

# Losing home without going anywhere: Inuit in Greenland and the conceptualization of climate-related displacement

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## 1. Introduction

This chapter contends that interpretation of contemporary approaches to climate and disaster-related mobilities adopted in law and policy are inadequate to address the diverse forms of dispossession and displacement that Indigenous Peoples continue to endure, and of which the effects of climate change are a contemporary manifestation. In doing so, it contributes to the small and evolving decolonial scholarly praxis in climate adaptation discussions,<sup>1</sup> and follows the lead of scholars such as Yamagulova et al<sup>2</sup> to champion ‘Indigenous peoples’ role in directing adaptation research, action and decision-making in line with their capacities and aspirations for self-determination and cultural continuity,<sup>3</sup> and their broader human rights. In doing so, it intentionally seeks to avoid damage-centered research, which tends to highlight the symptoms of a problem rather than the root cause. Accordingly, this chapter focuses less on the disproportionate impact of climate change on Indigenous Peoples, but more on the mechanisms of constraint and extraction that contribute both to climate change and to indigenous exclusion, discrimination and erasure.<sup>4</sup>

The central focus of this chapter is the displacement experiences of Inuit in Greenland, for whom colonization altered the way Inuit viewed the world and understood themselves within it. As the UN Special Rapporteur on the Rights of Indigenous Peoples recently wrote, by ‘...trying to limit the population growth of Greenland and imposing Danish culture, language and social and legal structures and through forced urbanization and discrimination, [some Danish] policies have threatened Inuit culture, identity and institutions...’,<sup>5</sup> aspects of which continue to this day.<sup>6</sup> Although there is a burgeoning body of research in which the nexuses between identities, climate, and mobility are interrogated, particularly, though not exclusively, from the Pacific region,<sup>7</sup> very little of that has centered on the experiences and knowledges of

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<sup>1</sup> Danielle Emma Johnson, Meg Parsons and Karen Fisher, ‘Indigenous Climate Change Adaptation: New Directions for Emerging Scholarship’ (2022) 5 *Environment and Planning E: Nature and Space* 1541, 1542.

<sup>2</sup> Lilia Yumagulova and others, ‘Indigenous Perspectives on Climate Mobility Justice and Displacement-Mobility-Immobility Continuum’ (2023) 0 *Climate and Development* 1; Robin Bronen and Patricia Cochrane, ‘Decolonize Climate Adaptation Research’ (2021) 372 (6548) *Nature* 1245.

<sup>3</sup> Yumagulova and others, *ibid*.

<sup>4</sup> On climate change constituting a contemporary manifestation of colonialism see: Kyle Whyte, ‘Is it Colonial Déjà Vu? Indigenous Peoples and Climate Injustice’ in Joni Adamson and Michael Davis (eds) *Humanities for the Environment: Integrating Knowledge, Forging New Constellations of Practice* (Routledge 2016) 88. On climate change as threat to the Indigenous right to exist, see Comar, this volume.

<sup>5</sup> Human Rights Council, *Visit to Denmark and Greenland: Report of the Special Rapporteur on the Rights of Indigenous Peoples*, José Francisco Calí Tzay, UN Doc A/HRC/54/31/Add.1 (3 August 2023) 5.

<sup>6</sup> *ibid*. Urbanization for instance, continues to rise: Statistics Greenland, ‘Population’

<<https://stat.gl/dialog/topmain.asp?lang=en&subject=Population&sc=BE>> accessed 2 October 2023. See also Miriam Cullen, Benedicte Sofie Holm, and Céline Brassart-Olsen, ‘A Human Rights-Based Approach to Disaster Risk Management in Greenland: Displacement, Relocation, and the Legacies of Colonialism’ (2024) *Yearbook of International Disaster Law* (Thematic Issue: Human Rights) (forthcoming).

<sup>7</sup> Fleur Ramsay, ‘Keynote Address: Decolonizing Climate Displacement’ (University of New South Wales Law Journal Launch of Issue 45(4), University of New South Wales, Sydney 22 December 2022) (on file with author); Lucas Lixinski, Jane McAdam, & Patricia Tupou, ‘Ocean Cultures, the Anthropocene and International Law: Cultural Heritage and Mobility Law as Imaginative Gateways’ (2022) 23 *Melb J Int’l Law* 1, 5; Yumagulova and others (n 2).

Inuit.<sup>8</sup> Even more broadly, it was not until 2022 that the IPCC expressly recognized colonialism as a driver of climate change as well as a factor which exacerbates one's vulnerability to its impacts. The IPCC found with high confidence that '[v]ulnerability of ecosystems and people to climate change [is] driven by patterns of intersecting socio-economic development, unsustainable ocean and land use, inequity, marginalisation, historical and ongoing patterns of inequity such as colonialism, and governance.'<sup>9</sup>

This chapter acknowledges that the written format in which academic work is typically produced, and indeed in which the law of the sovereign state is embedded, has serious limitations. As one PhD scholar wrote 'I am confident that you cannot come to a full understanding of Indigenous concepts of relationality in this [written] format, even if I were to produce here the best academic paper ever written.'<sup>10</sup> This student's reflections mirror those of critical legal scholars who acknowledge that in law, the structural bias inherent in legal institutions means that even the most 'impeccable legal argument' serves 'deeply embedded preferences...'<sup>11</sup> Accordingly, this chapter elevates Inuit epistemologies and experience to understand the forms of displacement that climate change imposes for Inuit, and at the same time accepts the tension with undertaking that task in this format. That tension does not, in the authors' view, negate the value of writing these words.

It is also important to acknowledge that the breadth of displacements Indigenous Peoples have experienced and continue to withstand cannot be decoupled from the ongoing coloniality that relevant formal systems of law, academia, and even climate change itself, each form part. As such, this chapter adopts the broad definition of 'coloniality' put forward by Liboiron, which refers to a set of practices 'characterized by a unique combination of remoteness, infrastructural sparseness, Indigenous erasure, and settler homogeneity that shapes everyday lived experience, politics and intellectual production'.<sup>12</sup> Climate change adds to pre-existing coloniality, not (only) through the direct weather and environmental-related effects exacted upon Peoples who have hardly caused it, but also through the way those things are perceived and responded to.

This chapter begins by elaborating the context within which Inuit were originally dispossessed and displaced as a People: colonialism, which is fundamental to understanding contemporary displacement and associated responses. The remainder of the chapter is then dedicated to explaining how the existing legal regime, and the associated desire of the legal certainty is an ill-fit for the that Inuit experience in Greenland.

## **2. First displacement: colonialism and coloniality in Greenland**

The vast majority of scholarship on climate and disaster-related mobilities, and for that matter refugee and migration studies more generally, ignore that refugee and migrant concepts are steeped in the colonial project, which 'actively denied sovereignty to much of the world, and

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<sup>8</sup> cf Cullen, Holm and Brassart-Olsen (n 6).

<sup>9</sup> 'Summary for Policymakers' in Hoesung Lee, J Romero and others, *Climate Change 2023: Synthesis Report. Contributions of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2023) 31 (hereafter IPCC Synthesis Report).

<sup>10</sup> Edward Allen cited in Max Liboiron, *Pollution is Colonialism* (Duke University Press, 2021) 22.

<sup>11</sup> Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP, 2005) 607.

<sup>12</sup> Liboiron (n 10) 29.

imposed borders that did not meaningfully map onto people's lives.'<sup>13</sup> Yet, colonialism is 'fundamental to contemporary migrations, mobilities, immobilities, receptions and social dynamics.'<sup>14</sup> This is readily apparent in the Arctic Region, in which Inuit exist across four nation states (Denmark, Canada, USA, and Russia). As a matter of law, territory itself is a European legal construct that dictates a certain relationship between community, authority, time and place.<sup>15</sup> To the colonizing authority, a legal interest in land was typically signaled through European-style infrastructural markers such as churches, roads, fences, and houses. As such, it was not difficult for them to ignore Indigenous Peoples' custodianship because 'the lighter the ecological footprint of the Indigenous peoples in question, the less likely they were likely to see the land as "inhabited" or "owned".'<sup>16</sup>

For Greenlandic Inuit, original dispossession and displacement was formalized in international law through a 1933 decision of the Permanent Court of International Justice, which declared Greenland *terra nullius* ('land belonging to no one') prior to 1814, and confirmed Greenland was part of the Danish state, ignoring millennia of human occupation before European arrivals.<sup>17</sup> Application of the doctrine of *terra nullius* not only legitimized the colonial project within the dominant international legal system but also affirmed a 'colonial mindset' in which Danish engagement in Greenland and with Inuit continued without any interrogation of otherwise obvious questions of jurisdiction and the misappropriation of land and resources.<sup>18</sup> Relevantly, the doctrine of *terra nullius* continues to evoke 'a sense of misappropriation and *displacement*' for the Indigenous Peoples today.<sup>19</sup>

When it joined the UN in 1945, Denmark listed Greenland as a non-self governing territory. This meant that Denmark was obligated under the terms of the UN Charter to promote the wellbeing of the inhabitants of Greenland and advance the development of self-governance,<sup>20</sup> as part of a multilateral system of UN oversight 'geared towards eventual independence' of those territories.<sup>21</sup> Denmark was reluctant to relinquish its control of Greenland which constituted a significant buffer zone between the Soviet Union and the North America, and bestowed Denmark with a degree of diplomatic leverage it would otherwise not possess. In

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<sup>13</sup> Rebecca Hamlin, *Crossing: How We Label and React to People on the Move* (Stanford University Press 2021) 30. With notable exceptions: Thomas Spijkerboer, 'The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control' (2018) 20 *European Journal of Migration and the Law* 452; Karin de Vries and Thomas Spijkerboer, 'Race and the Regulation of International Migration. The Ongoing Impact of Colonialism in the Case Law of The European Court of Human Rights' (2021) 39 *NQHR* 291.

<sup>14</sup> Lucy Mayblin and Joe B Turner, *Migration Studies and Colonialism* (Polity Press 2021) 2.

<sup>15</sup> Usha Natarajan and Julia Dehm, 'Introduction: Where is the Environment? Locating Nature in International Law in Usha Natarajan and Julia Dehm (eds) *Locating Nature in International Law* (CUP 2022) 1, 14.

<sup>16</sup> Karin Mickelson, 'The Maps of International Law: Perceptions of Nature in the Classification of Territory Beyond the State' in Usha Natarajan and Julia Dehm (eds), *Locating Nature: Making and Unmaking International Law* (CUP 2022) 159, 165.

<sup>17</sup> Sara Olsvig and Miriam Cullen, 'Arctic Indigenous Peoples and International Law' (2024) *Nordic Journal of International Law* (forthcoming).

<sup>18</sup> Mickelson (n 16) 163.

<sup>19</sup> *Ibid* 164 (emphasis added).

<sup>20</sup> Charter of the United Nations, 26 June 1945, art. 73.

<sup>21</sup> Miriam Cullen, 'Climate Change, Colonialism, and Human Rights in Greenland' in Petra Butler and Jean-Pierre Gauci, *Human Rights in Small States* (Springer 2024) (forthcoming) pre-publication draft accessible <[https://research.ku.dk/search/result/?pure=en%2Fpublications%2Fclimate-change-colonialism-and-human-rights-in-greenland\(15b2a7c8-5b4c-4dd3-abfb-56c34f54ce2c\).html](https://research.ku.dk/search/result/?pure=en%2Fpublications%2Fclimate-change-colonialism-and-human-rights-in-greenland(15b2a7c8-5b4c-4dd3-abfb-56c34f54ce2c).html)> accessed 5 December 2023.

contrast with the spirit of the arrangements under the UN Charter,<sup>22</sup> Greenland was *subsumed into* the Danish state by an amendment to the Danish Constitution in 1953,<sup>23</sup> notably, without the free, prior, and informed consent of Inuit.<sup>24</sup> Although integration into the colonizer state was possible as a matter of legal technicality,<sup>25</sup> it was a suspect conclusion to non-self-governing status given the purpose of the arrangement under the Charter.<sup>26</sup> Denmark would have to persuade the UN that integration was valid including by showcasing an adequate degree of economic, social and cultural alignment between Greenland and Denmark.<sup>27</sup> Through legislation passed in 1950 (*the Greenland Acts*) Denmark advanced a policy of intense industrialization in Greenland, which led to the rapid expansion of cod fishing and mining especially, and the forced eviction and relocation of Inuit in line with those policy priorities. It saw the implementation of compulsory education that banned the use of any of the Greenlandic languages in schools, and removed some Greenlandic children to Danish families. In 1954, the UN General Assembly voted in favor of incorporation of Greenland into Denmark, partly on the basis of a report prepared by the Committee on Information from Non-Self-Governing Territories which had been persuaded by the Danish assimilation efforts, combined with a misapprehension that self-determination had been properly exercised by the Greenlandic People.<sup>28</sup>

As the policies of other governments did for Inuit elsewhere, these ‘colonial strategies sought to missionize, educate and render sedentary Indigenous peoples in the Arctic, replacing Indigenous institutions with settler ones... [and]... facilitated resource extractive industries.’<sup>29</sup> The consequence of which was, among other things, to have effectively ‘ended high mobility as an adaptation strategy to climate variability and extreme weather, without replacing it with other readily identifiable adaptation strategies...’.<sup>30</sup> Long before the impacts of climate change were a measured aspect of daily life, Inuit had already been repeatedly uprooted, relocated, and dispossessed not so much “of territory” insofar as territorial ownership of land was not part of an Inuit way of thinking, but of a relationship with that territory through forced assimilation

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<sup>22</sup> Cullen, Holm and Brassart-Olsen (n 6).

<sup>23</sup> Confirmed by the UN General Assembly with the adoption of resolution 849(IX) on 22 November 1954

<sup>24</sup> Gudmundur Alfredsson, ‘Greenland and the Law of Political Decolonization’ (1982) GYIL 302; Gudmundur S. Alfredsson, ‘Greenland and the Right to Self-Determination’ (1982) 15(1) ActScandJurisGent 39-43; Anne Kristine Hermann, *Imperiets Børn: Da Danmark Vildledte FN Og Grønland for at Beholde Sin Sidste Koloni* (Lindhardt og Ringhof 2021) 74-78; Cullen (n 21) 6-7.

<sup>25</sup> Chapter XI of the UN Charter.

<sup>26</sup> James Crawford, *The Creation of States in International Law* (OUP 2007 2nd edn) 283.

<sup>27</sup> Since early 1952 the UN General Assembly had been engaged in a formal process of identifying a list of factors which should be taken into account in deciding whether a Territory has or has not attained a full measure of self government: ‘Future procedure for the continuation of the study of factors which should be taken into account in deciding whether a territory is or is not a territory whose people have not yet attained a full measure of self-government’ (18 January 1952) UN Doc A/RES/567(VI) 361<sup>st</sup> plen mtg. The several years of deliberations led to a resolution adopted just five months after the Constitutional amendment incorporating Greenland into Denmark was passed: ‘Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government’ (27 November 1953) UN Doc A/RES/742(VIII), 459<sup>th</sup> plen mtg.

<sup>28</sup> In fact it was a decision made by exclusively by the Greenlandic Provincial Council, which was chaired by a Dane. There was no referendum held, and the expertise and advice was provided by Denmark, and all of the options for the conclusion of non-self-governing status were not presented: Alfredsson ActScandJurisGent (n 24) 40.

<sup>29</sup> Whyte (n 4) 101.

<sup>30</sup> Elizabeth Marino, ‘The Long History of Environmental Migration: Assessing Vulnerability Construction and Obstacles to Successful Relocation in Shishmaref, Alaska’ (2012) *Global Environmental Change* 274, 278.

and the removal of the language, culture, and identity that supported it. As will be further elaborated in the sections which follow, for Inuit to be displaced is about more than simply physical relocation from one place to another.

### 3. The desire for legal certainty

A central struggle in the literature on mobility in the context of climate change and disasters is how to define exactly what is being discussed. Dominant systems of law demand certainty, definitions, and clarity about who and what is included or excluded from regulatory concern. Many scholars have undertaken detailed legal analysis to declare, define, and assess just who enjoys which legal protection, and who falls within and outside state-based legal recognition and associated entitlements.<sup>31</sup> There exist a variety of legal and policy categories into which people on the move in the context of climate change or disaster might fall, with no one-size-fits-all classification. Today, scholars generally prefer to speak of mobilities and immobilities in the context of climate change and disaster. The word “mobility” is favored because it recognizes the individual agency in decisions to move, such as those who move in advance of foreseeable climate-related hazards or potential disaster. To move “in the context of” climate change and disaster, acknowledges the multiple reasons that people might relocate, which is rarely, if ever, a single-issue decision. There have also been those who have debated the utility of mobility at all as a frame of reference for the impacts of climate change.<sup>32</sup>

Most early scholarship focused on the law that would, could, or should apply if people cross from one state into another, notwithstanding most people displaced in the context of climate change and disaster will not cross an international border. However thoughtfully conceived, that scholarly focus risked reproducing colonial imperatives insofar as it situates analysis within a legal framework that prioritises the inwards migration concerns of some states, over the lived experience of the people within them.<sup>33</sup> More recently, recognition that most people on the move in the context of climate change and disaster remain within the boundaries of the same state, has led to a growing body of literature on “internal displacement”. This is the legal guidance most relevant to the present case study insofar as the relevant mobility paradigm is one predominantly within the Kingdom of Denmark.

The Guiding Principles on Internal Displacement (GPID) are arguably the preeminent instrument for steering approaches to internal displacement in line with extant binding human rights obligations. Article 1(2) of the GPID provides that ‘internally displaced persons’ (IDPs) are those who have been forced to leave their ‘homes or places of habitual residence’ as a result of armed conflict, generalized violence, violations of human rights or natural or human-made disasters ‘and who have not crossed an internationally recognized State border’. Useful though

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<sup>31</sup> Eg Jane McAdam, *Climate Change, Forced Migration and International Law* (OUP 2012); Matthew Scott, *Climate Change, Disasters and the Refugee Convention*, (CUP 2020); Simon Behrman and Avidan Kent (eds), *“Climate Refugees”: Beyond the Legal Impasse* (Routledge 2018); Simon Behrman and Avidan Kent (eds), *Climate Refugees: Global, Local and Critical Approaches* (CUP 2022).

<sup>32</sup> Benoît Mayer, ‘Constructing Climate Migration as a Global Governance Issue: Essential Flaws in the Contemporary Literature’ (2013) 9 *McGill International Journal of Sustainable Development Law and Policy* 87; Ingrid Boas, ‘“Climate Mobility” Is a Proper Subject of Research and Governance’ in Benoît Mayer and Alexander Zahar (eds), *Debating Climate Law* (CUP 2022); Benoît Mayer, ‘Who Are “Climate Refugees”?’ Academic Engagement in the Post-Truth Era’ in Behrman and Kent *ibid* (2018) 89; Benoît Mayer, ‘Critical Perspective on the Identification of “Environmental Refugees” as a Category of Human Rights Concern’ in Dimitra Manou and others, *Climate Change, Migration and Human Rights* (Routledge 2017).

<sup>33</sup> For an elaboration of this critique, see: Spijkerboer (n 13).

such a conceptualization has been in advancing legal protections (as evidenced by its incorporation into regional frameworks for instance),<sup>34</sup> the GPID were drafted more than two decades ago. They did not expressly incorporate considerations of either climate change or empire in framing what, to whom, and how existing international law applied, and did not purport to critique those norms, nor anticipate how they could or should shift or progress. Nevertheless the GPID remain a grounding tool for addressing internal displacement based on norms of international law.

#### **4. What is ‘displacement’ from ‘home’ for Greenlandic Inuit and how does it manifest?**

Neither the word ‘homes’ nor the phrase ‘places of habitual residence’ are defined in the GPID, or elaborated in the commentaries that followed their adoption.<sup>35</sup> The concept of “home” as conceptualized by Western Europeans and applied to others (both physically and philosophically) has long been critiqued, and so too displacement from it. Bhabha writing in 1992 averred that to be unhomed ‘has less to do with forcible eviction and more to do with ... enforced social accommodation, or historical migrations and cultural relocations.’<sup>36</sup> Thus, to be displaced from one’s home does not necessarily require movement from one geographical location to another.

Indeed, to limit climate and disaster-related displacement and mobility to only its physical manifestation ignores the ways in which climate-related displacement is a social, cultural, economic, and spiritual phenomenon that compounds pre-existing displacement processes.<sup>37</sup> Inuit have experienced, and continue to experience, displacement in ways that cannot be adequately accounted for through notions of physical residence, and indeed occurs without necessarily being physically relocated at all. Rather, ‘the ground itself [has been] redefined beneath their feet’.<sup>38</sup> That redefining began with colonization, the invocation of the doctrine of discovery, the implementation of colonial systems of law, capitalism, land management and governance, as well as the structured dispossession of language, land and family. Now, it occurs through climate change, which itself is the result of the very ‘standards of civilization’ to which those policies aspired.<sup>39</sup> For ‘what initially appears to be the imperatives of capitalism and modernity turn out to be the culturally and historically specific characteristics that the modern capitalist state assumed in the West.’<sup>40</sup> Whereas for Inuit, physical and beyond physical understandings cannot be easily separated. Humans are a *part* of the environment in which they exist, and nature is also part of them. As much is now expressly acknowledged in the Preamble

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<sup>34</sup> The definition has been adopted verbatim in the Protocol on the Protection and Assistance to Internally Displaced Persons; and endorsed by the Committee of Ministers to the Council of Europe: Council of Europe, Rec(2006)6 of the Committee of Ministers to member states on internally displaced persons of 5 April 2006, para 1; as well as in the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, opened for signature 23 October 2009 (entered into force 6 December 2012) Art 1(k).

<sup>35</sup> Walter Kälin, ‘Guiding Principles on Internal Displacement: Annotations’ (2008) 38 *Studies in Transnational Legal Policy* <[https://www.brookings.edu/wp-content/uploads/2016/06/spring\\_guiding\\_principles.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/spring_guiding_principles.pdf)> accessed 3 October 2023.

<sup>36</sup> Homi Bhabha, ‘The World and the Home’ [1992] *Social Text* 141, 141.

<sup>37</sup> Yumagulova and others (n 2) 1.

<sup>38</sup> Daniel Coleman and others ‘Introduction’, in Daniel Coleman and others (eds), *Countering Displacements: The Creativity and Resilience of Indigenous and Refugee-ed People* (The University of Alberta Press 2012) XIV.

<sup>39</sup> Ntina Tzouvala, *Capitalism as Civilization: A History of International Law* (CUP 2020) 219.

<sup>40</sup> *Ibid* 212.

to the 2023 draft Greenland Constitution.<sup>41</sup> That interconnectedness itself is part of a broader and interdependent ecosystem. This is a core part of being Inuit. Not in the stereotyped way manifested in tourist brochures, but in very practical respects that cannot be detached from place.

In contrast to conceptualizations of climate-related mobility on one end of a spectrum, and immobility on the other, Bhabha's notion of "unhoming" describes a phenomenon of displacement from home without reference to a physical relocation, in which 'to be unhomed is not to be homeless.'<sup>42</sup> This notion of being "unhomed" aligns well with notions of "solastalgia", a term coined over a decade later and often used in the context of describing more-than-physical losses from climate change and environmental destruction.<sup>43</sup> It refers to the grief that follows the transformation and degradation 'of the biophysical spaces and landscapes within which people live and which they call "home."<sup>44</sup> As Albrecht explained in coining the term, solastalgia 'is manifest in an attack on one's sense of place, in the erosion of the sense of belonging (identity) to a particular place and a feeling of distress (psychological desolation) about its transformation.'<sup>45</sup> These elements under 'attack' are those very facets that give rise to recognition of 'Peoples' under international law, and their loss thus also diminishes access to an realization of self-determination.

Although the English language is imperfectly placed to represent or convey Inuit understandings of the world, the anthropological notion of sentient ecology provides a useful tool. Sentient ecology describes knowledge that is neither formal nor authorized within the annals or context of "science" but rather is only transmissible within the context of its practical application '... it is based in feeling, consisting in the skills, sensitivities and orientations that have developed through long experience of conducting one's life in a particular environment.'<sup>46</sup> In Greenland, over 80% of households in rely on wild or caught foods for at least a portion of their diet.<sup>47</sup> Although the nomadic lifestyle has by and large become a thing of the past, many people continue to maintain seasonal residences or camps.<sup>48</sup>

As such, capability in nature is an important part of daily life for a People who have always been ecologically mobile (capable of moving across ecological systems for sustenance),<sup>49</sup> and adept at waiting for the right moment, for weather, tides, and animals. Crucially, the way Inuit perceive the world and themselves in it is not transferrable to other places. Identity is inherently connected to one's capabilities in *this specific* environment. As the world dissolves at a rapidly

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<sup>41</sup> which provides "the Greenlandic People are a part of nature": authors' translation from Danish "det grøndlankse folk er en del af naturen": Constitution of Greenland (draft) (2023).

<sup>42</sup> *ibid.*

<sup>43</sup> Glenn Albrecht, 'Solastalgia: A New Concept in Human Health and Identity' (2005) 41(3) *Philosophy, Activism, Nature* 44.

<sup>44</sup> Glenn Albrecht, 'Negating Solastalgia: An Emotional Revolution from the Anthropocene to the Symbiocene' (2020) 77(1) *American Imago* 9.

<sup>45</sup> Albrecht (n 43) 44.

<sup>46</sup> Tim Ingold, *The Perception of the Environment* (2<sup>nd</sup> ed, Routledge 2022) 29.

<sup>47</sup> Kelton Minor and others, 'Greenlandic Perspectives on Climate Change: Results from a National Survey' (2019) <[https://kraksfondbyforskning.dk/wp-content/uploads/2019/08/2019\\_08\\_11\\_Greenlandic\\_Perspectives\\_Climate\\_Change\\_Final\\_Report\\_Reduced.pdf](https://kraksfondbyforskning.dk/wp-content/uploads/2019/08/2019_08_11_Greenlandic_Perspectives_Climate_Change_Final_Report_Reduced.pdf)> accessed 5 December 2023.

<sup>48</sup> Naja Carina Steenholdt, 'Subjective Well-Being and the Importance of Nature in Greenland' (2022) 58 *Arctic Anthropology* 66, 67

<sup>49</sup> Whyte (n 4) 88.

increasing pace, the applicability and relevance of highly developed skills begin to dissolve with it. A person's sensitivity to the environment struggles to interpret signals not heard or seen before. In this way, climate change has added a new dimension to pre-existing colonialities and amplified feelings of being homesick in one's home, homeless in one's homeland.<sup>50</sup> Thus, as the ice dissolves with the changing climate, aspects of the Inuit sense of capability and capacity to provide dissolves too. The personal and collective sense of connectedness to nature and overall wellbeing also diminishes.<sup>51</sup>

In Greenland, displacement associated with climate change is not only about displacement of people from place,<sup>52</sup> but also about *displacement of place from people*. Place itself is physically disappearing as sea ice becomes "absent" in locations at which it could once be relied.<sup>53</sup> For instance, during the winters of 2016 and 2018, surface temperatures in the central Arctic measured 6 degrees (Celsius) above the 1981–2010 average, "contributing to unprecedented regional sea ice absence".<sup>54</sup> Arctic sea ice extent is now declining in all months of the year. Even when it has not disappeared entirely it has often thinned to such an extent that it is not reliable to bear weight,<sup>55</sup> making passage across the ice often inaccessible, or unsafe. Permafrost melt also contributes to a loss of reliable hunting grounds, shelter, and food storage. In addition, changes in Arctic hydrology, wildfire and abrupt thaw have altered "the abundance and distribution of animals including reindeer and salmon... these impact access to (and food availability within) herding, hunting, fishing, forage and gathering areas, affecting the livelihood, health and cultural identity of residents including Indigenous peoples."<sup>56</sup> All of which impinges upon life for both hunter and prey (human and animal) in substantial respects.

Climate change adds to pre-existing coloniality, not (only) through the direct weather and environmental-related effects exacted upon Peoples who have hardly caused it, but also through the way those things are perceived and responded to. The Arctic, and Greenland in particular, is subject to significant scientific attention because of the consequences for the rest of the world of climate impacts in this region. The melting of the Greenlandic ice sheet holds profound and undeniable significance for planetary health. Concerted efforts to slow or reverse that process include geoengineering and solar radiation modification projects which, when implemented at scale, manipulate the climate system itself, and run the risk of 'deleterious effects that are

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<sup>50</sup> Yumagulova and others (n 2); *ibid*.

<sup>51</sup> In interpreting the human right to health, the UN Committee on Economic, Social and Cultural Rights has acknowledged that displacing Indigenous Peoples "against their will from their traditional territories and environment ... and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.": UN Committee on Economic, Social, and Cultural Rights, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)', (11 August 2000) UN Doc. E/C.12/2000/4, para. 27. And in Greenland, the Greenlandic Board of Food and Environment has advised that the dietary *context* including the social and cultural context, is important to overall health: Gert Mulvad, 'Food Security in Greenland' in Heather Exner-Pirot, Bente Norbye and Lorna Butler (eds), *Northern and Indigenous Healthcare* (Open Press University of Saskatchewan 2018) 40; Peter Bjerregaard and Gert Mulvad, 'The Best of Two Worlds: How the Greenland Board of Nutrition has Handled Conflicting Evidence about Diet and Health' 71(1) (2012) *Int J Circumpolar Health* 1, 3.

<sup>52</sup> See Cullen, Holm, and Brassart-Olsen (n 6).

<sup>53</sup> Michael Meredith and others, 'Polar Regions' in IPCC Special Report on the Oceans and Cryosphere in a Changing Climate (Intergovernmental Panel on Climate Change 2019) 261; IPCC Synthesis Report (n 9) 46.

<sup>54</sup> Meredith and others *ibid* 205.

<sup>55</sup> *ibid*.

<sup>56</sup> *ibid* 206.



widespread, long lasting or severe.’<sup>57</sup> Much of this work takes place without the input, knowledge, meaningful consultation, or consent of the Inuit whose daily lives will or could be directly impacted by such interventions,<sup>58</sup> notwithstanding that their knowledge could well improve the projects themselves.<sup>59</sup>

Indeed, according to a report of the UN Human Rights Council Advisory Committee on the impact of new technologies intended for climate protection on the enjoyment of human rights, Indigenous Peoples are not *systematically* included in the design or planning of new technologies for climate protection at all.<sup>60</sup> Indeed, as the world feels the urgency and importance of responding to climate change, the installation of geoengineering or mitigation technologies has at times ridden roughshod over the rights of the Peoples directly impacted by them. There is also a concern that projects claiming to address or mitigate climate change could serve as a Trojan horse for other policy or commercial objectives, as has already occurred elsewhere.<sup>61</sup> In this context, the 2023 Statement of the Arctic Peoples’ Conference provides, relevantly, “climate change cannot be used as an excuse to infringe our distinct rights as Indigenous Peoples.”<sup>62</sup> It objects to the “green colonialism” being experienced in the Arctic which it defines as “land encroachment, resource extraction, renewable energy production, and protectionist conservation that is undertaken at the expense of Indigenous Peoples’ reality ... [and] without our consent...”

Infrastructure, mining, and energy companies have their eyes turned to Greenland as the melting of the ice sheet and other climate impacts permits better access to deposits, and new business opportunities. In the past month, Greenland both acceded to the Paris Agreement and signed a strategic partnership on sustainable raw materials value chains with the EU which they will now put into action.<sup>63</sup> The corporate and material objectives of the latter arrangements come with inherent risk that potentially undermines the realization of environmental protections. At the time of writing, Greenland Minerals—a conspicuously named Australian-domiciled company—has undertaken investor state dispute settlement (ISDS) to force its perceived right to exploit rare earth elements deposits near the South-Greenland settlement of Narsaq, after a license to exploit the region was declined by the Greenland Government.<sup>64</sup>

ISDS was recently critiqued by the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

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<sup>57</sup> UN Human Rights Council, *Impact of New Technologies Intended for Climate Protection on the Enjoyment of Human Rights* UN Doc A/HRC/54/47 (10 August 2023) paras 14, 55, annex.

<sup>58</sup> *ibid.*

<sup>59</sup> See, eg, Magali Houde and others, ‘Contributions and Perspectives of Indigenous Peoples to the Study of Mercury in the Arctic’ (2022) 841 *Science of the Total Environment* 156566.

<sup>60</sup> *ibid.*, para 55.

<sup>61</sup> See, eg, Hamza Hamouchene and Katie Sandwell (eds), *Dismantling Green Colonialism: Energy and Climate Justice in the Arab Region* (Pluto Press 2023).

<sup>62</sup> ‘Statement of the Arctic Peoples’ Conference 2023 – Inuiaat Issittormiut Ataatsimeersuarnerat 2023’ at the 50<sup>th</sup> Anniversary of the first circumpolar meeting of Arctic Indigenous Peoples <<https://www.inuitcircumpolar.com/news/statement-of-the-arctic-peoples-conference-2023-inuiaat-issittormiut-ataatsimeersuarnerat-2023/>> accessed 5 December 2023.

<sup>63</sup> European Commission, ‘EU and Greenland Sign Strategic Partnership on Sustainable Raw Materials Value Chains’ (Press release, 30 November 2023).

<sup>64</sup> Claimant’s Statement of Claim, *Greenland Minerals A/S v Government of Greenland (Naalakkersuisut) and the Government of the Kingdom of Denmark* (19 July 2023) <<https://www.italaw.com/sites/default/files/case-documents/180123.pdf>> accessed 13 November 2023. These rare earth elements are increasingly in demand to facilitate the production of certain green technologies.

precisely because it inhibits a state's capacity to meet its environmental protection and human rights obligations.<sup>65</sup> Indigenous Peoples have no right to participate in proceedings, and when they have requested participation, it has been routinely denied by the arbitral tribunal.<sup>66</sup> ISDS is part of many bilateral international investment agreements between states and private companies, which permit the settlement of disputes under the agreement 'not by independent judges but by arbitration lawyers, many of whom work for law firms that represent investors'.<sup>67</sup> The ISDS system creates rights for private companies without any associated responsibilities, and is a platform within which companies can bring claims against governments without any reciprocal possibility for claims in the other direction. Their decision-makers can order crippling amounts in damages, sometimes several times more than the state's own GDP.<sup>68</sup>

In relation to Greenland Minerals' proposed open pit mine near Narsaq, three UN special procedures mandate holders wrote to the company to express concern over 'potential human rights violations and environmental damaging consequences'.<sup>69</sup> The letter explained among other things that:

Concerns have been raised over the lack of access to adequate information, failure to consult and seek the free, prior, and informed consent of local indigenous community, insufficient documentation and recognition of environmental risks of toxic and radioactive pollution and waste and damage to the nearby UNESCO heritage listed site, Kujaata [sic].<sup>70</sup>

Other potential impacts include the disturbance of habitat for terrestrial, freshwater and marine fauna and flora, including the endangerment of vulnerable or near threatened species.<sup>71</sup> It is alleged that the environmental impact assessment downplayed the risks and the assessment was presented by the company in a way that was not culturally appropriate, nor in a language understood by those impacted.<sup>72</sup> Even if Narsaq residents are not displaced physically, the damage to the surrounding area has the potential to displace them from their knowledge and inhibit access to fishing and hunting. An ISDS award is decided in confidence and with no obligation to consider either environmental protection or human rights.

## **5. Adding the collective dimension to mobility and rights**

In Greenland, the way Inuit people feel capable is associated with their capacity to navigate place, and subjective individual well-being is inherently connected to broader 'collective

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<sup>65</sup> Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, *Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights*, UN Doc A/78/168 (13 July 2023) paras 6, 7, 14, 33, 40-48.

<sup>66</sup> *ibid* 9-10, paras 24-26.

<sup>67</sup> *ibid* para 1.

<sup>68</sup> *ibid* 3, 32.

<sup>69</sup> Letter from the Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group on the issue of human rights and transnational corporations and other business enterprises; and the Special Rapporteur on the Rights of Indigenous Peoples (19 April 2021) (copies on file with author).

<sup>70</sup> *ibid* 1.

<sup>71</sup> *ibid* 2.

<sup>72</sup> *Ibid*

wellbeing in social groups, regions, and countries'.<sup>73</sup> That understanding of mobility stands in contrast to the legal frameworks for governing human mobility in national and international law, which is often framed in a regulatory sense in terms of the *individual* alone. Article 14 of the 1948 Universal Declaration of Human Rights, for instance, provides for the right of every 'individual person' to seek asylum. The 1951 Refugee Convention applies to 'any person' who owing to a well-founded fear of persecution on specific grounds, is outside their country of nationality and, owing to that persecution, unable or unwilling to avail themselves of its protection. The GPID also focus on internally displaced 'persons'. This focus on the individual continued into studies and initiatives dealing specifically with climate and disaster-related displacement and mobility. The terms of reference for the Nansen Initiative 'Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change', for instance, also fell squarely within the traditional human rights and migration law regime.<sup>74</sup>

To focus on the protection of the individual is not *inherently* problematic, but it has the effect of potentially overlooking other relevant considerations. Centering the individual does not allow for consideration of the collective elements of mobility that are so relevant for Greenlandic Inuit and other Indigenous Peoples. Indeed, to date no regulatory initiatives related to climate mobilities in the Nordic Region (be it related to planned relocation, disaster risk management, or migration) take into account the specific rights of Indigenous Peoples and the responsibilities of states with respect to them at all. Nor do they venture to incorporate Indigenous epistemologies in developing an appropriate response. This is so notwithstanding that the specific connection of Indigenous Peoples, as a collective, to their land, territories and resources is recognized in international law and endorsed by Nordic states, including, relevantly here, Denmark.

The collective rights of Indigenous Peoples are recognized and enshrined in the International Labour Organization's Indigenous and Tribal Peoples Convention (ILO 169) and the UN Declaration on the Rights of Indigenous Peoples (the Declaration). The latter took decades to negotiate, but eventually the initial disquiet held by some governments that recognition of Indigenous rights to land would be a threat to state sovereignty was set aside,<sup>75</sup> aided by the express acknowledgement in Article 46 that nothing in the Declaration authorizes actions that 'would dismember or impair ... the territorial integrity or political unity of sovereign and independent states'. Indigenous representatives insisted that the 'profound spiritual, cultural, traditional and economic relationship indigenous peoples have to their total environment' and their ownership and control of their territories and resources was essential to realise their rights to self-determination and public health.<sup>76</sup> The Declaration recognizes that the inseparability

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<sup>73</sup> Steenholdt (n 48) 68 citing Birger Poppel, 'Living Conditions and Perceived Quality of Life Among Indigenous Peoples in the Arctic' in Wolfgang Glatzer and others (eds), *Global Handbook of Quality of Life: Exploration of Well-Being of Nations and Continents* (Springer 2015).

<sup>74</sup> Notwithstanding it was mandated to examine cross-border mobility, the Nansen Initiative nevertheless also addressed internal displacement on the grounds that any effective response to cross-border displacement warrants addressing the internal mobility that invariably occurs as a precursor. Nansen Initiative, 'Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change' (The Nansen Initiative 2015) 39 <[https://disasterdisplacement.org/wp-content/uploads/2014/08/EN\\_Protection\\_Agenda\\_Volume\\_I\\_-low\\_res.pdf](https://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_-low_res.pdf)> accessed 5 December 2023.

<sup>75</sup> UN Commission on Human Rights, *Report of the Working Group Established in Accordance with Commission on Human Rights Resolution 1995/32 of 3 March 1995*, UN Doc E/CN.4/1996/84 17 (4 January 1996) 17, para 83.

<sup>76</sup> UN Commission on Human Rights, *Report of the Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995*, UN Doc E/CN.4/1996/84 (4 January 1996) 18, para 84.

between person and place, and connectedness to land, often goes ‘to the very identity of Indigenous Peoples’ themselves,<sup>77</sup> and that the collective rights of Indigenous Peoples ‘are indispensable for their existence, well-being and integral development as peoples’,<sup>78</sup> and that ‘Indigenous Peoples have the collective right to live in freedom, peace and security as distinct peoples ...’<sup>79</sup> In this way, it acknowledges the inherent relativity of Indigenous Sovereignities, in which all elements of the natural world are recognized as being in relationship with each other,<sup>80</sup> rather than dissected and dichotomized in the ways usual within dominant systems of law.

Yet the Declaration is not, strictly speaking, a “binding” instrument of international law, and there remains some debate about the status of the rules it contains.<sup>81</sup> Most academic literature supports the view adopted by the then UN Special Rapporteur for the Rights of Indigenous People, James Anaya, that the Declaration represents “...a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of Indigenous peoples”.<sup>82</sup> As others have noted, “regardless of the fears about its legal strength, national courts have begun to make use of the Declaration as adopted”.<sup>83</sup> Relevantly, Denmark voted in favor of the adoption of the Declaration in the General Assembly in 2007 and has since repeatedly endorsed it both in multilateral fora and national policy,<sup>84</sup> so too the Government of Greenland.<sup>85</sup>

Denmark ratified and accepted ILO 169 in 1996, and in so doing, declared that the original inhabitants of Greenland were the only Indigenous People in the Danish Realm.<sup>86</sup> Having specifically accepted that Greenland Inuit are Indigenous People under international law left it undoubtable that the rights enjoyed by Indigenous Peoples would apply to Denmark in its

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<sup>77</sup> Claire Charters, ‘Indigenous Peoples’ Rights to Lands, Territories and Resources in the UNDRIP: Articles 10, 25, 26, and 27’ in Jessie Hohmann and Marc Weller (eds), *The UN Declaration on the Rights of Indigenous Peoples: A Commentary* (OUP 2018) 397.

<sup>78</sup> Declaration, Preamble.

<sup>79</sup> Declaration, art 7.

<sup>80</sup> *ibid* 301 citing Aileen Moreton-Robinson, ‘Incommensurable Sovereignities’ in Brendan Hokowithu and others (eds), *Routledge Handbook of Critical Indigenous Studies* (Routledge 2020).

<sup>81</sup> Megan Davis, ‘To Bind or Not to Bind: The United Nations Declaration on the Rights of Indigenous Peoples Five Years On’ (2012) 19 *Austl Int’l LJ* 17.

<sup>82</sup> James Anaya, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, UN Doc A/HRC/9/9 (11 August 2008) 24.

<sup>83</sup> Willem van Genugten, ‘Protection of Indigenous Peoples on the African Continent: Concepts, Position-Seeking, and the Interaction of Legal Systems’ (2010) 104 *AJIL* 29 cited in Davis (n 81) 28.

<sup>84</sup> Danish Ministry of Foreign Affairs, ‘Danmarks Menneskerettighedspolitik’ <<https://um.dk/udenrigspolitik/folkeretten/menneskerettigheder/danmarks-menneskerettighedspolitik>> accessed 13 November 2023.

<sup>85</sup> See, eg, *Study on Indigenous Peoples and the Right to Participate in Decision-Making: Response from the Government of Greenland and the Danish Government*, which states, *inter alia*, “The Government of Denmark and the Naalakkersuisut strongly endorse the United Nations Declaration on the Rights of Indigenous Peoples.” <<https://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/3rd/docs/contributions/Denmark.doc>> accessed 5 December 2023.

<sup>86</sup> Cullen, Holm and Brassart-Olsen (n 6) citing Declaration in Relation to Convention No. 169, Order no. 97 of 19 October 1997 of the ILO Convention no. 169 of 28 June 1989 (BKI nr 97 af 09/10/1997 Erklæring i forbindelse med ratifikation af ILO-Konventionen Nr. 169 af Oprindelige Folk og Stammefolk i Selvstændige Stater), para. 1; reproduced in English in: International Labour Organization (ILO), Report of the Committee set up to examine the representation alleging non-observance by Denmark of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the National Confederation of Trade Unions of Greenland (Sulinermik Inuussutissarsiuqartut Kattuffiat-SIK) (SIK), Decision (2001) para. 25.

governance of Greenland. ILO 169 relevantly provides that “governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship”.<sup>87</sup> There is precedent for the incorporation of Indigenous epistemologies into Danish understanding of its international legal obligations, including recognition of collective rights. Denmark added a declaration to its ratification of ILO 169, which provided that it was not possible “for either natural or legal persons, to acquire rights of ownership to lands in Greenland”,<sup>88</sup> on the basis that this interpretation was more “faithful to the traditional ways of the Greenlanders”.<sup>89</sup> It is notable that no other aspects of Inuit philosophy was expressly mentioned, and that this particular interpretation left the legal interest in land squarely in the hands of the Danish state by default as sovereign,<sup>90</sup> notwithstanding obligations to consult Indigenous Peoples under the ILO Convention.<sup>91</sup> Although this declaration does not have binding force,<sup>92</sup> it continues to govern land management in Greenland today.

## 6. Conclusion

Greenlandic Inuit are often treated as either passive victims of colonization, climate change, or other forms of exploitation in need of “help”, or as resilient innovators capable of adapting to changing circumstances. Such labelling can create oversimplified, dichotomized notions of Inuit as a People, and contributes to racist stereotyping. Although Greenlandic Inuit are well-versed in adapting to changing circumstances, there are obvious questions about whether the need for that adaptability extent is really equitable in all the circumstances. Decolonial climate adaptation scholarship “calls for exploration of multiple objectives, identities, subjectivities, and power dynamics within Indigenous societies that produce unique vulnerabilities, capacities, and encounters with adaptation policy.”<sup>93</sup> At the same time, Greenlandic Inuit share in the research fatigue that commonly exists among Indigenous Peoples as a result “of being overresearched yet, ironically, made invisible”.<sup>94</sup> To the extent that dominant legal systems continue to be those imposed by the colonial encounter, then the incorporation of Inuit epistemology into those legal frameworks (Danish or Greenlandic) ought to be both encouraged and led by Inuit themselves, including in relation to the consultation and other processes that feed into broader policy development.

This chapter has evidenced that law and scholarship on human mobility in the context of climate change and disaster, and its central focus on physical movement of people from place, does not adequately account for the Inuit experience of it. Overall, regulatory approaches effectively ignore worldviews outside the dominant (Western European) paradigm, and therefore also invalidate the various forms of displacement actually occurring. A reevaluation

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<sup>87</sup> ILO 169 art 13 (emphasis added).

<sup>88</sup> Declaration in Relation to Convention No. 169 (n 86) para 25.

<sup>89</sup> *ibid.*

<sup>90</sup> And this approach to land management has led to instances in which Greenlandic Inuit People have been excluded from the land they traditionally occupied precisely because there is “no private right to ownership of land in Greenland”: Cullen, Holm and Brassart-Olsen (n 6).

<sup>91</sup> ILO 169 Art 15(2); 17(2).

<sup>92</sup> Declaration in Relation to Convention No. 169 (n 86) para. 27.

<sup>93</sup> Yumagulova and others citing Johnson, Parsons, and Fisher (n 1).

<sup>94</sup> Eve Tuck, ‘Suspending Damage: A Letter to Communities’ (2009) 79 *Harvard Educational Review* 409, 411–412.

of notions of mobility and displacement through the perspectives and realities of peoples subject to this consequence of climate change is essential.<sup>95</sup>

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<sup>95</sup> Ideas within the evolving scholarship of Fourth World Approaches to International Law (FWAIL) could serve as a useful starting point through which ‘to correct centuries-long framing of Indigenous peoples’ identities, geographies, and histories’: Armi Beatriz E Bayot, ‘Indigenous People in International Law: Resistance, Refusal, Revolution’ (2023) 15(1) *European Journal of Legal Studies* 293, 299.