Rising seas are endangering the habitability and very existence of several small island nations, mostly in the Pacific and Indian oceans. This is the first book to focus on the myriad legal issues posed by this tragic situation. If a nation is under water, is it still a state? Does it still have a seat at the United Nations? What becomes of its exclusive economic zone, the basis for its fishing rights? What obligations do other nations have to take in the displaced populations, and what are these peoples’ rights and legal status once they arrive? Should there be a new international agreement on climate-displaced populations? Do these nations and their citizens have any legal recourse for compensation? Are there any courts that will hear their claims, and based on what theories? Leading legal scholars from around the world address these novel questions and propose answers.

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Threatened Island Nations

LEGAL IMPLICATIONS OF RISING SEAS AND A CHANGING CLIMATE

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Preface and Acknowledgments

In late 2009, Phillip H. Muller, then the Ambassador and Permanent Representative of the Republic of the Marshall Islands to the United Nations (and now the Minister of Foreign Affairs), approached Columbia Law School’s Center for Climate Change Law. He posed a startling scenario: the seas are rising, and some decade – no one knows which – his country of twenty-nine coral atolls and five islands, located midway between Hawaii and Australia, is going to be under water. When that happens, a number of novel legal questions will arise. If a country is under water, is it still a state? Does it still have a seat at the United Nations? What becomes of its exclusive economic zone, and the fishing rights on which it depends for much of its livelihood? What countries will take in its displaced people, and what rights will they have when they arrive? Do they have any legal recourse against those states whose greenhouse gas emissions caused this plight?

We concluded that we could not answer these questions on our own, but that they had so much both practical importance and intellectual interest that they warranted an international conference of legal scholars. So Columbia and the Republic of the Marshall Islands decided to put on such a conference at Columbia. Columbia’s Earth Institute provided a seed grant, and ultimately The World Bank, Australia, Israel, and South Korea’s Global Green Growth Institute agreed to provide funding so that people from the Marshall Islands and other affected regions of the world could travel to New York and participate in the conference.
The conference took place May 23–25, 2011. A total of 272 people registered from thirty-nine different countries; numerous Pacific nations as well as Asia, Africa, Europe, and the Americas were represented, and an additional 308 people registered for the live Webcast. Serious scholarly discussion occurred, and many connections were made as people from around the world met for the first time and discovered their common goals. A high point came during the formal conference dinner in the ornate rotunda of Columbia’s Low Library. The Marshall Islands delegation (twenty-three strong) mounted the stage and sang a series of their nation’s songs in Marshallese, led by then-President Jurelang Zedkaia on the ukulele. This highlighted the cultures that stand to be lost if the world does not solve this problem.

We invited the scholars who participated in the conference to contribute formal papers. This volume is the result. It is the first book written about the legal issues faced by island nations that are threatened by sea level rise, and it explores legal theories whose novelty, imagination, and complexity are as great as the problems they seek to tackle. All the chapters were written by lawyers (except for Chapter 2, which was written by scientists who present what is known about the nature and timing of sea level rise as it affects the island nations). Each chapter represents the views of its authors alone; the authors of other chapters, and the editors, may disagree with some of them, but in the spirit of open academic inquiry and the urgency of finding legal approaches to the crises felt by the affected populations, we felt it important to give a full airing to the theories presented.

Many people contributed to the creation of this book. Ambassador Muller and Caleb W. Christopher, Legal Advisor, were our primary liaisons to the Marshall Islands government and also helped organize M.B.G.’s memorable and illuminating trip to the Marshall Islands atolls of Majuro and Eniwetok in December 2010. Multiple members of Columbia Law School and University staff provided invaluable assistance organizing the conference that inspired this book. Julia Errea Ciardullo and Danielle Sugarman, two very talented lawyers, assisted with
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