup>. These include the IORA Indian Ocean Blue Carbon Hub 2019-2022, the Blue Economy Cooperative Research Center, and risk assessment of the ocean boundary in the Pacific Ocean due to the impact of climate change<sup>24</sup>. Taking these into consideration, Australia's ocean policies related to climate change could be described as progressing with a focus on research.

### 3.2 Relationship with Pacific Island States

Like New Zealand, the Pacific Island states also carry diplomatic significance for Australia<sup>25</sup>. *The Pacific Step-Up* launched in 2016 and updated in November 2018, commits to support Pacific Island States providing approximately \$1.4 billion from 2019 to 2020<sup>26</sup>. According to the policy brochure for 2018, among the support items agreed upon with the Pacific Islands Forum (PIF), Australia has promised the Pacific Island states support amounting to \$500 million over five years for investment in renewable energy and investment in resilience in the areas of climate and disaster<sup>27</sup>.

### 3.3 Policy for Accepting Migrants Displaced by Rising Sea Levels

Australia, like New Zealand, has prepared a framework for accepting workers, targeted at citizens of Pacific Island states. *The Pacific Labour Scheme*, launched in July 2018, serves to enhance capacity across the Pacific region and eliminate labour shortages in Australia by accepting workers from nine countries including Fiji, Kiribati, and Nauru, and through the return of skilled workers to their hometowns after that<sup>28</sup>. Prior to this program, there had been a program known as *the Northern Australia Worker Pilot Program* (NAWPP), which would allocate migration quotas to workers from Kiribati, Nauru, and Tuvalu. *The Pacific Labour Scheme* was established as the successor program to the NAWPP and

<sup>17</sup> *Ibid.*, p.41.

<sup>18</sup> *Supra* note 5, (CAT), "Australia" in 19 Sep 2019.

<sup>19</sup> Guardian, "Australian government backs coal in defiance of IPCC climate warning" on 8 October 2018, <https://www.theguardian.com/australia-news/2018/oct/09/australian-government-backs-coal-defiance-ipcc-climate-warning> (Accessed on November 15, 2019).

<sup>20</sup> Australian Budget at a Glance 2019-20. p. 3, footnote 2. However, this was originally a support program for \$200 million over four years under the UNFCCC. *See*, <https://www.environment.gov.au/climate-change/adaptation/international-climate-change-adaptation-initiative/paccsap> (Accessed on November 15, 2019).

<sup>21</sup> *Supra* note 5, (CAT), "Australia" in 19 Sep 2019.

<sup>22</sup> State of Climate 2018.

<sup>23</sup> *Supra* note 7, p. 2.

<sup>24</sup> Refers to the impact and risks that the rising sea levels have on the ocean boundaries with other countries, brought about by changes to the topography, which is used to demarcate borders with other countries.

<sup>25</sup> Department of Foreign Affairs and Trade "Stepping Up Australia's Engagement with Our Pacific Family,"

<https://dfat.gov.au/geo/pacific/engagement/Documents/stepping-up-australias-engagement-with-our-pacific-family.pdf> (Accessed on November 15, 2019).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> Department of Foreign Affairs and Trade, "Pacific Labour Mobility" <https://dfat.gov.au/geo/pacific/engagement/pacific-labour-mobility/Pages/default.aspx> (Accessed on November 15, 2019).

the Seasonal Worker Programme<sup>29</sup>.

Like the migrant acceptance program in New Zealand, Australia's programs established with the Pacific Island states in mind are not specific to the acceptance of climate refugees. However, again like New Zealand, the Australian government recognizes this labour scheme as "a key part of building resilience (in the Pacific Island states)<sup>30</sup>".

### 3.4 Brief Summary and clarifying questions

As seen above, both New Zealand and Australia have climate change and ocean policies, and in particular are actively engaged in international cooperation towards Pacific Island states on climate change measures. However, the current situation is such that initiatives for migrants displaced by sea level rise are not implemented as such policies in themselves, but instead involve the acceptance of migrants as part of the economic and employment policies.

If you look at the situation in both governments from the perspective of climate refugees, according to Jane McAdam in 2016, while there are more than 20 examples in New Zealand and Australia of refugee applications from Tuvalu and Kiribati for seeking protection as refugees displaced by climate change (so-called climate refugees), there are no successful cases<sup>31</sup>. How might this current state of affairs be assessed in the context of international discussions?

## 4. Trends in International Discussions on Migration Associated with Rising Sea Levels

With regard to problems related to international law associated with sea level rise, the International Law Commission (ILC) has just decided to include in its agenda the issue of "Sea-level rise in relation to international law<sup>32</sup>." in 2019. Concerning the issue of sea level rise, the ILC had already been engaged in discussions through its work on baselines in international maritime laws (completed in 2012) and work on protecting people in disasters (completed in 2016). However, taking into consideration the following points, it decided to include the issue of rising sea levels in new codification work: (1) growing concern and interest in recent years, (2) the emergence of new State practice, (3) possible codification of international law, and (4) an agenda that reflects new developments in international law<sup>33</sup>.

Ahead of the ILC, the International Law Association (ILA) established the committee on International Law and Sea Level Rise in 2012, and adopted the *Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise* (hereafter, "Sydney Declaration") in 2018<sup>34</sup>. With regard to migrants displaced by rising sea levels, Principle 7 of the Sydney Declaration states that "Both States of origin and destination should review existing domestic laws [...] in accordance with applicable international human rights law as well as international labour law<sup>35</sup>," indicating that accepting migrants displaced by rising sea levels is not necessarily seen as a stringent legal obligation.

New Zealand and Australia, as explained above, provide much support to Pacific Island states for adapting to climate change. While the migrant acceptance programs of both countries are not aimed specifically at the acceptance of climate refugees, the position of both governments is that these programs

<sup>29</sup> Archived; Minister for Foreign Affairs. [https://foreignminister.gov.au/releases/Pages/2018/jb\\_mr\\_180301a.aspx](https://foreignminister.gov.au/releases/Pages/2018/jb_mr_180301a.aspx) (Accessed on November 15, 2019).

<sup>30</sup> Nansen Initiative, "Global Consultation Conference Report: Geneva, 12-13 October 2015" (December 2015), p. 77 [Australian Statement].

<sup>31</sup> Jane McAdam, "Building International Approaches to Climate Change, Disasters, and Displacement," *Windsor Yearbook of Access to Justice*, vol.33, no. 2 (2016), p.5.

<sup>32</sup> Analytical Guide to the Work of the International Law Commission [http://legal.un.org/ilc/guide/8\\_9.shtml](http://legal.un.org/ilc/guide/8_9.shtml) (Accessed on 8 November, 2019).

<sup>33</sup> *Ibid* (A/73/10), paras. 23-25. The issues currently proposed by the ILC are: maritime law (such as baselines for sea level rise and the legal effect of changing ocean borders established based on these baselines, the demarcation of boundaries, islands and manmade islands, existing boundaries and the sovereign rights of coastal countries, and the rights and obligations of third countries), national character (continuity/loss of national character in the event that an island becomes completely submerged, transfer of territory or integration with a third country's territory), and protection of people (such as international cooperation, local measures, and the protection of human rights of refugees, migrants, and forcibly displaced people). See also, paras. 15-17.

<sup>34</sup> ILA Resolution 6/2018, 19-24 August 2018. pp. 1-2.

<sup>35</sup> *Ibid*, Annex Principle 7. Furthermore, Principle 9 on the highly urgent cross-border displacement of affected persons, states that "States should admit persons displaced across borders" and "should not return persons." This is not in the context of migrants displaced by rising sea levels, but in the context of disasters. [https://www.ila-hq.org/images/ILA/Resolutions/ILAResolution\\_6\\_2018\\_SeaLevelRise\\_SydneyDeclaration.pdf](https://www.ila-hq.org/images/ILA/Resolutions/ILAResolution_6_2018_SeaLevelRise_SydneyDeclaration.pdf).

incorporate contexts of support related to climate change. In this regard, the Pacific Island states also perceive migrant labour policies and migration as a measure of adapting to climate change as being inseparable from one another<sup>36</sup>.

Based on this current situation, if we were to consider the facts that New Zealand and Australia have in place cooperative systems with the Pacific Island states, that they already provide much continuous support, that acceptance programs are in place as a part of migrant policy, and that these programs also serve as a part of climate change policy, then neither New Zealand nor Australia seem to be in a position to be criticized under international law, even if they do not accept migrants as per se climate migrants or climate refugees.

However, as the ILC is set to carry out some form of codification work to reflect new developments in international law going forward (item (4) above), there is a need to continue paying close attention to how the related state practices will be assessed in ILC.

(Originally published in Japanese in December 2019)

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<sup>36</sup> *Supra* note 31, p.137 [Statement of Kilibati].