

CYCLONES, CLIMATE, PANDEMICS, SALE-OF-PASSPORTS: NEW LINKS FOR SOLIDARITY IN GLOBAL-& SUPRA-NATIONAL CITIZENSHIP

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INTRODUCTION: ‘CLIMATE ETC.’ MIGRATION & CITIZENSHIP MARGINS

‘Law, like the traveller, must be ready for the morrow’¹

How we approach, value, use, study, learn and teach law, refer to- and incorporate law’s transformations, depends on many factors, one of them being to identify emerging fields of relevance. Transcending borders, globalization, climate change, pollution or the pandemic may pose as penultimate collective global-commons issues, as agents for global citizenship legal discourse, reform and education. At the same time, citizenship is becoming transformed, such as through individualist-mercantilist -immediately issued- ‘passports-for-sale’, introducing space-less and time-less reductions of citizenship as passports for enhanced visa-free travel or as Plan-B emergency relocation options.² Migrations can be voluntary, involuntary, and anything in-between, part of upward economic-strategic relocations, political-, health-, climate- and humanitarian crisis-induced, within-, but also vested outside the state’s law of residence or citizenship. Local-global migrations pose as both disruptive yet potentially creative forces that require a re-thinking of the fundamental precepts and conditions of municipally framed membership law.

It is not clear when the international community first noticed the link between climate change and global human mobility, including climate-induced migration.³ One of the early alerts of this connection sparking global resonance was the first assessment report of the Intergovernmental Panel on Climate Change in 1990.⁴ A step towards explicit international commitments then came with the 1997 adoption of the *Kyoto Protocol* and subsequent expansions.⁵ The difficulties of the link between climate and migration alone are manifold,

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¹ Words attributed to the Hon. Justice Benjamin N. Cardozo, (1924), seen at a plaque commemorating the start of construction of Sydney University’s New Law School building of 15 June 2006.

² States create CBI but arguably lose or share some of the control over citizenship with global markets for membership entitlements (residence and citizenship): Michael B. Krakat, ‘Genuine Links beyond state and market control: The Sale of Citizenship by Investment in International- and Supranational Legal Perspective’, (2018) 30 (10) 9, *Bond Law Review Special Issue*, 145-184.

³ Gervais Appave, ‘Emerging issues in international migration’, 390-418, in Brian Opeskin, Richard Perruchoud & Jillyanne Redpath-Cross (eds.) *Foundations of International Migration Law* (2012, Cambridge University Press), at 400.

⁴ Intergovernmental Panel on Climate Change, ‘Climate Change: The IPCC Scientific Assessment’ (World Meteorological Organization, United Nations Environment Programme, 1990), 5.

⁵ In form of green-house gas emission reduction targets, see: Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998), available at <<http://unfccc.int/resource/docs/convkp/kpeng.pdf>>.

and include the need to establishing simple, direct and causal relationships between extreme environmental events such as cyclones, floods, desertification, soil erosion and changing coastlines and processes such as internal and cross-border migrations that may seemingly follow these events or at perhaps somehow correlate with them.⁶ Pandemic travel bubbles and the rebuilding of travel from the ground up may foreshadow a world where climate induced forced migration will be a daily reality.⁷

Both globalization and climate change cannot be conceptualized through the lens of any one state, but necessitate reference to the international- or global community, to humanity, individuals, as well as to regions, states, cities, and markets. For example, Pacific Ocean small island state Kiribati's low-lying topography makes it particularly susceptible to rising sea levels brought on by climate change, showing that a purely state-centric world may no longer be sustainable. Instead, innovation may include floating islands and homesteads, climate resilient farming and floating pods, with the ocean itself as a storekeeper, emphasizing South Pacific cultural focus on both Ocean as well as land.⁸ Citizenship law and teaching will need innovative and traditional perspectives, overcome Western paradigms of citizenship, law and education to become inclusive of local and global ways.⁹

Individuals, corporations, non-governmental bodies as well as nation states owe reciprocal duties to all other global stakeholders, so that rights and obligations may function beyond state borders to address the issues of this millennium.¹⁰ Counter-intuitively, while states evermore vehemently reinforce the bordered paradigm, not least because of coming climate induced migrations or the present pandemic,¹¹ at the same time, and at heightened pace and level, loss of control over the metes-and-bounds of citizenship and the meanings of statehood itself is taking place: Reference is to global markets, as well as to supra-national political perspectives incorporating the municipal, precisely because of climate change or the pandemic as global events.

This paper then contrasts and to some extent reconciles citizenship and climate change legal-theoretical narratives, making reference to the sale of citizenship and considerations of solidarity, global justice and global citizenship. It suggests that citizenship is to grow in its

⁶ Philippe Boncour and Bruce Burson (ed.) *Climate Change and Migration: South Pacific Perspectives* (Institute of Policy Studies, 2010); International Organization for Migration, 'Migration, Climate Change and the Environment' (IOM, May 2009); Carol Farbotko and Heather Lazrus, 'The first climate refugees? Contesting global narratives of climate change in Tuvalu' (2012) 22 (2) *Global Environmental Change*, 382-390.

⁷ Michael B. Krakat, 'Travel Bubbles: Are We Rebuilding International Travel From the Ground Up?' (2020) October 18th, *The Investment Migration Insider*, available at <<https://www.imidaily.com/ue-process/travel-bubbles-are-we-rebuilding-international-travel-from-the-ground-up/>>.

⁸ UNDP Climate, *The Ocean is our store keeper* (2020) June 6th, <<https://undp-climate.exposure.co/the-ocean-is-our-store-keeper>>.

⁹ Dealing with different cultural perceptions of citizenship and nationhood in the South Pacific: Michael B. Krakat, 'Why Those Hoping to design CIPs in the South Pacific are in for a ride Part 1' (Parts 2, 3 and 4 forthcoming) (2021) May 2nd, *The Investment Migration Insider*, available at <<https://www.imidaily.com/asia-pacific/why-those-hoping-to-design-cips-in-the-south-pacific-are-in-for-a-ride/>>.

¹⁰ Subjected to powers of change eroding and transforming, including globalization and the ecologic sphere, citizenship today may no longer function in reference to one state alone. A holistic view on responsibility appears in line with Immanuel Kant, *Practical Philosophy* (trans. Mary J. Gregor, Cambridge University Press, 1996) 322; Georg Cavallar, 'Cosmopolitanisms in Kant's philosophy' (2012) 5(2) *Ethics & Global Politics* 95, 99.

¹¹ See for example Australia effectively closing its borders to its own citizens, Michael B. Krakat, 'Australians exiled in India: Marooned or banished?' (2021) May 11th, *The Investment Migration Insider*, available at <https://www.imidaily.com/asia-pacific/australians-exiled-in-india-marooned-or-banished/>.

inclusivity beyond the initial membership contract.¹² To stay relevant, citizenship may have to incorporate supra-national goals such as the UN Sustainability goals¹³ or allow for alternatives such as ‘belonging.’¹⁴ Lawmakers could integrate solidarity reflections in response to these events into municipal citizenship laws.¹⁵

CLIMATE CHANGE & CLIMATE INDUCED MOBILITY

Global climate change is seen as the penultimate global commons problem, with the relevant greenhouse gases mixing uniformly in the upper atmosphere, leading to damages independent of the location of emissions.¹⁶ The International Federation of the Red Cross estimates that there are more environmentally displaced than political refugees trying to avoid wars and conflicts.¹⁷ Any person may become a climate-induced migrant in principle, pending their location and perhaps status. The Carteret island people, evacuated from an archipelago off the coast of Papua New Guinea are commonly viewed as the world’s first people displaced by climate change in form of changing sea levels.¹⁸ Countries such as the Maldives, Bangladesh

¹² Generally: Sue Donaldson and Will Kymlicka, ‘Inclusive citizenship beyond the capacity contract’, 838-860, in: Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds.) *The Oxford Handbook of Citizenship* (Oxford University Press, 2017).

¹³ UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, available at: <https://www.refworld.org/docid/57b6e3e44.html>; also see as to statelessness: UN High Commissioner for Refugees (UNHCR), The Sustainable Development Goals and Addressing Statelessness, March 2017, available at: <https://www.refworld.org/docid/58b6e3364.html>.

¹⁴ Michael B. Krakat, ‘Love in the South Pacific & Finding the ‘Zen’ in Citizenship: Supranational-Municipal Links in ‘Indigenous Belongers’ & the Global Sale-of-Passports’ (2021) *Journal of South Pacific Law* (forthcoming), pre-print (abridged) available at https://www.researchgate.net/publication/349759436_Love_in_the_South_Pacific_Finding_the_'Zen'_in_Citizenship_Supra-national-Municipal_Links_in_'Indigenous_Belongers'_the_Global_Sale-of-Passports; *Love v Commonwealth of Australia*; *Thoms v Commonwealth of Australia* [2020] HCA 3, handed down 11 February 2020, Case Number: B43/2018, B64/2018, available at <<http://eresources.hcourt.gov.au/showCase/2020/HCA/3>>. I had anticipated possible references as to the supranational, anticipating the creation of the ‘indigenous non-citizen’ necessarily materializing: Michael B. Krakat, ‘Neo-Nottebohmian 21st Century Genuine Links and Australia’s Indigenous Non-Citizens’ (2019) 4 (2) *The Investment Migration Council Bulletin*, available at <<https://investmentmigration.org/articles/neo-nottebohmian-21st-century-genuine-links-and-australias-indigenous-non-citizens/>>.

¹⁵ This may in turn insulate citizenship from the now narrow exclusive claim and meaning assigned to it by states as its creators, or from the take-over of citizenship’s interest-based meanings through non-state events and actors, such as citizenship becoming merely (global) market- or disaster-driven outside the power and control of the state itself. States remain as originators as well as custodians and planners of citizenship’s definitions and delineations, impacting the relevance of the concept of citizenship itself. In global crisis, however, states do no longer exclusively own citizenship, nor can state induced narrow subordinations toward (global) citizens be upheld. States should instead allow for a proactive citizenship’s adaptations to a changing world, and where appropriate, likely need to further creations of novel concepts outside citizenship, such as belonging, fragmentations of citizenship, and concepts facilitating global-mobility for all.

¹⁶ See for instance Joseph E. Aldy and Robert N. Stavins, Introduction: International policy architecture for global climate change, 1, in: Joseph E. Aldy and Robert N. Stavins (eds.), *Architectures for Agreement - Addressing Global Climate Change in the Post-Kyoto World* (Cambridge, 2007).

¹⁷ International Federation of the Red Cross (IFRC), Climate Change and Human Mobility: A Humanitarian Point of View, International Federation of the Red Cross and Red Crescent Societies (2009) Geneva. The United Nations High Commissioner for Refugees (UNHCR) confirmed that around 36 million people have been displaced by natural disaster related causes in 2009. Their number will increase to at least 50 million by 2050, see UNHCR 2016, available at <http://www.unhcr.org/en-us/>; The Sendai Framework for Disaster Risk Reduction stated that more than 1.5 billion people were affected by disasters worldwide between 2005 and 2015. Further, around 144 million people were displaced by disasters in between 2008 and 2014, many of these cases exacerbated by climate change with increasing frequency and intensity, see: Sendai Framework for Disaster Risk Reduction 2015-2030 (2015) United Nations Office for Disaster Risk Reduction (UNISDR), United Nations, Geneva; also see the references in Ahmed, above n4, at 6 and in M Hulme, ‘1,5°C and climate research after the Paris agreement’ (2016) 6 (3) *Nature Climate Change*, 222-224.

¹⁸ Carol Farbotko and Heather Lazrus, ‘The first climate refugees? Contesting global narratives of climate in Tuvalu’ (2012) 22 (2) *Global Environmental Change*, 382-390, at 384-5.

or Ethiopia face at least partial inundation.¹⁹ The Alliance of Small Island States (AOSIS) includes in total 44 island states, with some selling passports (including Caribbean CBI states, such as St. Kitts & Nevis), and others apparently affected by climate change (Tuvalu or the Maldives).²⁰ Climate change, environmental change and human mobility are related in multiple ways:²¹ For instance, when cyclone ‘Aila’ swept over Bangladesh in May 2009, it breached 1,742 kilometres of embankments and affected 3.9 million people.²² It is the most marginalized segments of a society that are suffering the greatest impacts of climate change, especially in the global South.²³ In climate change discourse, the term ‘climate refugee’ may be a misnomer as those affected do not necessarily wish to leave their country,²⁴ and as climate induced migrants are currently devoid of remedy at international law, are not being listed in the *Refugee Convention*.²⁵ There are also significant commonalities among unique indigenous communities when it comes to the impact of climate change, such as their vulnerable physical locations throughout the world, including low-lying island nations facing disproportionate negative impacts.²⁶ Climate change appears as an omnipresent phenomenon that potentially includes and affects all life present in all or any given territory or state, across politically drawn borders, demanding greater levels of flexibility over the bordered paradigm and potentially, heightened mobility for all.²⁷

CITIZENSHIP BY INVESTMENT AS PROTO-‘GLOBAL CITIZENSHIP’?

Conventionally, and often used interchangeably, citizenship as membership to a sovereign state refers to the domestic municipal legal forum, while nationality in turn refers to that relationship’s international law forum vis-a-vis other states.²⁸ Commonly, citizenship is

¹⁹ John Vidal, ‘Global Warming could create 150 million ‘Climate Refugees’ by 2050, available at <<https://www.theguardian.com/environment/2009/nov/03/global-warming-climate-refugees>>.

²⁰ See the AOSIS at <http://aosis.org/about/>. The question who is going to buy passports from countries that are islands facing inundation may be answered as follows: Those who do not really intend to live on the island, but mainly want a new passport’ for visa free travel (“better” travel when compared to previous passports held).

²¹ Bonnie Docherty and Tyler Giannini, ‘Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees’ (2009) 33(2) *Harvard Environmental Law Review*, 349.

²² See in Appave (2012) n3, at 403.

²³ Daniel Faber, *Capitalizing on Environmental Injustice: The Polluter Industrial Complex in the Age of Globalization* (Rowman and Littlefield, 2008).

²⁴ Karen Elizabeth McNamara and Chris Gibson, ‘We do not want to leave our land: Pacific ambassadors at the United Nations resist the category of ‘climate refugees’ (2009) 40 (3) *Geoforum*, 475-483.

²⁵ *Convention Relating to the Status of Refugees*, Geneva 28 July 1951 (UNTS vol. 189, 137). For instance, Ioene Teitiota from the Pacific Island of Kiribati sought asylum on grounds of climate change, with the New Zealand Supreme Court refusing refugee status, as environmental refugees are not a class of people recognized or enlisted under the Convention, see: Shabnam Dastgheib, ‘Kiribati Climate Change Refugee told he must leave New Zealand (2015) The Guardian, available at <https://www.theguardian.com/environment/2015/sep/22/kiribati-climate-change-refugee-told-he-must-leave-new-zealand>

²⁶ Randall S. Abate and Elizabeth Ann Kronk, ‘Commonality among unique indigenous communities: An introduction to climate change and its impacts on indigenous peoples’ 3-18 in: Ibid (eds.), *Climate Change and Indigenous Peoples* (2013, Edward Elgar), at 5-7.

²⁷ Territoriality does no longer refer to the modality of one’s existence: Lenses of nationhood or property become more or less irrelevant to global disasters existing in any given frame of time and space on earth. By being affected by global climate change or any other global catastrophe, citizen, denizen and alien, whichever status or de facto presence is applied, may experience rights impacts qua status as living beings. In other words, status does not change levels of affectedness. This in turn could lead to a general notion and abstract right in light of considerations of climate justice to inhabit any territory (particularly, territory that may at times be less affected by Climate Change with affectedness potentially changing in time). Climate change then requires a great level of mobility and flexibility in physical presence.

²⁸ However, both concepts seem to be in a state of flux, shifting toward a multi-disciplinary account, including trans- and supra-national spheres, see: Kristin Henrard, ‘The Shifting Parameters of Nationality’ (2018) 65, *Netherlands International Law Review*, 269–297; Generally, see Kim Rubenstein, ‘Globalisation and Citizenship and Nationality’, (2004), *The*

conferred directly by way of birthplace under the territorial principle (*ius soli*) or by descent under the parental principle (*ius sanguinis*).²⁹ In citizenship by conferral, however, civic bonds gradually crystallize through time periods of physical presence, naturalization.

The classical ideal of political citizenship is one of participation, solidarity, reciprocity, perhaps allegiance and subordination to higher purposes of the polity.³⁰ However, it is noteworthy that, at law, political or moral high ideals do not need to overlap with citizenship legal ordering principles. These spheres are often conflated and there may be far less participation, nor identity links between polity and citizen than may be commonly expected. Naturalization requirements may become waived as such: Citizenship by Investment (CBI) then is a special form of acquisition, in which states create revenue and purchasers enhance their visa-free travel rights through new passports that allow for more locations to be added to their portfolio, acquisition of upward social-economic status through passports and, especially relevant in times of disaster, political diversification and optional, pandemic free safe havens, the latter reason growing in relevance.³¹ Put simply, CBI means states selling

University of Melbourne Faculty of Law, Legal Studies Research Paper No.69, at 4; Idem, 'Rethinking Nationality in International Humanitarian Law', 89-104, in: Ustina Dolgopol and Judith Gardam (eds.) *The Challenge of Conflict: International Law responds* (Nijhoff, 2006), at 89-90; Paul Weis, *Nationality and Statelessness in International Law* (Sijthoff & Noordhoff, 1956), at 5.

²⁹ Maarten P. Vink and Gerard-Rene De Groot, *Birthright Citizenship: Trends and Regulations in Europe 2010/8* (2010) Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory; Chikako Kashiwazaki, 'Jus Sanguinis in Japan' (1998) 39 (3), *International Journal of Comparative Sociology*, 278-300.

³⁰ Rainer Bauböck, Political Membership and Democratic Boundaries, 60-82, in: Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds.) *The Oxford Handbook of Citizenship* (2017, Oxford University Press); Ryan K. Balot, 'Revisiting the Classical Ideal of Citizenship', 15-35, in: Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds.) *The Oxford Handbook of Citizenship* (2017, Oxford University Press); Engin Isin, 'Performative Citizenship', 500-523, in: Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds.) *The Oxford Handbook of Citizenship* (2017, Oxford University Press).

³¹ Reasons for passport purchase change, at the time of writing, include an ongoing pandemic buying rush, emphasizing the heightened importance of safe havens with the factor health and pandemic response being high on the list, in addition to passports for global mobility. The state's claim to control over the definition and demarcations of a globalizing citizenship may become increasingly co-determined by global markets, despite, or because of pandemic times, seeing an extreme rise in demand for both CBI diversified passport mobility, as well as relocation and safe haven options, personal political safety and, now, health: Michael B. Krakat, 'Health Passports Are Coming - What Does That Mean for Investment Migration?' (2020) November 25th, *The Investment Migration Insider*, available at <<https://www.imidaily.com/due-process/health-passports-are-coming-what-does-that-mean-for-investment-migration/>>; Idem, 'Health-Passports Part 2: CBI in a World Where Nationality Alone Doesn't Determine Mobility' (2021) February 24th, *The Investment Migration Insider*, <https://www.imidaily.com/due-process/health-passports-part-2-cbi-in-a-world-where-nationality-alone-doesnt-determine-mobility/>. CBI then refers to the diversification of passports as assets, with purchasers wishing to enhance travel globally through better passports allowing for more destinations without visa. People purchase multiple 'passports' to enhance global mobility strategies through visa free travel as well as for political-, financial- and other diversification, including lower or zero tax burdens. Increasingly today, especially due to the pandemic, the second limb of CBI is focused on the creation of relocation-alternatives for political, financial or environmental protection, as a means of personal insurance against creeping authoritarianism and dystopia in any one- or number of states. A clear shift has emerged in the emphasis of CBI in pandemic times, with 'safe havens' for re-settlement becoming as important as global visa-free mobility. For example, those that did not previously consider either global mobility may now physically consider the strategic relocations aspects of CBI subject to better healthcare and crisis or other disaster response. In other words, post-Corona lockdowns, some small island havens may be in need to prepare for a possible and sudden influx of those who may have only purchased for global mobility, now, with travel shutdowns, seeking relative safety instead, taking up the actual territorial part of the bargain. CBI sales touch upon the state's constitutive elements and existential pillars next to territory and state power, citizen status, indicates that the state itself, leaving the traditional role of custodian of citizenship, may be transforming, subject to the forces of globalization, selling citizenship as a 'zombie entity' at the behest of market forces and the dictate of other more dominant states, in turn accelerating the process of state run globalization of the inner sanctum, the state power over territory and its citizens. As to enhancing social-economic status through citizenship in general, see: Michael B. Krakat, 'What If, When Borders Reopen, CBI Citizens Actually Move to Their COVID-Free Island Havens?' (2020) September 23rd, *Investment Migration Insider*, <<https://www.imidaily.com/industry-trends/what-if-when-borders-reopen-cbi-citizens-actually-move-to-their-covid-free-island-havens/>>; Krakat (2018) n3; Don J.DeVoretz and Nahikari Irastorza, 'Economic Theories of Citizenship Ascension', 200-220, in: Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds.) *The Oxford Handbook of Citizenship* (2017, Oxford).

citizenship, and naturalization requirements of years are condensed to nominal periods of weeks, days or reduced to zero, so that, virtually overnight, persons can become admitted as citizens in the polity.³² Where personal, physical and temporal residence is a most important factor for naturalization, allowing effective state impacts over the shaping of its citizens,³³ CBI does not even refer to naturalization or immigration processes in their etymological sense.³⁴ CBI reduces citizenship to price and absence of criminal record. CBI is exceptional, mercantile citizenship, generic, plural (dual-and multiple), non-participatory, formal-legal, contractual and transactional.³⁵ Absent any successful challenge or repeal, CBI programs are constitutionally valid and in no need for further justification.

CBI appears to be indeterminate in that its actual physical connection between migrant-citizen and state depends on a decision made by the individual CBI purchaser whether, and if so, when, to ever enter or even reside or participate in the CBI state at any given point in time after the new passport's arrival in the mail. In most cases, the purchaser is reduced to providing payment and a clear criminal record, no more, no less. Similarly, the CBI migrant has no real need to purchase any particular citizenship, but could in fact purchase any citizenship with like or similar features sought, especially for interim solutions.³⁶

The common understanding of ordinary naturalization is that of a time-consuming process. The question from an economic point would be whether ordinary naturalization, taking considerably longer time, really generates less revenue to a community at least in the long term than immediate admission CBI programs.³⁷

Sold by states acting as both custodians and sellers, CBI at some rate may be viewed as the commodification of the state-run, public concept of citizenship, with market value and narratives attaching to the concept, potentially leading to some erosion of state power over the demarcations of citizenship.³⁸ From the selling state's perspective, CBI laws narrow direct naturalization requirements to a single factor, that of citizenship's prize, a factor unlike naturalization, potentially open to negotiation and able to legally migrate into climate change law. For CBI exceptional naturalizations, the ultra-wealthy need not hold any extraordinary skill or talent other than payment in form of an investment or donation, directed to causes

³² Naturalization to attain citizenship status ordinarily requires physical presence within a polity of anything between 2-12 or more years. See in Christian H. Kälin, *Ius Doni: The Acquisition of Citizenship by Investment* (2016, Ideos). The system of birthright is described as indeterminate and random, inherently unequal: Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge, 2009) 8, 21-43; Idem, 'Citizenship for Sale?', 789-816, in: Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds.) *The Oxford Handbook of Citizenship* (2017, Oxford University Press); as to ordinary naturalization, see Liav Orgav, 'Naturalization', 337-357, in: Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds.) *The Oxford Handbook of Citizenship* (2017, Oxford University Press).

³³ The concept of residence has a multitude of uses, including its form of domicile or tax residence which usually applies after 183 days of presence in a country. See for instance, on the example of Panama, *Art. 762-N of the Panamanian Tax Code*.

³⁴ Kochenov, Barbulsecu, Roy, n26, at 42; Madeleine Sumption, 'The growing Market for Citizenship and Residence: A policy perspective', 14-15, in: Henley & Partners, *Global Residence and Citizenship Programs 2016* (Ideos, 2016), at 15.

³⁵ Krakat (2018) n3.

³⁶ For instance, where the goal is to leave the current country of residence and to enter the EU or the Caribbean Region. Vanuatu could be viewed as an interim solution for many Chinese purchasers who may then move on to other destinations on their Vanuatu passport, including Australia or Canada.

³⁷ Jelena Džankić, 'The Maltese Falcon, or: My Porsche for a Passport!', in: Ayelet Shachar and Rainer Bauböck (ed.), *Should Citizenship be for Sale?* (2014) European University Institute RSCAS Working Paper 2014/01, Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory, at 17-8.

³⁸ *Ibid.*

ranging from the simple generation of revenue to global humanitarian philanthropy, all deemed in the public interest.³⁹

Where states act as enterprises rather than public communities, they may fail to acknowledge public-and private spheres boundaries.⁴⁰ Driven by the states themselves, commodification schemes may have deep-reaching effects and consequences to the concept of the nation State and citizenship, and thus, not only to the nations that allow for citizenship's commodification, but potentially, to the naturalization and citizenship laws of all nations.⁴¹ One of the main issues CBI legal schemes and policies face then is the impact of the global market for citizenship and residence, the CBI industry, dominant CBI and other third states on CBI law, transcending the social contract of a single demos and from which a single state may no longer readily withdraw.⁴²

At the same time, we may in fact live in an interconnected post-globalization world in the context of mercantile interdependencies, and with commodification of public goods as the new standard: In this context, the sale of citizenship could itself become the assertion and expression of ultimate state control and sovereignty. CBI may then well be an attempt of states to retain remaining sovereignty over membership. Coupled with the growing acceptance and importance of plural citizenship and the Human Rights discourse vis-à-vis civic rights, CBI then ensures that purchaser-citizens have the choice to likely be in a place they want to be at a given time, while at the same rate, they may never need enter any of the territories of most of their passport portfolio.⁴³

CBI is commonly claimed to only come in form of small, negligible schemes usually run by small island states for negligible fraction of high - net worth individuals: CBI systems are, however, not limited in such way, with the programs expanding, becoming more inclusive and open toward broader segments of purchasers as well as migrants, such as the stateless.⁴⁴

³⁹ See in Krakat (2018) n3.

⁴⁰ Joseph H. Carens, 'Aliens and Citizens: The Case for Open Borders' (1987) 49 (2), *Review of Politics*, 251-273 ('Carens 1987'), 269-70; see further references in Krakat (2018) n3.

⁴¹ It may here be relevant to gain an understanding of how the creation of market citizenship corresponds with the constitutional governmental role as *protector and public trustee for citizenship*.

⁴² Raul Magni Berton asks: 'Who will decide about the future price of citizenship of states in a common market for citizenship? Will it be each sovereign state, or will the price be determined, perhaps dominated by market powers? Raul Magni Berton, 'Citizenship for those who invest into the future of the state is not wrong, the price is the problem', 11-12, in: Ayelet Shachar and Rainer Bauböck (ed.), *Should Citizenship be for Sale?* (2014) European University Institute RSCAS Working Paper 2014/01, Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory, 12; further see in Krakat (2018) n3.

⁴³ See in Krakat (2018) n3.

⁴⁴ With globalization having entered the state paradigm, so have state- and individual-global responsibility, not least through solidarity events that are emerging in each state and individual from the greater global-local sphere. Generic CBI may function to carry new meanings territorially or individually unbound that include reference to the global commons. CBI may open venues toward climate justice. Disasters such as climate change, as well as seemingly neutral or beneficial paradigms such as the individual-global link of humanity are accelerating the need for local-global solidarity becoming reflected in municipal CBI law, assisting to making these laws more sustainable and raising their acceptability in turn, reflecting on the new global links between people. In addition to- and perhaps beyond the state, we may perhaps witness a new- or a changing form of citizenship, a forerunner of a proto-global citizenship from the ground-up that could incorporate considerations such as a wide range of solidarities responding to world events, leaving the path of conventional citizenship when adapting to, incorporating and so addressing change. See references in Michael B. Krakat, 'CBI: Price based global standards for migration, no longer limited nor marginal' (2020) 5 (3) *Investment Migration Council Bulletin (Crossing Borders Issue)*, <<https://investmentmigration.org/articles/cbi-price-based-global-standards-for-migration-no-longer-limited-nor-marginal/>>.

What could be the new narrative and justification of a timeless, non-territorial global mercantile citizenship? Could CBI be a "bottom up" approach to global citizenship, existing through and by way of 'global citizen' travellers, not bound to territory and residency? Any such global citizenship would need to exist in lieu of a global constitutional framework that is missing.

Purportedly raising revenue from thin air for the benefit of a collective, CBI appears at first sight as an individualists' approach to citizenship, asking how the leveraged concept can serve both the seller and the purchaser. One could however argue that there is no better time and justification for CBI programs than times of crisis and disaster (such as Vanuatu's megacyclone Pam in 2015), acting in support of the collective polity.⁴⁵

RECONCILING CLIMATE CHANGE DISCOURSE WITH CBI MERCANTILISM

Just as CBI law, climate-refugee crisis legal responses, as well as education, may become framed in the context of extrinsic and somewhat changing and to some degree indeterminable events such as climate (or pandemic) research, natural disasters, as well as the demands of neoliberal capitalism.⁴⁶ A price has been placed on carbon emissions, with solutions sought through mercantilism.⁴⁷ The international trade of emissions and states' sale of membership entitlements through CBI legal mechanisms may hold some similarities.⁴⁸ Could policies for CBI and those addressing climate induced migration become reconciled? Membership or aspects of membership are not yet traded. However, both carbon trade and citizenship/visa purchases appear to share that a good or concept is priced and commodified in response to the public's sphere's exposure to the individual need for mobility, relocations subject to globalization, as well as climate induced, affecting citizenship and national carbon emissions, respectively.⁴⁹ Arguably, CBI could become a standardised mercantile model citizenship of anywhere and nowhere. As I argue elsewhere, CBI is able to readily showcase material and

CBI is growing more inclusive and not limited to a certain class of the ultra-wealthy, so that everyone could utilize market citizenship while being protected by states from third states, NGO's or individuals dominating the global market for membership. Vanuatu includes now CBI sales to the stateless: Christian H. Nesheim, 'Vanuatu to offer citizenship by investment to Stateless People - Local agent gets exclusive deal' (2020) September 11th, *The Investment Migration Insider*, available at <<https://www.imidaily.com/editors-picks/vanuatu-to-offer-citizenship-by-investment-to-stateless-people-local-agent-gets-exclusive-deal/>>.

⁴⁵ Concerns by the existing citizenry, as well as the world at large about the acceptability of CBI appear to go dormant especially during disasters and existential threats, may become negligible as the sovereign state is seen to act in defending its existential claim to power. At the same time, crisis as source and justification for law, because it may post inroads into individual rights and the Rule of Law, is a path that should be pursued with caution. Michael B. Krakat, 'The Case For Citizenship by Investment Is Never Stronger Than During Times of Crisis' (2020) September 13th, *The Investment Migration Insider*, available at <<https://www.imidaily.com/industry-trends/the-case-for-citizenship-by-investment-is-never-stronger-than-during-times-of-crisis/>>: Be it perpetual global pandemics, climate change, economic meltdowns, or any other genre of calamity that a sovereign state might wish to mitigate by tapping into unconventional revenue sources.

⁴⁶ Daniel Faber and Christina Schlegel, 'Give me shelter from the storm: Framing the Climate Refugee Crisis in the Context of Neoliberal Capitalism' (2017) 28 (3) *Capitalism, Nature, Socialism*, 1-17.

⁴⁷ A carbon unit is a 'permit' (certificate) to emit one tonne of carbon dioxide gas (CO₂). In 1997 most of the countries in the world signed the Kyoto Protocol with the aim that all industrial countries in the world should reduce their total emissions of greenhouse gas (GHG). An emission trading scheme determines how much CO₂ the GHG can emit and the price is controlled by the carbon market. The United Nations (UN) distributes quotas of carbon units to those industrialized countries that have signed the treaty. Surplus in units can be traded to those not able to reduce emissions. These units set a limit under level emissions commonly referred to as caps. This limit is equivalent to total amount of CO₂ each of these countries are permitted or allowed to emit into the atmosphere and which is less than anticipated emissions. Countries may buy and sell carbon units (permits). Peter S. Kinjap, 'Carbon trading is controversial yet effective tool to combat climate change' (2019), Friday July 12th, *Papua New Guinea Today*, available at <<https://news.pngfacts.com/2019/07/carbon-trading-is-controversial-yet.html>>.

⁴⁸ Whether we will see individual trade of membership entitlements is not yet clear. Generally, Joseph E. Aldy, 'Saving the Planet Cost-Effectively: The Role of Economic Analysis in Climate Change Mitigation Policy', 89-118, in: R. Lutter and J. F. Shogren (eds.) *Painting the White House Green: Rationalizing Environmental Policy Inside the Executive Office of the President* (Resources for the Future Press, 2004). See for climate induced migration policies alone: Adelle Thomas et al., 'Policies and mechanisms to address climate-induced migration and displacement in Pacific and Caribbean small island developing states' (2017) 10 (1), *International Journal of Climate Change Strategies and Management*, 1.

⁴⁹ With carbon credits, could CBI become referenced to a trade in social credits of some sort, and what would be their use?

effective references to supranational concepts such as local-and global links to a polity and beyond, to ‘humanity’, human rights and UN principles in addition to any municipal public interest references and revenue alone.⁵⁰

Global Climate Justice & Global (-globalization of) Citizenship

Globalization through markets has now reached citizenship as an aspect of the state and state sovereignty.⁵¹ Emerging architectures for agreement of membership may then incorporate solidarity considerations and become reframed through the lens of climate and justice.⁵² Climate induced migrations and CBI visa free mobility may become reconciled in context of existing mechanisms of neoliberal capitalism, referencing transformations of the bordered state paradigm.⁵³ CBI, while state-initiated is arguably, to a significant extent, effectively co-determined by markets for membership entitlements (residence and citizenship options).⁵⁴

With Climate change and CBI, how much relevance the concept of residence or the process of naturalization still holds in reinforcing narratives of homogeneity of unified solidary citizenries is unclear. There is an already existing increasing incongruence between constituent people and resident populations. This incongruence is in part due to economic globalisation, higher international migration flows, cultural, social and ethnic plurality, cross border affiliations, as well as connectivity and digitization, adding and at times replacing existing narratives of claims of homogeneity and the state’s sole power over citizenship.⁵⁵

Global climate justice (‘GCJ’) as an aspect of global justice then refers to a view that includes consideration for the solidarity between and toward all of humanity, facing threats to the

⁵⁰ With CBI, the question becomes how much relevance local municipal connections between citizens and states may still hold when viewed in isolation and in view to the public interest of one polity alone. Can a formal legal transactional and generic CBI assist to incorporate links to the greater global good, already leaving behind naturalization as an ongoing time-consuming requirement, as well as a fixated view on the fiction of homogenous population against which citizenship should be referenced (politically or morally, as dimensions often wrongfully conflated with the law). While contentious, counter-intuitively, CBI could also be viewed as active enforcement of sovereignty, overcoming the need for foreign aid. Likewise, CBI legal mechanisms could proactively address climate change lend itself to becoming informed by global solidarity arguably already exists with ‘commodified’ CBI, ‘cash for’ passports. With a naturalization requirement missing or negligible, CBI means the escape from a system of state-run determinism, avoiding the personal commitment of naturalization, the spending of time in the polity of choice, with CBI exemptions being attractive for personal, financial, taxation or other reasons. Citizenship status can thus be achieved without any personal commitment, but with the a-personal payment of money. The state sells the key to the polity, whereas the purchaser, who could be anyone, commits only in the most general way; CBI effectively allows individuals to attain almost supra-national status based on a plurality of passport. Within this multiplicity lies the true effect of CBI, that no one single nation can quite determine or bind the fate of the plural passport holder, who, as long as funds do not run out, can continue purchase further passports and stay mobile. The CBI purchaser is able to tap into rights so purchased, political protection, safe havens, never needs to remain in any one place: Krakat (2018) n3.

⁵¹ See Vincent Chetail, ‘Freedom of Movement and Transnational Migrations: A Human Rights Perspective’, 47, in: T. Alexander Aleinikoff and Vincent Chetail (eds.) *Migration and International Legal Norms* (2003), at 47.

⁵² For instance, Joseph E. Aldy and Robert N. Stavins, *Architectures for Agreement - Addressing Global Climate Change in the Post-Kyoto World* (Cambridge, 2007). For Peter Spiro, CBI is [n]ot the cause, but a consequence of the changing perception of the core of state power and the relationship between the individual and the state as no longer being a ‘sacred bond’: CBI is just another symptom of the inevitable decline of citizenship due to globalization, alongside the increasing toleration of dual- (and multiple) citizenship (which CBI is one venue to create): Emphasis added, see Spiro (2019), above n79, 9; Idem, ‘Citizenship, nationality, and statelessness’, 281-300, in: Vincent Chetail and Celine Bauloz (eds.) *Research Handbook on International Law and Migration* (2014), Edward Elgar.

⁵³ Daniel Faber and Christina Schlegel, ‘Give me shelter from the storm: Framing the Climate Refugee Crisis in the Context of Neoliberal Capitalism’ (2017) 28 (3) *Capitalism, Nature, Socialism*, 1-17.

⁵⁴ Krakat (2018) n3.

⁵⁵ Kälin (2016) n26, 14.

global commons and to all life on the planet, requiring multi-faceted responses.⁵⁶ GCJ may relate to ethical considerations or perhaps a ‘right of being present’, to physically exist at Natural Law theory.⁵⁷ In ‘global care chains’ of climate induced migrations, (including burden-sharing), GCJ is an ideal or vision rather than a set principle. It may be viewed as a foundational consideration, vision constitutive for both climate- as well as any Migration law- and policy related frames and considerations.⁵⁸

What then is global- or supra-national citizenship? There is no world-state, and a global citizenship in a narrow legal sense does not exist. However, supra-national citizenship holds reference to spheres of belonging beyond the state. It doctrinally sits between cases of EU mercantile-trade union turning political regional additional frames of citizenship, and is otherwise mostly aspirational with unresolved discourses on globality- or cosmopolitanism, global social networks, blockchain technology of a wide reading of citizenship existing not in reference to a state but, from the ground-up to the citizen themselves or being cloud-based and instead legitimised between citizens.⁵⁹

“Flag of convenience”⁶⁰ CBI fits this new generic citizenship into the demands of globalization, effectively reducing citizenship to its core functions including an emphasis on passports. Finality in citizenship is often not even needed, with the intermediate step to citizenship being temporary and permanent residency as valuable in the circumstances as ideological steps toward full membership that may have outlived its purpose after some time.⁶¹

Climate change and CBI effectively challenge the conceptual demarcations and permanency of population, territory or indeed state power and statehood as stipulated by Georg Jellinek and the *Montevideo Convention* 1933, including one government, a permanent population

⁵⁶ While universal law exists, such as in form of Human Rights, their enforcement vests with states.

⁵⁷ Linda Bosniak, ‘Being Here: Ethical Territoriality and the Rights of Immigrants’ (2007) 8 (2) *Theoretical Inquiries in Law*, 389-410; see however, Cara Nine, *Global Justice and Territory* (Oxford University Press, 2012), Chapter 2.

⁵⁸ Barbara Adams and Gretchen Luchsinger, ‘Climate Justice for a Changing Planet: A Primer for Policy Makers and NGOs’ (2009) 3 September 2015, United Nations; Sumudu Atapattu, ‘Climate change, human rights, and forced migration: Implications for International Law’ (2009) 27, *Wisconsin International Law Journal*, 607; David S.G. Thomas and Chasca Twyman, ‘Equity and justice in climate change adaptation amongst natural-resource-dependent societies’ (2005) 15 (2), *Global Environmental Change*, 115-124; United Nations, ‘Should International Refugee Law Accommodate Climate Change?’ (2014) UN News Centre, available at http://www.un.org/apps/news/story.asp?NewsID=48201#_Wcx1plv4P3X; Nigel Clark and Giovanni Bettini, ‘Floods’ of migrants, flows of care: Between climate displacement and global care chains’ (2017) 65 (2) *The Sociological Review Monographs*, 36-54; Frank Biermann and Ingrid Boas, ‘Preparing for a warmer world: Towards a global governance system to protect climate refugees’ (2010) 10 (1) *Global Environmental Politics*, 60-88; Maxine Burkett, ‘In search of refuge: Pacific Islands, climate induced migration, and the legal frontier’ (2011) 98, *Asia Pacific Issues*, 1; Jane McAdam, *Climate Change, forced migration and international law* (Oxford, 2012).

⁵⁹ However, with Francesca Strumia, it is difficult to give a satisfactory account of supranational citizenship: European citizenship is too narrow to exhaust the concept, and global or cosmopolitan citizenship is too broad to embrace it firmly: Francesca Strumia, ‘Supranational Citizenship’, 669-693, in: Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds.) *The Oxford Handbook of Citizenship* (2017, Oxford University Press), further see Kok-Chor Tan, ‘Cosmopolitan Citizenship’, 694-716, in: Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds.) *The Oxford Handbook of Citizenship* (2017, Oxford University Press).

⁶⁰ Michael B. Krakat, ‘The Many Parallels of CBI and Maritime Flags of Convenience’ (2020) October 14th, *Investment Migration Insider*, available at https://www.researchgate.net/publication/348736052_The_Many_Parallels_of_CBI_and_Maritime_Flags_of_Convenience_2020_October_14th_Investment_Migration_Insider.

⁶¹ One could thus argue that residency may thus become the new citizenship. See Michael B. Krakat, ‘Residency as the New Citizenship?’ (2021) *The Investment Migration Insider* (forthcoming); Further see generally, Kim Rubenstein, ‘Review Essay: The Centrality of Migration to Citizenship’, (2010) 7 (2), *Citizenship Studies*, 255, 256.

and a defined territory.⁶² CBI may here suffer some internal issues of legitimacy vis-à-vis the existing citizenry. Pending the particular jurisdiction, it may not always be entirely clear whether citizenships obtained through CBI programs can be revoked (or ‘stripped’) any easier or more readily than ordinary plural citizenship or than non-CBI naturalization-based citizenship.⁶³

CBI may also differ to other citizenship in that gradations or class(es) of citizenship are created, particularly where a polity speaks of “one undivided citizenry” (as most, if not all, constitutions do). Here, citizens-by-investment may face effective limitations that other citizens do not, such as the publishing of personal details on a register, the requirement to maintain a property investment, or limitations as to the active engagement in political office or even on voting.⁶⁴

Current nature of CBI is not geared toward participation⁶⁵ nor solidarity, but is more or less tailored to please the parties to the bargain, is individual generic and open, fixed on the factor of ‘price’.

I suggest that is in the entirety of the above ‘thin-ness’ that CBI could yet become a platform for narratives of climate change and other paradigms.

There have been some attempts to frame CBI purchasers as ‘global citizens’, with emphasis on philanthropists acting in the interest of humanity.⁶⁶ Further, aspects of the industry’s narrative include the lens of CBI purchases as “donations” country, with the transactions themselves somehow viewed to being of an altruistic nature.⁶⁷ In reality, however, excepting cases of discretion involved, CBI appears as a bargain, not a one-way donation or gift (with Christian Kälin’s *ius doni* being at first sight a mere vision not reaching far beyond

⁶² This includes the internal waters, territorial sea and air-space; generally see the *Montevideo Convention on the Rights and Duties of States* (1933), Dec. 26, 1933, 165 L.N.T.S. 19, 28 American Journal of International Law (Supp.) 75 (1934), which outlines and codifies the declarative theory of statehood as accepted as part of customary international law and which has added the ability of states to enter into binding contracts (treaties) as fourth requirement. For statehood’s constitutive theory, recognition by at least one other state is required. See in Sascha Bachmann and Martin Prazauskas, “The Status of Unrecognized Quasi-States and Their Responsibilities Under the Montevideo Convention” (2019), 52 (3) *The International Lawyer*, 400-410; Georg Jellinek, *Allgemeine Staatslehre* (3.Auflage, Haering, 1914), 394-434, and further references and discussion of Jellinek’s three constitutive elements of the state in the English language in Jochen von Bernstorff, ‘Georg Jellinek and the Origins of Liberal Constitutionalism in International Law’ (2012) 4 (3) *Goettingen Journal of International Law*, 659-675; also see in Roland Portmann, *Legal Personality in International Law* (Cambridge 2010), at 58.

⁶³ See for example the case of the ‘Vanuatu six’ (Chinese heritage Vanuatu CBI holders, whose citizenship was revoked and who were immediately deported, seemingly without hearing, and with questions remaining as to the Rule of Law, representation and a fair hearing / fairness, see Christian Nesheim, ‘Details Emerge on Vanuatu’s revoking Citizenships, Extraditing Fraud suspects to China’ (2019) July 17th, *The Investment Migration Insider*, <https://www.imidaily.com/editors-picks/details-emerge-on-vanuatus-revoking-citizenships-extraditing-fraud-suspects-to-china/>.

⁶⁴ Michael B. Krakat, ‘The Five Indispensable “Unities” of Sustainable Investment Migration Programs’ (2021) January 6th, *Investment Migration Insider*, available at <<https://www.imidaily.com/due-process/the-five-indispensable-unities-of-sustainable-investment-migration-programs/>>

⁶⁵ Kälin (2016) n26, at 213: ‘[N]early 100% of the applicants [...] have absolutely no interest in the political participation aspect of citizenship’; Atossa Abraxia Abrahamian, ‘The Cosmopolites’, (Columbia Global Reports, 2015), at 85.

⁶⁶ See global law firm Henley & Partners, Global Citizen Awards, available at <https://www.henleyglobal.com/newsroom/press-releases/gca-nominations>.

⁶⁷ Contra Kälin (2016), n26: Kälin states that ‘[the CBI] programs of St. Kitts and Nevis and Malta are supported by more detailed legislative schemes than those of Australia and Montenegro, where the government has far-reaching discretionary latitude in terms of deciding whether to grant naturalization to investors, without it being clear in the relevant laws under what conditions an investment will be considered as “sufficient consideration” for naturalization’, Kälin (2016) n26 at 413. At another place, Kälin states: ‘The term *ius doni* coined by the author, derives from the Latin expression used for a gift or a contribution (*donum/gen. doni*) and signifies the right to citizenship by making donation and by investing in the host state’ Christian H. Kälin, *Ius Doni in International Law and EU Law* (Brill, 2019), at 3, Fn. 28.

marketing). Rather, standard CBI appears a commodity under *ius pecuniae*,⁶⁸ the contractual exchange of passports for a price, with mutual and direct benefits attached, as per the stipulated and advertised requirements.⁶⁹ At the same time, the lens of the donation may hold potential, effectively corresponding to the global economy of care in form of contributions to counter climate change within the global commons sphere.⁷⁰ Counterintuitively, with philanthropy as one lens in mind, CBI legal mechanisms may then serve as a citizenship for stewardship and solidarity regarding world matters, including to addressing change through new narratives and the incorporation of climate change into the consciousness of citizenship.

Local-global ‘solidarity events’ & common duty dimensions

CBI could then generically act to uncouple citizenship from political and moral expectations that may no longer uphold facing crisis, adding new solidarities instead.

The historical citizenship as social-contract involved an exchange of rights and at least two core duties, allegiance and military duty as evidence of loyalty.⁷¹ Today, the citizen is primarily seen as a rights bearer, with remaining core duties including paying taxes, obeying laws (which are also owed by all residents), and, in some countries, the duty to vote or participate in jury trial processes. EU citizenship does not list a single duty.⁷²

In political liberalism, citizenship is a concept understood to focus on the citizens’ rights, limited by fellow citizens’ rights, referring to political persons contributing to the common public good (*bonum commune*) and to shared interests of the citizenry.⁷³ These interests necessarily include those essential for the citizenry’s functioning, fundamentals such as the ecosystem, thus taking obligations to the global level: Obligations may then be supra-national contributory, be seen in a Kantian mutual obligation of hospitality between the international community of citizens, states, and humanity.

At the same rate, automatic assumptions of plural citizens holding foreign or any lesser allegiance to the asserting state is a parochialism: In times of climate change, such is no

⁶⁸ Being a term somehow misleadingly coined on the example of Austria, which has an ordinary immigration system, as well as a discreet discretionary scheme, rather than an actually pecuniary CBI scheme: See Joachim Stern, ‘Ius Pecuniae - Staatsbürgerschaft zwischen ausreichendem Lebensunterhalt, Mindestsicherung und Menschenwürde’, 55-74, in: Julia Dahlvik, Heinz Fassmann and Wiebke Sievers (eds.), *Migration und Integration - Wissenschaftliche Perspektive aus Oesterreich* (2012, Vienna University Press).

⁶⁹ Again, contra Kälén’s *ius doni*, under contract, citizenship cannot simply be withheld for other than political reasons. Beyond glossy advertisements, such altruism in CBI is mostly a lip-service, as the selling state is creating revenue in return for the conferral of citizenship. In most cases of the contractual ordinary transaction with the essentials of the negotiation present (such as a clear criminal record of the purchaser and payment of a fixed price), the passport will be conferred as advertised. Even in citizenship by discretion (CBD), a sub-form of CBI, certain (threshold) levels of payment may more likely trigger positive discretion, which may hardly be called a donation. Donations are directed gifts without the expectation of a return and altruism would exist beyond any commercial exchange between payment and passport.

⁷⁰ Tony Shallcross and John Robinson (eds) *Global Citizenship and Environmental Justice* (Editions Rodopi, 2006).

⁷¹ Otfried Hoffe, *Democracy in an Age of Globalisation* (2007) Springer; also see Joppke, *Instrumental Citizenship*, 9.

⁷² Dimitry Kochenov, ‘EU Citizenship without Duties’ (2014) 20 (4), *European Law Journal*, 482; Richard Bellamy, ‘A Duty-Free Europe? What’s Wrong with Kochenov’s Account of EU Citizenship Rights’, (2015) 21 (4), *European Law Journal*, 558.

⁷³ Angela Kallhoff, ‘The Normative Limits of Consumer Citizenship’ (2016) 29, *Journal Agric Environ Ethics*, 23, at 26, referring to John Rawls, *Political Liberalism* (Columbia University Press, 1996).

longer tenable, if anything, dual- and multiple citizenship should be endorsed, becoming the norm, where providing assistance in the adapting to crisis.⁷⁴

Full, material, reciprocal and participatory citizenship is a measure and condition of civic equality.⁷⁵ This concerns membership of a political community where all citizens can determine the terms of social cooperation on an equal basis.⁷⁶ John Rawls highlights reciprocal rights and duties under a conception of the common good. Rawls refers to citizens as free, self-authenticating human beings presumed to be rational, capable of taking responsibility.⁷⁷ Does reciprocity exist when addressing global change? A traditional statist approach to citizenship will still emphasise the rights and duties, which individuals have as members of bounded sovereign communities, denying that citizenship has any meaning when detached from the sovereign nation state. Yet, a duty dimension may derive from abstract concepts, even pertain to pandemics and climate. At law, this refers to the very idea of obligations of solidarity of each towards all, of individual states towards the international community as a whole. Aspects of such solidarity on a global scale may be materialising today.⁷⁸ In the globalization agenda, economic growth and development still dominates, with loyalty to national economic interest being greater than a more remote larger public interest dimensions in the preservation and protection of the global commons.⁷⁹

CBI Greening: ‘Neo-Nottebohmian’ Links, Effectiveness, global commons

Generally, CBI law, unless repealed, amended or successfully challenged in court, appears to validly waive residence time: At international law, there are no general genuine links or material effective connections requirements, such as evidenced through ‘habitual residence’ between nationals and their state that could become affected by- and hence limit CBI waivers, outside very narrow and specific cases.⁸⁰ At municipal law levels, material links are also not

⁷⁴ However, in some countries such as Australia, plural citizens do not hold full rights and status, are, for instance barred from active political mandate and may even lose their Australian citizenship faster than others. An extreme example is the ban on Australian citizens with Indian background to return to Australia during the pandemics. See in Krakat (2021) n15, in Idem, Further see Michael B. Krakat, ‘Between the local and the global: Plural Citizenship in Australia’ (2018) Issue 1, *Investment Migration Council Bulletin*, available at <<https://investmentmigration.org/articles/local-global-plural-citizenship-australia/>> and Idem (2021) n11.

⁷⁵ Kim Rubenstein & Niamh Lenagh-Maguire, ‘Thick and thin citizenship as measures of Australian Democracy’, 27, in: Glenn Patmore & Kim Rubenstein (eds.) *Law and Democracy: Contemporary questions* (2014, ANU Press).

⁷⁶ *Ibid.*, 17.

⁷⁷ John Rawls, *Political Liberalism* (Columbia University Press, 1996), 30, 32; Idem, *The Law of Peoples* (Harvard University Press, 1999); also: Jonathan Crowe, *Legal Theory* (Lawbook Co., 2nd ed. 2014), 197.

⁷⁸ See in Francioni (2012), n72, at 455.

⁷⁹ This exclusively state centric view is yet bound to transform, with state sovereigns being directly exposed not only to economic globalization, but to other global scale impacts such as the changing climate. *Ibid.*, at 456.

⁸⁰ *Nottebohm (Liechtenstein v Guatemala)*, 6 April 1955, ICJ Reports 4. At 22, the ICJ states that it considers various factors for the purpose of establishing effective nationality, with the importance of these factors depending on the particular context. These factors are habitual residence, the centre of one’s interests, family life, participation in public life and attachment shown to a particular country: ‘[N]ationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as a result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State’ at 23; see generally in Krakat (2021), n15, 42; The International Law Commission proposes in its 7th report on diplomatic protection (2006) to do away with the genuine link criterion as an additional factor for the exercise of diplomatic protection (Art. 4 of the report), and takes the general view that the case should be limited to the particular circumstances and facts. Peter Spiro correctly states that ‘At no time has “genuine link” represented a general rule of international law. The putative doctrine has a poor track record in subsequent international proceedings (including before the European Court of Justice), effectively limited to supplying secondary support for the “dominant nationality”’

strictly required as a general rule, sovereign legislators may stipulate as they deem fit. However, it appears that the supra-national EU Commission requires such link municipally as well as supra-nationally for its CBI running member states: The ECJ's 2010 decision of *Rottmann*⁸¹ constrains the practices of Member states⁸² where they might include a breach of the duty of loyal or sincere cooperation as contained in Art. 4(3) of the *Treaty on the European Union*.⁸³ However, this is commonly viewed as an erroneous requirement for CBI,⁸⁴ as member states are sovereign and any such limitations on citizenship law cannot be readily extracted from municipal citizenship law or from EU law alike.

At the same rate, any reference to material ties or links may yet be brought into existence by legislators, be made a requirement specifically in an effort of enhancement of CBI sustainability and acceptability.⁸⁵ While the genuine link itself is said by Peter Spiro to have 'no salience to CBI programs',⁸⁶ I argue, however, that counterintuitively to citizenship doctrine, municipal-supranational links within (and outside) the law of citizenship may indeed be engaged in support of existences referenced in addition to- or beyond the state: The climate refugee may hold such newly acknowledged link to humanitarian safe havens outside disaster zones and to humanity in total, or indigenous people hold ancient genuine-ties to ancestral metaphysical 'country'. With Kim Rubenstein, this pertains to a wider notion of citizenship including extra-constitutional sources, such as the *Uluru Statement from the Heart*

approach in the narrow context of international claims involving dual nationals. "Genuine link" is even less appropriately applied in the wake of globalisation, in which states have increasingly enabled the conferment of nationality to individuals with tenuous connections to the state, for example, through ancestral descent. Although some political theorists have deployed the "genuine link" label to advance a liberal nationalist agenda, *Nottebohm* has been rejected by a growing consensus of legal scholars. Moreover, 'genuine link' seems infinitely elastic in a world in which establishing connections of various descriptions has been dramatically facilitated by the compression of space which has come with globalisation. The threshold for demonstrating links with a state, its people and its economy are categorically lower than they have been ever been in the past. This adds additional complexity to the task of any state or other entity seeking to second-guess the attribution of nationality by another state.' Spiro (2019) n79 at iv and 20. Adam I. Muchmore, 'Passports and Nationality in International Law' (2004) 10, *University of California Davis Journal of International Law*, 301-355, at 342-3; Christian H. Kaelin, 'Ius Doni: Citizenship-By-Investment' (2019) 3rd Quarter, *Global Citizenship Review*, available at <<https://globecit.com/ius-doni-citizenship-by-investment/>>; A more extensive interpretation of the link ie. by Michel Verwilghen, 'Les conflits de nationalités (apatridie et double nationalité)' (1999) Vol.277, *Recueil des cours de l'Academie de droit international de la Haye*, 9-480, at 95. See further Peter J. Spiro, 'Nottebohm and 'Genuine Link': Anatomy of a Jurisprudential Illusion' (2019) 1 *Investment Migration Council Working Papers*; Audrey Macklin, 'Symposium in framing global migration law - Part III: Is it time to retire Nottebohm?' (2017) 111, *American Journal of International Law (AJIL)* Unbound, 492-497; also see Rayner Thwaites, 'The Life and Times of the Genuine Link', (2010) 49, *Victoria University Wellington Law Review* 645, 657; Robert D. Sloane, 'Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality' (2009) 50 (1), *Harvard International Law Journal*, 1-60.

⁸¹ Case C-135/08 *Rottmann* [2010] ECR-I-01449, (hereinafter: 'Rottmann 2010')

⁸² See in Shaw 2014, at 33.

⁸³ *European Union, Treaty on European Union (Consolidated Version), Treaty of Maastricht*, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002: According to this provision, '[t]he Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.'

⁸⁴ Dimitry Kochenov, 'Commission would likely be humiliated if CIP matter goes to court over genuine links' (2020) October 23rd, *The Investment Migration Insider*, available at <https://www.imidaily.com/editors-picks/kochenov-commission-would-likely-be-humiliated-if-cip-matter-goes-to-court-over-genuine-links/>.

⁸⁵ Krakat (2018) n3. CBI as generic citizenship, may incorporate local ways (such as indigenous custom, urban- or regional law, but also mercantile citizenship narratives including CBI), overcome barriers posed by the bordered nation-state and its idiosyncrasies when contrasted with a global sphere of belonging and responsibility. There is a local-specific need to utilize CBI structures and mechanisms, which can even assist in incorporating local ways vis-à-vis the bonds imposed through Western conceptions of citizenship and nationhood. CBI can be informed directly with local custom through new municipal-supra-national links.

⁸⁶ Spiro (2019) n79, at 2.

as a commitment to ‘active citizenship’ for equal power of the governors and the governed,⁸⁷ or within the notion of an effective material- focus on just outcomes beyond formal legal nationality.⁸⁸ With climate change, the world of citizenship law may be pressed toward transforming law’s abstractions into material commitments, for a local-global re-dutification of citizenship. Such effective material links could then be found both in- and outside citizenship, such as in supra-national indigenous non-citizen ‘belongers’ in the Australian High Court’s *Love* case, a landmark-ruling endorsing membership beyond the law of residence- and citizenship as inclusions of cultural metaphysical links to country.⁸⁹ Supra-national as well as municipal ‘new-genuine’ or as I term them, ‘Neo-Nottebohmian’ genuine links may then in principle be evidenced within concepts such as belonging, adding to citizenship law but which may well be placed within CBI- and ordinary residence- and citizenship law as well. ie. in references to humanity and humanitarianism in New Zealand discretionary CBI or Malta’s spousal direct naturalizations.⁹⁰ I hence suggest that transactional generic CBI is able to pose as the formal legal basis to attach specific material links to citizenship law.⁹¹ Whether such link(s) could, today, be conceptualized in form of a general “genuine link to humanity” is the question.⁹² Facing crisis, it seems likely that such general global link may well be needed.

CBI as a plural, extraterritorial, mercantile concept is going beyond the municipal lens, also open to supra-nationalisms. The state initiates CBI formula at law, but then effectively leaves the program conceptually exposed to the forces of the global market for membership, to market logic and rule developing from a commercial perspective.

Existing outside the usual connotations, conventions and expectations of conventional citizenship, CBI legal mechanisms may indeed become employed to reformulate the global genuine link:⁹³ CBI as proto-structure may for instance fit states that have had a colonial

⁸⁷ Kim Rubenstein, ‘Power, Control and Citizenship: The Uluru Statement from the Heart as Active Citizenship’ (2018) 30 (1) *Essay 3, Bond Law Review (Special Issue)*, 19-30.

⁸⁸ Adding meaning to citizenship, arguably a relevant instrument in times of crisis and beyond, reference could be made to Kim Rubenstein and Daniel Adler, advocating for a ‘effective nationality [...] concerned with a person’s connections in fact, the social, political, and psychological’, to which one could surely add metaphysical connections to ‘country’ as well as a commitment to the environmental protection. ‘Effective nationality should be the stronger consideration rather than formal nationality’; Effective nationality takes into account a much broader notion of citizenship, ‘[n]ot concerned with the formal legal status of an individual [...] but with issues of social fact, identity and justice in a given situation. That this individualized account of citizenship, in turn, allows to consider the global commons as directly affecting the health and rights of the individual. Such flexible, effective nationality could prove more effective in the struggle for individual, regional supranational efforts in addressing climate change beyond a state centric view. Effective nationality could further acknowledge the ‘effectiveness’ of CBI: This is because effective nationality may be ‘[f]acilitating a theoretical (if not yet practical) entry point for the acknowledgment of layered and/or fragmented nationality appropriate to the circumstances of our participation in a given national, supranational, regional or even nonterritorial communities’: Kim Rubenstein and Daniel Adler, ‘International Citizenship: The Future of Nationality in a Globalized World’ (2000) 7 (2) *Indiana Journal of Global Legal Studies*, 519-548, at 546-7.

⁸⁹ Krakat (2018) n3, as to supranational CBI references, see above n45-6; Krakat (2019) n15; Krakat (2021) n15.

⁹⁰ See references in Krakat (2021) n15.

⁹¹ Michael B. Krakat, *Citizenship by Investment in International- and Supranational Perspectives* (PhD Thesis, Bond University, Australia, forthcoming 2021).

⁹² Such link could also include reference to the existing citizenry of the CBI states, to other states within a union of states where there are mutual commitments between member states such as in the EU, the public good & to universal ‘humanity’. Cohesive, sustainable concepts for national memberships with a global perspective, new links whether general or specific are of municipal-supra-national nature, directed toward local- as well as the global community. The values of that link that inform CBI can be anything between municipal and global, are to necessarily include reference to the global climate and those displaced across borders. I suggest that CBI may here become informed by general accepted rules, such as the UN-Sustainability goals, so to enhance acceptance, acceptability and sustainability of the schemes.

⁹³ As to the nature of CBI, suggesting “neo-Nottebohmian genuine links”, see Krakat (2018) n3.

experience and struggle with Western perceptions of citizenship and nationhood, such as small states in the South Pacific where Constitutions (including Criminal Law) at times overlap or clash with Custom Law.⁹⁴

Price-bound CBI legal mechanisms are then valuable for climate change law and climate justice in that they may assist overcoming the randomness of birthplace and, to some extent, appear to release citizenship from the conceptual weightings and expectations of the nation state.⁹⁵ States may release price bound direct naturalization citizenship for free to those deserving, or with a moratorium on payments, payment plans, interest free loans in reference to global climate aid programs, to crowdfunding or a variety of other instruments.

Passports may thus now directly become assigned, absent naturalization periods, such as to frontline workers, researchers, and others who are serving the nation or humanity in climate relief, as well as to those displaced by climate change. This in turn could lead to credit schemes and systems of admissions, akin to the mechanisms of carbon offset schemes. Importantly, to incorporate goals of climate justice within CBI legal mechanisms, the idea is to allocate citizenship to worthy goals, national and global.

For current CBI, this may mean that local and global acceptance of passport purchasers may be heightened by showing that commitments to local-global solidarity are established through the transaction. This in turn may overcome the lacuna CBI leaves from missing naturalization and to establish that CBI can be linked to public interest goals that are assigned to revenue creation as set for purposes by the selling state. Such enhanced CBI by local-global public interest narratives overcome a CBI that merely acts indifferently to create ‘revenue’ as such. The CBI purchaser may in other words become accepted to act as sponsor for new membership narratives, linked to local-global solidarity and identity beyond the formal legal transaction serving purposes solely for municipal revenue creation:⁹⁶ Climate change and markets for membership may contribute here to a new global vision in the approach to citizenship, either reflected within municipal law, or outside of it.

Supranational communities based on purchased membership, climate social credits, at times assigned to climate induced migrants, informed by just outcomes, may now become possible concepts. Just as globalization, climate change may constitute a ‘Grotian moment’, an instance where there is fundamental change to the international (as well as internal and global) system on such a scale that a new principle of the law of citizenship could emerge.⁹⁷ In conceptual response, CBI’s ‘greening’, that is, the heightened awareness of global issues through CBI’s own mercantile lens, could be achieved through education and law reform toward flexibility and the release of the potential of law, through awareness of passport

⁹⁴ CBI can, in other words, provide the conceptual basis for a Customary Law of Citizenship. See here for instance Vanuatu having custom reflected in its Constitution but not necessarily fully represented; further see the Solomon Islands with their ongoing journey toward Constitutional reform and Constitutionalism: See Krakat (2021) n10.

⁹⁵ For Dimitry Kochenov, price-bound, citizenship may then be less arbitrary and more transparent than territorial or parental acquisition of citizenship and no longer subjected to mechanisms of arbitrary approval such as language or cultural tests. Dimitry Kochenov, ‘Citizenship for Real: Its Hypocrisy. Its Randomness. Its Price’, 27-9, in: Ayelet Shachar and Rainer Bauböck (ed.), *Should Citizenship be for Sale?* (2014) European University Institute RSCAS Working Paper 2014/01, Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory, at 27-29.

⁹⁶ See for this also Krakat (2018) n3.

⁹⁷ Referring to Hugo Grotius, on the example of customary international law, see Michael P. Scharf, *Customary International Law in Times of Fundamental Change: Recognising Grotian Moments* (Cambridge, 2013), at 3.

purchasers of their actual allocation and usage of funds, as well as the linking of their new membership to issues both locally and globally relevant. CBI enhanced by ideas of justice is opt-in and optional, vesting in the nature of solidarity as not being enforceable.

Overall, global adjustments of CBI involve a difficult balancing between the sphere boundaries of law and politics, vis-à-vis civic rights to participation material citizenship would ordinarily allow instead of CBI payment augmentations in lieu of naturalization.⁹⁸ Citizenship reform could impact the state's authority over the concept of citizenship, as well as the moral attitudes and overall acceptance of citizens and the laws of their polity.⁹⁹ Perhaps counterintuitively and surprisingly, notwithstanding the creating of new paradigms such as belonging, it is entirely possible that legislators and courts as lawgivers may assign various meanings to the existing municipal legal matrix governing people within state borders and their relationship with the state, whether civic, mercantile, indigenous or otherwise¹⁰⁰ Instead of external supra-national creations, there can be solutions from within an extending law of citizenship, with heightened global acceptance of local-global CBI practice and the support for climate and other causes.¹⁰¹

While not strictly necessary for CBI to function, and with CBI being formally and legally valid law absent any further need for justification at law, additional 'links' may yet be created to address issues of local/global education and acceptance the programs have been facing. There are in fact only very few standards or generic formal blueprints informing CBI-laws, making CBI attractive to become in turn enriched with meaning and learning, such as to addressing climate change.¹⁰² One major venue may be positive social impact 'Socially Responsible Investment' (SRI) as longer-term government backed investments of 6-8 years rather than 'one-off' payments, ensuring the state's ability to upholding global mobility and sustainability of the programs. Such is the case for Saint Lucia CBI COVID Bond Programme, which may quite literally be about small island states economic survival in times of pandemics or following health- or economic crises.¹⁰³ This may be making CBI more

⁹⁸ It may become appropriate for global CBI applicants to choose links and connections to the polity that may be created through a local and global lens. The solidarity achieved through CBI, if any, is at any rate, and by its nature, both a local- and a global one, akin to a duty owed by global citizens in a sense that transcends state borders, not in relation to any one Leviathan state, but somewhat akin to Kantian cosmopolitan duty of hospitality between all inhabitants of earth.

⁹⁹ See ie. in Joseph Raz, *The Authority of Law* (1983, Oxford University Press), 164, 227-9.

¹⁰⁰ As to the global market for membership entitlements: Krakat (2018) n3 and Jelena Džankić, *The Global Market for Investor Citizenship* (Palgrave Macmillan, 2019). Kristin Surak, 'Global Citizenship 2.0 - The growth of Citizenship by Investment programs' (2016) 3 *Investment Migration Council Research Papers*; Andres Solimano, 'Global Mobility of the wealthy and their assets' (2018) 2, *Investment Migration Council Research Papers*. Further see Krakat (2017 Issue 1) n23.

¹⁰¹ CBI may be over-leveraging the concept of citizenship with the waiving of naturalization and naturalization's links that may, ordinarily stem from or at least being perceived to (potentially) being created through naturalization processes within the global public's and existing citizenry's perception and acceptance of CBI. CBI as thin, transactional and somewhat generic citizenship may become enriched with assigned meaning. Krakat (2021) n15.

¹⁰² These local-global standards perhaps include accepted due-diligence requirements including criminal history checks. These standards are yet only formal facilitators toward CBI admissions, not material references to any links.

¹⁰³ Citizenship by Investment Saint Lucia, 'Socially responsible investment at the heart of CIP Saint Lucia Covid Bond innovation' (2021) March 3rd, available at <https://www.cipsaintlucia.com/news-blog/socially-responsible-investment-at-the-heart-of-cip-st-lucia-covid-bond-innovation>. By creating a new bond offering, investors inject \$250,000/300,000 with varying holding periods onto the sovereign balance sheet, thereby creating enhanced autonomy for St. Lucia against the current challenging economic dynamic. Due to the investment structure, the COVID bond offering is particularly attractive to families looking to augment global mobility and hedge volatility. Fully backed by the government and therefore very low risk, the coupon will be repaid after 5/6/7 years depending on the tenor selected - creating a favourable long term value proposition compared to donation or real estate options. Nestor Alfred, CEO of CIP St. Lucia states: "The CIP Saint Lucia COVID bond can be seen as the only socially responsible investing (SRI) option in the investment migration industry. Our innovative investment structure means that investors can support a developing economy and sovereign state in a time of need.

rigid, it could effectively create (complementary opt-in?) longer term ties through government holdings of the investment, at least for those CBI purchasers who wish to emphasize personal relocation and adaptation/protection and acceptance over passport mobility. These mechanisms could also become a venue for CBI to support reference to climate protection and to intergenerational justice, to minorities such as climate refugees, stateless or indigenous belongers.¹⁰⁴ Further, this could be achieved perhaps akin to other areas such as Corporate Social Responsibility (CSR) or Social Licences to Operate (SLO).¹⁰⁵

In addition to local public interest links of general or detailed revenue creation, CBI municipal law could incorporate references to humanity or to the UN-sustainability goals, adding to the sustainability and acceptance of CBI programs themselves, materializing some of the self-proclaimed aims of philanthropic ‘noble causes’ the investments are purportedly assigned for in the first place according to CBI industry and advertisement, attracting a global audience through local-global aims of CBI revenue. I term the entirety of these municipal-supranational connections ‘Neo-Nottebohmian Genuine Links’.¹⁰⁶ These are effective, material links between people, whether citizens or not, in the national and supra-national dimension of governance of persons, as acknowledged by states through a variety of status allocations, including citizens, residents, belongers, stakeholders.¹⁰⁷ Sovereign states’

But this isn’t charity, this is a sophisticated investment choice that creates value for St Lucia, St Lucians and investors alike. St Lucia gains from a sustainable liquidity source. Investors gain a value catalyst from enhanced global mobility, and lifelong yield and the bond pricing. It’s a real win, win - which in the time of COVID is pretty rare.”

¹⁰⁴ See for belongers, as addressed in the Australian High Court’s 2020 case in *Love*, with long-term investments able to assist this status: See Krakat (2021) n15.

¹⁰⁵ For the example of mining, these may include neighbours and other stakeholders. For CBI, these may be the existing citizenry and other, regularly naturalizing immigrants, as well as accepted CBI applicants turned citizens. The SLO refers to a level of tolerance, acceptance, or approval of an organization’s activities by the stakeholders with the greatest concern about the activity: Robert Boutilier, ‘A Measure of the Social License to Operate for Infrastructure and Extractive Projects’ (2017) November, available at <https://ssrn.com/abstract=3204005>.

¹⁰⁶ At law, sovereign states may wish to attach any values or sentiments to citizenship, including supra-national values: I propose that such re-evaluations of citizenship could include reference to existing factors such as support for local individuals and businesses, as well as custodianship for cultural goods locally and globally, pending the nature of the reference, in effect assigning a sponsor- or custodianship role, even if merely ceremonially so, to the passport purchaser. Such may in turn allow both local- and supra-or extra-national narratives of belonging to be created on top of the otherwise merely transactional CBI, making possible the future potential for both the purchaser and the polity to develop meaningful belonging, an important goal in times of economic turmoil, and pandemic and climate induced displacements. Both local- and globally meaningful references may be added to create sustainability, heightened demand for more diverse groups of purchasers and civic/supra-national acceptance of the programs, addressing the dilemma of admitting strangers absent naturalization: In other words, CBI could be linked to artworks (ie., paintings, musical instruments) of significance both to any one country and to the world at large, then exhibited locally or such exponents travelling globally, becoming objects of reference to receive support by CBI payments in exchange for passports. These links may then, in effect, allow the purchaser to refer to- and to become associated with relevant matters that find acceptance and praise within the selling polity as well as globally, become embraced by the existing citizenry as well as worldwide in support for items of local or global heritage and meaning. On the example of Vanuatu, but directed to all countries running CBI, I have argued to making CBI more sustainable by adding links toward the people whether local and/or global, to flora, fauna (ie. local Dugong Sea Cow conservation efforts) as well as to cultural goods, musical instruments, enriching the narratives of municipal passports for sale, creating global stories beyond the mere contractual paper trail of citizenship and allowing for expats to enter the ‘homogenous zone’ of actual local acceptance without naturalization, sharing stories toward an individual’s share of the social contract while being exempt from the ten-year-period of presence and participation in the polity: I have suggested these Neo-Nottebohmian Genuine link since 2018 (Krakat 2018 n22); March 4th 2019 at the University of the South Pacific, public lecture; at the Investment Migration Council Academic day 2019, June 3rd, Geneva; Idem (2021) n15; for sustainability goals see above n6 and generally in Krakat (2018) n3.

¹⁰⁷ Again, what I term ‘Neo-Nottebohmian Genuine links’, are supranational links enabled through CBI’s market lens, or through digitization and justified in the wake of the HR (r)evolution, limiting the monopoly of states over membership, such as municipal references to humanity in New Zealand’s citizenship by discretion laws. These are references to links outside the citizenship of the state. This is somewhat akin to what the High Court has now acknowledged, links outside the state’s citizenship legal matrix, with the links being direct individual ones, connecting the local person (ie. passport purchaser, or, here, indigenous person) to spheres somewhat vested outside municipal law. These links may include local-global humanity,

legislators as well as the courts are entirely capable and entitled to create laws that establish connectors between individuals and reference points so described and acknowledged, whether real- or aspirational.¹⁰⁸

For example, within upcoming CBI programs for, say, Tuvalu, climate change funds contributions could assist in direct CBI naturalizations qua payment contribution alone (given that the investment fund itself includes respective goals), or, by additional choice for climate donations on top of passport payments, akin to airline carbon-offset options. The now localised and ‘acceptable’ passport purchaser becomes publicly associated with respective projects in support of local- and/or global people (such as the existing citizenry, indigenous belongers, stakeholders) and their meaningful connotations, flora or fauna, replacing language and cultural ties with direct, project-based ‘purchased’ ties made relevant to the passport sold through connection at law.¹⁰⁹ These legal-mechanisms and contributions could then assist in funds re-distributions such as for the re-placement of climate induced migrants.

Climate Justice & CBI: Enforcing the spirit of humanity?

While a global citizenship in the strict sense does not exist absent legal- (following political) stratification and constitutionalizing processes, theorists in the Kantian tradition have used the idea of world citizenship to refer to obligations to care about the future of all humanity.¹¹⁰ Transformations in membership laws, in turn, may allow for more holistic and sustainable narratives of climate justice in terms of global burden-sharing. With damages independent of the location of emissions, and persons increasingly placed within transnational paradigms of existence, be it globalization of membership through forced- or mercantile mobility, both climate change and migration link the experience of individuals with the global commons.

In reconciling global climate change and associated considerations for justice with CBI, a wider and more flexible understanding of what should constitute citizenship, including membership of the international- or global community, could be a frame in addition to

or in *Love*, a specific collective spiritual ancestral plane. References to supranational links go beyond the conceptual constraints in *Nottebohm*, are hinting at an emerging hybrid local-global law of membership, at least, in addition to- and supplementing state law, and created by the state. These links would need to be upheld by the assigning state also vis-à-vis other states: Krakat (2018) n3 at 170, referring ie. to s9(2) of the *Citizenship Act 1977* (NZ) as a humanitarian cause for direct citizenship admissions; also see above n90.

¹⁰⁸ Supranational ‘genuine-links’ may here reflect today the past and putative genuine link-requirement in *Nottebohm*: See again Krakat (2018) n3.

¹⁰⁹ While states may sell passports without requiring naturalization, to retain control and relevance of citizenship itself, they may now begin to establish some meaningful links through these sales, leading to the adoptions of passport purchasers of local-global values. States can, through any reference points, establish their own municipal-supranational links at law, connecting the local and the global, rather than remain confined to the national sphere. With extending references and links between the real world, its globalization, pandemics, and hope vested in humanity, the world of citizenship is to exist for the benefit of the people. Formal rigidity leading to exclusion should instead be informed by flexibility and holism. The possibilities for the new links seem endless and can include a complete reframing of the relationship between peoples in a territory, such as indigenous and non-indigenous, attached to the CBI lens. These effective links are officially making passport purchasers a part of the polity they seek to enter absent naturalization, with names of purchasers and the purpose of their purpose made transparent, readily becoming associated with that issues that matter to the existing citizenry if not to the world at large. New links between the selling state and the passport purchaser could be established, involving all stakeholders and overcoming the lacuna left by missing naturalization, making the passport purchaser at home over night, as well as raising local acceptance and sustainability of CBI practice. A discretionary element may or may not be added, to such programs to become citizenship by discretion (‘CBD’), with possible emphasis on the passport purchaser in particular, their skills, contributions and visions.

¹¹⁰ Andrew Linklater, ‘Cosmopolitan Citizenship’ (1998) 2 (1), *Citizenship Studies*, 23-41.

national citizenship. Flexibility of membership may ideally be utilized to more proactively address global commons problems beyond mere disaster response. The impact of markets for citizenship on the laws and policies of a CBI state may be dramatic: In Dominica, CBI programs were put to work as economic response to natural disasters, leading to substantial price reductions.¹¹¹ The Hurricane season of 2017 has seen the storms ‘Irma’ and ‘Maria’ led to emergency ‘race-to-the-bottom’ sales of citizenship.¹¹² Other Caribbean nations, including St. Kitts and Nevis, Grenada, or Antigua in an effort to rebuilding (rather than to save costs by seceding from-) its twin island Barbuda, sold citizenship at dramatically discounted prices (halved prices and reductions between US\$50.000 to \$200.000) in an effort to expediently raise emergency funds, sparking concerns that the programs may be vulnerable to abuse for attracting the “wrong” purchasers, for instance, due to relaxation of due-diligence checks.¹¹³

Beyond state-referenced goals and visions that end at the border, GCJ then requires to think of responsibility for everyone, including of those placed and displaced within, as well as outside the fixed, rigid, limiting, static, incomplete, parochial, bordered-national paradigm that is rendered defunct in light of global crisis and solidarity.¹¹⁴ From a holistic viewpoint, climate justice may hence include legal references to ‘humanity’, made by specific municipal legislation relating to the direct sale of passports in a (broader) public interest. In other words, global passport purchasers wishing to acquire heightened mobility in form of visa free travel through purchased passports should be able to pay both for local- as well as global ‘good causes’, acknowledging the connection of the two spheres.

Challenges lie ahead, most relevantly the issue of potential enforcement beyond voluntary contributions.¹¹⁵ Responsibility for the global commons, whether by proximity or otherwise, has always been a problem area:¹¹⁶ The environment was seen as a concern of the international community, thereby removing environmental law from the narrow confines of

¹¹¹ Costing half the country’s annual GDP for reparations, see: Paul Crask, ‘Dominica asks for aid after tropical storm Erika devastates island’, *The Guardian*, Friday, 4 September 2015, 16:48 BST, <<http://www.theguardian.com/world/2015/sep/04/dominica-asks-for-aid-tropical-storm-erika-damage>>.

¹¹² Saphora Smith, ‘Hurricane-hit countries slash cost of citizenship-by-investment programs’, nbc news, Jan.06.2018, <https://www.nbcnews.com/news/world/hurricane-hit-countries-slash-cost-citizenship-investment-programs-n832161> also see Phil McCausland, ‘2017 hurricane season finally ends: How bad was it? Will the future bring worse?’, December 3rd, 2017, available at <https://www.nbcnews.com/news/us-news/2017-hurricane-season-finally-ends-how-bad-was-it-will-n825816>

¹¹³ Marketization of citizenship could result in a ‘race to the bottom’ as to due diligence and monitoring requirements applied to applicants in an effort generate revenue from thin air for hurricane-relief efforts. This could make authorities more inclined to approve would-be citizens and result in laxer vetting practices with less margin for revenue, potentially spending less on due diligence and investigating each case.

¹¹⁴ Compare here with Bayes Ahmed, ‘Who takes responsibility for the climate refugees?’ (2018) 10 (1), *International Journal of Climate Change Strategies and Management*, 5-26; C. Okereke, ‘Climate Justice and the international regime’ (2010) 1 (3) *Wiley Interdisciplinary Reviews: Climate Change*, 462-474.

¹¹⁵ Both international law relating to the environment and to nationality remain relatively immature and underdeveloped bodies. Francesco Francioni remarks, even after more than 40 years of development, international environmental law is still comprised mainly of treaties and soft law instruments, with the consequence that even in relation to global issues including climate change, large regulatory gaps exist due to the inability to co-opt important actors within the relevant treaty system. Most seriously is the ‘lack or deficiency in enforcement mechanisms. In other areas of international law, such as [...] human rights and international economic law, the progressive development at the normative level has been accompanied in the past half-century by a parallel development of dispute-settlement institutions and enforcement procedures: ‘Francesco Francioni, ‘Realism, Utopia, and the Future of International Environmental Law’, 442-460, in: Antonio Cassese (ed), *Realizing Utopia, The Future of International Law* (2012, Oxford University Press), at 447.

¹¹⁶ There is general agreement that the inception of international environmental law can be traced to the early 1970s with the organization by the United Nations of the adoption of the *Stockholm Declaration on the Human Environment*, adopted 16 June 1972, 11 ILM 1416 (1972).

private law regulating reciprocal relations between neighbouring states.¹¹⁷ The *Stockholm Declaration* enunciated a body of norms and principles governing the collective action of states and other international actors with the goal of safeguarding the essential elements of the environment as a ‘public good’, including water, air, climate and the biosphere.¹¹⁸ This then gave substance to obligations formulated only two years earlier by the International Court of Justice in the *Barcelona Traction* case.¹¹⁹ This judgment proclaimed the responsibility of every state to prevent damage to the environment beyond the bounds of national jurisdiction.¹²⁰ The case linked the safeguarding of the environment to fundamental rights and to human dignity, as well as enunciated the duty to protect and improve the environment for present- and future generations.¹²¹ The *Stockholm Declaration* led to a broad range of global treaties including the *World Heritage Convention*¹²² and the *Montreal Protocol on the control of substances that deplete the ozone layer*.¹²³ This wave of treaties eventually arrived at the Earth Summit leading to the *Rio Declaration* of 1992¹²⁴ with the adoption of the *UN Framework Convention on Global Warming* and the perception of biodiversity degradation as a ‘common concern’ of humankind.¹²⁵

Despite the above efforts, a state-centric view is still prevalent. On the occasion of discussing the *UN Millennium Declaration*, on 8 September 2000, the President of the Czech Republic, Vaclav Havel, proposed a profound two-chamber restructuring of the UN General Assembly:

[O]ne constituted by an assembly of equal executive representatives of individual countries, resembling the present plenary, and the other consisting of a group elected directly by the globe’s population, in which the number of delegates representing individual nations would, thus, roughly correspond to the size of the nations. These two bodies would create and guarantee global legislation.¹²⁶

However, contrary to proposals such as these, and to what Hans Kelsen aspired, states do not (currently) exercise powers derived from the international order.¹²⁷ With Dionisio Anzilotti, states derive their authority somewhat limited, from themselves, and can hence prevent, quarantine or facilitate various forms of progress.¹²⁸ Consequently, the world’s communal

¹¹⁷ *Trail Smelter Arbitration (Canada-US)*, 16 April 1938-11 March 1941, RIAA Vol. III, 1905-82; further see in Francioni (2012) n72, 444.

¹¹⁸ UN General Assembly, United Nations Conference on the Human Environment, 15 December 1972, A/RES/2994.

¹¹⁹ See n116 and *Barcelona Traction, Light and Power Ltd*, judgment, ICJ Reports, pp 3ff, paras 33-4.

¹²⁰ Principle 21; see again discussed in Francioni (2012) n114, 444-5.

¹²¹ Principle 1.

¹²² *Convention Concerning the Protection of the World Cultural and Natural Heritage*, adopted by the UNESCO General Conference on 16 November 1972; also see Francesco Francioni and F. Lenzerini (eds), *The 1972 World Heritage Convention: A Commentary* (Oxford University Press, 2008).

¹²³ *Montreal Protocol* of 16 September 1987, reprinted in 26 ILM 1550 (1987), additional to the *Vienna Convention on the Protection of the Ozone Layer*, 22 March 1985, *ibid*, at 1529.

¹²⁴ Rio de Janeiro, 9 May 1992, reprinted in 31 ILM 849 (1992).

¹²⁵ See the *Convention on Biological Diversity*, adopted in Rio de Janeiro on 5 June 1992, reprinted in 31 ILM 818 (1992); further, see discussed in Francioni (2012) n72, 445.

¹²⁶ UN General Assembly, United Nations Millennium Declaration, Resolution Adopted by the General Assembly, 18 September 2000, A/RES/55/2, available at: <https://www.refworld.org/docid/3b00f4ea3.html>. See the UN General Assembly, 8th Plenary Meeting, Thursday, 26 September 2019, 3 p.m., UN Doc. A/PV/8, at 1, available at <https://undocs.org/en/A/74/PV.8>.

¹²⁷ Hans Kelsen, ‘Les rapports de système entre le droit interne et le droit international public’ 14 HR (1926-IV) 231, at 235-8, 241-8 and 299-320.

¹²⁸ Indeed, major powers now seem to leave behind the utopia of a world community, reverting to some sort of neo-Westphalian order, with tightening borders and increasingly conservative positions on immigration law and policy (Australia,

institutions, including the United Nations, are currently set-up and dominated by a select number of member states, lacking autonomous power.¹²⁹ At the same time, states can no longer hold the effective monopoly on decisions ('Entscheidungsmonopol') in international dealings.¹³⁰ Global climate change and migration, have created social facts in need to be addressed by new, innovative laws and education.

Even if cause and effect of climate change are left aside for a moment, there is a plethora of regional- and global problems (potentially) causing issues beyond the scope of one state alone, again, resulting in often uncontrolled migration patterns.¹³¹

For Antonio Cassese then,

[s]olidarity proper, namely strongly shared concerns, moral bonds, feelings, sympathies, actions, resulting in collective action, still does not exist. The concept of the 'common good' is not yet felt by the members of the international community.¹³²

A community proper, the Grotian dream of a '*societas generis humani*' (society of mankind) sits uncomfortably between utopia & dystopia.¹³³ Arguably, with the emergence of CBI, states may be seen to self-erode by leveraging acceptance of their authority and sovereignty, exposing citizenship as a state-constituent to global markets, effectively delivering the blueprints of national membership and its co-determinations to market rule. Immanuel Kant's dream of effective, ground-up enforcements for world peace (which today by necessity may include measures to save the environment, limit pandemics, or to address climate change) appears as to being juxtaposed by states not embracing political spheres beyond the national.¹³⁴ However, the global crisis-paradigm does neither hold still nor respect idiosyncrasies, parochial struggles for power or control over partitioned territory and random yesteryear borders still imprinting outmoded thinking that demarks formal-legal state citizenship.¹³⁵ With any continued short-fallings of the state frame, potential for world membership rises, exacerbated by the states' non-commitment to effective measures for global commons participation and protection. Highly mobile CBI market citizens, already, effectively vote with their feet, globally.¹³⁶

Climate change, and the pandemic, both pose as ultimate tests for humanity, encompass the entire world, may not simply be viewed as transboundary, single- or multi-jurisdictional

USA), even insisting on maximum restraints on any collective enforcement of a law of the international community (USA, China, Russia). Dionisio Anzilotti, *Cours de droit international, I* (G. Gidel Trans., Sirey, 1929), at 51.

¹²⁹ Alf Ross, *Constitution of the United Nations - Analysis of Structure and Function* (Rinehart, 1950), at 108-9; 137-9.

¹³⁰ Albert Bleckmann, *Grundgesetz und Voelkerrecht* (Duncker und Humblodt, 1975), 252.

¹³¹ Again, with Cassese, this may include, for instance, devastating civil wars in many states, particularly in African countries, resulting in the migration of thousands of civilians to wealthy countries, causing many socio-economic side effects that cannot be settled by individual states, but must be addressed collectively: Cassese, above n 6, at 654.

¹³² Antonio Cassese, 'Gathering up the main threads', 654-684, in: Antonio Cassese (ed.) *Realizing Utopia - The Future of International Law* (Oxford University Press, 2012), at 650.

¹³³ Hugo Grotius, *De Jure belli ac Pacis, Libri Tres* (Paris: Apud Nicolaum Byon, 1625), at 439 (L. II, Cap.XX, Sec. XLIV).

¹³⁴ Immanuel Kant, *Zum Ewigen Frieden, ein philosophischer Entwurf* (1795, Koenigsberg, Friedrich Nicolovius), at 30.

¹³⁵ It is then not merely CBI being formal-legal, but the law of state citizenship itself lacking effective links.

¹³⁶ Their memberships could become informed with local-global paradigms, may function as actual global citizens, could assist to address and fund issues of our world more effectively. Citizens could identify as world citizens in addition, and derivative to a state's citizenship.

issues, but as one of global- or supra-national impacts.¹³⁷ The challenge is to address climate change as an inherently extra-territorial problem that is yet driven (if indeed, not caused) through- and by the medium of the territorially bounded state's structure and its tightly controlled citizenship posing a hindrance to innovation such as through demands of allegiance or mono-citizenship for political office that excludes some of the most productive members of a given polity.¹³⁸ Currently, multilateral institutions and processes have grown, even achieved a level of autonomous operation, yet, without imposing on state operational sovereignty. Although embryonic and incomplete, transboundary climate responses have tended to be multilateral rather than unilateral, and they have been coordinated, if not well choreographed.¹³⁹ As Eric Dannenmaier correctly states,

[t]here are instances in which state interests cannot be satisfied by a narrow reach across borders. [...] Climate is an inherently extra-territorial problem [...] solutions require intra- and inter-state action, as well as action by non-state actors both within and outside of state institutions.¹⁴⁰

CBI existence makes clear that the role of the state may be changing and that paradigms beyond the municipal bordered lens are to be applied to citizenship. Climate Justice in turn indicates that the role of the state itself may need to change, and that it is in the best interest of the state to think, educate and action both locally- and globally.¹⁴¹

This leaves any citizenship that does not respond to global change isolated and detached from the world at large.¹⁴² Citizenship, to not risk redundancy through emergence of other concepts such as lawful or otherwise link-based residency, belongings, stakeholder-ship, transborder or otherwise. It may yet be likely that no learning experience will follow resulting

¹³⁷ See also discussion in Eckard Rehbinder, 'Extra-Territoriality of Pollution Control Laws from a European Perspective', 127-162, in: Guenther Handl, Joachim Zekoll and Peer Zumbansen (eds.) *Beyond Territoriality - Transnational Legal Authority in an Age of Globalization* (2012, Martinus Nijhoff Publishers), 128.

¹³⁸ Krakat (2021) n15 with further references for the citizenship concept as hindrance innovation; further, Idem, (2018) n73.

¹³⁹ But see Eric Dannenmaier, 'Constructing Transnational Climate Regimes', 519-550, in: Guenther Handl, Joachim Zekoll and Peer Zumbansen (eds.) *Beyond Territoriality - Transnational Legal Authority in an Age of Globalization* (2012, Martinus Nijhoff), 521.

¹⁴⁰ Dannenmaier (2012) n121, 520-1, adding that 'concerns about climate change [...] also (inevitably) focus on the impact that measures to mitigate anthropogenic climate forcings might have on human economies and social prosperity.'

¹⁴¹ In the sale and purchase of citizenship, those citizenships that make a commitment to global values, may become the most attractive memberships, if only for the sake of market logic and survival in growing competitive markets. After all, climate change also affects global markets, including markets for mobility. With state sovereigns directly facing transformations through globalization, meta-individual concerns and universal values beyond sole focus on state interests may assist in the creation of a just world order. Both passport purchasers and climate refugees pose as lenses, responses and inductions of local and global events, becoming conceptualized through the conduit of municipal law. What this means is that the individual responses to climate change, exemplified by passport purchases and their growing demand in all social strata, are demanding change within municipal law. To some extent, climate response could be viewed as effectuating a need for law's response within that individual's polity and all other polities that may be of greater demand through the CBI lens, introducing anything between crisis, market and global human logic into lawmaking of CBI, with climate change being another layer of complexity within the CBI paradigm. CBI mechanisms already evaluate passports, as well as countries. Climate change will have a profound impact on these future evaluations.

¹⁴² This citizenship is no longer exclusively determined by any one municipality as our joint story has now become a global one by mere existence of globalization responses (global mobility) or crisis (and crisis response). Instead, bringing global matters into the respective polities and jurisdictions in which these individuals function, the municipality is to incorporate global thought and perspective into its law so to address real life impacts on its peoples. This then is the constitutionalizing of an individual-municipal-global stratum from the ground up. In this way, even (or especially) purchased solidarities or disaster solidarities outside borders can assist in making overall membership law more sustainable.

in a more flexible citizenship, and that, instead, other concepts emerge.¹⁴³ A return to the source for citizenship may result in its adopting references to humanity. Citizenship has been a concept tested for some time, but it may not be (nor was it ever meant to be) the ultimate, final concept for the ordering of human affairs in an almost fully explored and vastly exploited planet. Citizenship, itself being an artificial construct just like the nation state is to now return to its actual source, its members: Arguably, both do not exist for self-validation or as isolated academic existences, but in congruence with humanity's public sphere. Citizenship, if not to becoming fragmented, unpacked into its actual required (and hence purchased) parts and meanings of political protection or travel (in form of CBI), is to return for dissemination and learning, or risk becoming decommissioned in the wake of climate change and pandemics, themselves constitutionalizing, overriding real-life events and supra-national educators to deconstruct then reconstitute the law of membership.¹⁴⁴

Global Climate Justice, just as much as the question of national citizenship, may relate to-, be linked to- and become contrasted with the question of universally applying Human Rights: While being two regimes, citizenship rights may here become increasingly co-informed and -covered by the universally applicable Human Rights model in global crisis response.¹⁴⁵

CBI laws already make direct references to local-global concepts such as humanity and humanitarianism, and reference to phenomena such as global climate change fall within the spectrum of CBI's potential projections.¹⁴⁶ Residence requirements, as well as intention to continue to reside after grant, may then be completely waived.¹⁴⁷ In New Zealand, large land purchases linked to visa and passports are taking place, creating exit strategies in fear of societal collapse for reasons ranging from economic- to ecological disasters.¹⁴⁸ From a global and holistic perspective, any of these escapisms, creating gated communities that may do no

¹⁴³ In other words, individual responses to outside factors such as crisis, if not currently covered by municipal law, are nonetheless law in the making: All people are faced with climate change, only the degree of that experience may differ. This may be resulting with either an individual choice as to relocations and constant move for the wealthy, or at least be somewhat be causal or correlative to responsive reaction. Other concepts may include the *Love* case's belongers, see n15.

¹⁴⁴ Citizenship is an abstraction and a simulacrum, belonging to the now outmoded ordering paradigm of the state and state borders. Cyclones, climate change are not stopped at a closed border (different for pandemics, directly attaching to humans).

¹⁴⁵ Outside the scope of this paper. See Pauline Tambakaki, *Human Rights, Or Citizenship* (Birkbeck Law Press, 2010); also see David Owen, 'Citizenship and Human Rights', 247-267, in: Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (eds.) *The Oxford Handbook of Citizenship* (2017, Oxford University Press).

¹⁴⁶ To make sense outside the state's paradigm of naturalization and assimilation into the polity, CBI proceeds should be claimed for philanthropic, humane causes. Currently, there are few if any examples from CBI itself, but from its conceptual cousin, citizenship by discretion (CBD): For instance, New Zealand's discretionary naturalization program allows to grant more or less immediate citizenship to any person where the grant is '[i]n the public interest because of exceptional circumstances of a humanitarian or other nature relating to the applicant', see again the *Citizenship Act 1977, Section 9(1)(c)*.

¹⁴⁷ Such waiver is for the Minister's discretion: *Section 9(2), Citizenship Act 1977*; This discretion is limited where there are disqualifying convictions: *Sections 9A, 9B*. Ordinarily, a permanent resident's actual, physical presence is required for at least 1,350 days in the five years immediately preceding an application, *section 8(2) (b)(i)*. Alternatively, see *Section 8(2)(b)(ii)*, requiring at least 240 days in each of those five years. In exceptional circumstances, a residency period of 450 days may suffice, *section 8(7)* of the Act: 450 days during the 20 months period immediately preceding the date of the application. Also, there must be the intention to reside in New Zealand after grant of citizenship, *section 8(2) (f)*. In addition, there are other requirements such as good character, as well as sufficient knowledge of the English language and knowledge of the responsibilities and privileges attaching to New Zealand citizenship: *Section 8(2)(c),(d) and (e)*. Since 2012, there have been 632 such applications, with 92 Ministerial approvals: Department of Internal Affairs, 'Citizenship of Mr Peter Thiel', <https://www.dia.govt.nz/Citizenship-of-Mr-Peter-Thiel>.

¹⁴⁸ The global wealthy seek exist strategies and for that, take to secluded, remote underground shelters, such as in case of some of the most renowned ultra-wealthy US. Silicon Valley and Social Media entrepreneurs migrating to New Zealand and preparing for the apocalypse and the end of the world. See especially Evan Osnos, 'Doomsday Prep for the super rich', *The New Yorker*, (January 30th, 2017, print edition title: 'Survival of the Richest'), available at <https://www.newyorker.com/magazine/2017/01/20/doomsday-prep-for-the-super-rich>

more than be exclusionary, emulating micro-states yet again, can, however, only be limited and temporary: Claims to ‘complete protection’ from disaster fail, as humanity’s most treasured asset is its ecosystem that knows no borders nor price, posing as commodification’s end: What is wealth without a working climate, clean water and healthy oceans?¹⁴⁹

CBI’s ‘greening’ then refers to the heightened awareness of how CBI revenue then could and should become allocated, and how membership narratives can be created, keeping in mind issues of sustainability, appear to be of high relevance to the evolution of CBI law. Ultimately, these new membership narratives may lead to heightened local and global acceptance of CBI and the sustainability of the programs.¹⁵⁰ Many questions remain open: When will CBI reach its limits, or is the concept already over-leveraged? How many passport purchasers actually moving to their small island safe havens can a country sustain?¹⁵¹ In light of Climate Change and -Justice, will CBI now need to be utilized for the admission of broader segments of the global society, with all of us being stakeholders of the global-local commons?¹⁵² One of the great achievements of CBI then is its commitment to plurality, a feat coming handy in climate response.¹⁵³ The acceptance of multiple nationality, as seen in the 1997 *European Convention of Nationality*,¹⁵⁴ is to recognize and institutionalize the social legal fact of ‘international life’ within the acceptance and facilitation of multiple nationality.¹⁵⁵ The enhanced system of CBI, I suggest, could reflect on the attitude of countries themselves, acting as good global citizens.¹⁵⁶ With climate change, CBI may have found the need for some evidence of moral-, political meaning within CBI’s legal main-frame.

Mercantilism: Certificate trade, CBI as Insurance & a global fund?

¹⁴⁹ Chuck Collins, ‘To Billionaire Doomsday Preppers: Your Wealth Won’t Save you’ (YES! Magazine), February 21, 2017, at <http://www.yesmagazine.org/new-economy/to-billionaire-doomsday-preppers-your-wealth-wont-save-you-20170221>

¹⁵⁰ See already Michael B. Krakat (2018) n3.

¹⁵¹ CBI is growth based, but what if it becomes more relevant for the selling state to keep its borders closed for public health and safety and for the preservation of its own resources, against economic, climate or any other refugees or wealthy migrants, when clean and sustainable resources be valued higher than the revenue created from CBI? See in Krakat (2020) n46.

¹⁵² With climate change felt independently of the location of emissions, and persons increasingly placed within transnational, (post-)globalization paradigms of real-life existence, be it through forced as well as voluntary economic mobility, both climate change and migration are linked and pose as penultimate global commons matters. Citizenship may then be an inherently insufficient frame to address global commons problems affecting all beings. Likewise, the ‘genuine connection’ test isolated to the international law sphere cannot readily be placed outside the state- or global frame for much longer. With globalization conceptually attaching to states through CBI, so is global responsibility through local-global proximity through climate change. CBI as emerging legal mechanisms, with markets breaking the static view of bounded states, allowing the expansion of values that include the global commons. For this, the law is to continuously evolve, either include supra-nationalisms from within a more flexible form of citizenship, or with fragmentation and the creation of categories of membership such as the Australian High Court has achieved in *Love*: Ibid (2021) n13.

¹⁵³ Due to lack of residence in CBI exceptional naturalization and references to global mobility, facilitating dual and multiple citizenship, CBI makes claims and references that go beyond the municipal sphere of citizenship, allowing for CBI to work and function in reference to both markets, as well as to individual rights protections.

¹⁵⁴ *European Convention on Nationality*, opened for signature Nov. 6, 1997, Eur. T.S. No. 166; Ryszard Pitorowicz, ‘One Nation or Two? New Developments in Citizenship Law’ (1999) 72 *Australian Law Journal* 673.

¹⁵⁵ CBI remains a complex concept introducing individuality and market flexibility to citizenship. A commitment to plurality of meaning of membership itself, and of a difference of memberships existing together means faith in the system of other state’s membership laws in a global community of states and a system of CBI originating from municipal citizenship law.

¹⁵⁶ Michael B. Krakat, ‘The Five Indispensable “Unities” of Sustainable Investment Migration Programs’ (2021) January 6th, *Investment Migration Insider*, available at <<https://www.imidaily.com/due-process/the-five-indispensable-unities-of-sustainable-investment-migration-programs/>>.

The market lens is a peculiar one, with the CBI market probably being more settled than the carbon- certificate one.¹⁵⁷ The marketization of the public good of citizenship takes places in what effectively is an emerging global market for membership (citizenship- and residence) and mobility.¹⁵⁸ Politically or economically dominant states that may (or may not directly) engage in CBI markets can obtain economic-political advantages through market dominance or via visa agreements over other CBI states.¹⁵⁹ Market rule may itself likely impose supra-national or dominant foreign power- and market politics, increase economic dependencies, as well as generate potentials for standardization, harmonization and the migration of CBI principles, forming a global-legal political-economic hybrid sphere.¹⁶⁰ In addition, the nation state is joined by the highly mobile individual as direct stakeholder at law, at times, on eye-level outside sub-ordination paradigms of allegiance, not seeking welfare or protection, just passports. Others, especially the wealthy or supported stateless or displaced, may in some ways rely on conceptions of both global markets to become mobile, escaping one polity to enter another, as well as on universal, collective local-global justice beyond citizenship.¹⁶¹ Particularly, global markets for mobility, the sale of citizenship and residence entitlements, are now calling for solutions to re-inform or transcend the open- and closed borders civic paradigm, to integrate some global commons reference beyond a citizenship that functions solely for states, individual- or market demand.¹⁶² The global passport market is one of the few and currently, at times sole markets keeping small island state economies afloat through pandemic crisis, which will likely also be the case for other future disasters. With global interconnectedness, anyone able to pay residence- or citizenship's price, may potentially claim connections any- and everywhere. Novel common social denominators emerge: So-called 'health- or vaccine passports' based on individual health criteria, then function as generic platforms that allow any other information to become uploaded and associated with them.¹⁶³ With Klaus Schwab, founder of the World Economic Forum, the meaning of the

¹⁵⁷ Juan-Pablo Montero discusses market powers in regards to pollution permit markets, reminding of some of the concerns described for CBI above. As Montero states, '[I]t is very unlikely to see, at least in the medium-term, a truly global carbon market with a unique market price but rather multiple permit markets in different countries/regions. These markets will be (imperfectly) linked to each other so that some exchange of permits will be allowed across markets. Countries, not individual facilities, will decide through different domestic policies how much "linkage" to have with the rest of the world. Hence, the interesting question is under what circumstances a large country would find in its best interest to implement domestic policies or market designs (i.e., introduction of safety valves, subsidies, standards, etc.) that would work as if the country were exercising market power in a truly global market. Or alternatively put, if we observe the implementation of domestic policies that prevent a perfect linkage among the different permit markets to what extent we can claim that these policies are driven by a genuine interest in altering international prices or rather they are the result of internal domestic forces (politics) unrelated to market power.' He continues that, '[a]s with other commodity markets, permit markets have not been immune to market power concerns [...] that is, the ability of large players to move prices, either unilaterally or collectively. While some of the existing permit markets are composed by many small agents (e.g., the particulate market in Santiago-Chile), others are not.' See Juan-Pablo Montero, 'Market Power in Pollution Permit Markets', (2009) Volume 30 (Special Issue 2), *The Energy Journal*, 1-28, at 1-2.

¹⁵⁸ Discussing the issue of the marketization and CBI schemes, see Krakat 2018 n22.

¹⁵⁹ Visa arrangements also function as a tool of potential (political) control by dominant non-CBI third states over smaller CBI states, see for instance Canada and Antigua & Barbuda, see: Christian H. Nesheim, 'Trudeau: Canada would reinstate Antigua's Visa-free access if CIP significantly improves' (2018) January 13th, *The Investment Migration Insider*, available at <https://www.imidaily.com/editors-picks/trudeau-canada-would-reinstate-antiguas-visa-free-status-if-cip-significantly/>.

¹⁶⁰ Krakat (2018) n3.

¹⁶¹ For CBI see Krakat (2018), n3; generally, see Rafael Domingo, 'The new global human community' (2012) 12(2) *Chicago Journal of International Law* 562.

¹⁶² Krakat (2018) n3; also see Christof Roos & Lena Laube, 'Liberal Cosmopolitan Norms and The Border: Local Actors' Critique Of Global Processes' (2015) 15(3) *Ethnicities* 341.

¹⁶³ Krakat (2020) and (2021) n43.

citizen is changing, focusing, on mercantile common-denominators, within which all persons may be ‘stakeholders’ in a wider public-private global enterprise.¹⁶⁴

Responding to climate change, a case has been made for whole countries to purchase a new homeland.¹⁶⁵ Other approaches may include floating artificial islands that belong to countries, or existing autonomously in what are, heavily contested by nation states, libertarian sea-steading movements that attempts to create permanent colonies with dwellings at sea, outside the territory claimed or claimable by any government.¹⁶⁶

CBI purchasers usually have in common that there exists no initial interest in (at least early) participation in the polity, by both selling state and the purchasing migrant.¹⁶⁷

At the same time, whether facing crisis or not, CBI transactions may continuously be challenged if sales are made absent consideration of the sentiments and values held by the local existing citizenry as well as the global community and the world at large.¹⁶⁸ Acceptance and education are significant anywhere, but may become informed by different paradigms and levels of relevance pending the circumstances: Vanuatu could pose as a case-study of heightened homogeneity, coming with a larger indigenous, some inter-island- and Pacific migrant- and smaller expatriate population. The country faces the issues of climate change¹⁶⁹ as well as cyclones and other disasters. Here, passport sales are welcomed as one of the main sources of revenue, but at the same time, viewed critical from perspectives of social cohesion, solidarity, moral politics.¹⁷⁰ An alternative view is that especially small island CBI could be

¹⁶⁴ That enterprise is all inclusive, has somewhat hollowed out citizenship at the behest of stakeholder-ship. Schwab uses the term “stakeholders” (“Interessenten”) as secondary participants in an effectively global corporate commercial enterprise: Klaus Schwab & Hein Kroos, *Moderne Unternehmensführung im Maschinenbau (Modern Enterprise Management in Mechanical Engineering)* (1971 Verein Dt. Maschinenbau-Anst. e.V.); Klaus Schwab, *The Fourth Industrial Revolution* (2017 Crown Business); Klaus Schwab, ‘The Fourth Industrial Revolution - What It Means and How to Respond’ (2015) December 12th, *Foreign Affairs*; Klaus Schwab and Thierry Malleret, *COVID19: The Great Reset* (2020, Forum Publishing).

¹⁶⁵ Some territories may not allow for internal displacement. This may be the case as the whole territory may become entirely uninhabitable, as is the case for the Maldives, or where the territory is not able to absorb the whole of the displaced population, for instance, in the case of Bangladesh. See ie. Benoit Mayer, ‘The International Legal Challenges of Climate-Induced Migration: Proposal for and International Legal Framework’ (2011) 22 (3) *Colo Journal of International Environmental Law and Policy*, 357; further see: Randeep Ramesh, ‘Paradise almost lost: Maldives seek to buy a new homeland’ (2008) 10, *The Guardian*; also see L Caramel, ‘Besieged by the rising tides of climate change, Kiribati buys land in Fiji’, (2014) *The Guardian*, <http://www.theguardian.com/environment/2014/jul/01/kiribati-climate-change-fiji-vanua-levu>.

¹⁶⁶ The Sea-steading Institute, *Reimagining Civilization with Floating Cities*, available at <https://www.seasteading.org/>.

¹⁶⁷ CBI is completely honest about being ‘citizenship-for-sale’, publicly and openly depleted of any further political and moral narratives beyond payment, applying to anyone, could be of value and assistance especially when coupled with governmental loans or payment moratoriums, as well as crowd-funding for both groups and individuals. Considering mercantilist CBI price-based direct conferrals of citizenship, it appears that the immediacy within market driven forms of membership, absent naturalization requirements, could serve as functions for the admission not only of wealthy individuals but also of larger segments of purchasers. Even CBI’s price is not fixed, rendering the entire exchange between the waiving of naturalization and direct payments for admission indeterminate. Krakat (2018) n3.

¹⁶⁸ For example, refer to CBI’s crisis in Cyprus and its general critique by organizations such as the EU-Commission or the OECD: Krakat (2018) n3; as to Cyprus, see David Lesperance ‘Cyprus, Be Careful Not to Throw the Baby out With the Bathwater’ (2021) January 10th, *The Investment Migration Insider*, available at <https://www.imidaily.com/europe/cyprus-be-careful-not-to-throw-the-baby-out-with-the-bathwater/>.

¹⁶⁹ See for example in Vanuatu: Ann Esswein and Felie Zernack, ‘Pushing back against the tide: Vanuatu’s climate fight’ (2020) December 1st, *The New Humanitarian*, available at <https://www.thenewhumanitarian.org/news-feature/2020/12/1/pacific-vanuatu-disappearing-island-climate-change-cyclone-lawsuit-migration>.

¹⁷⁰ Especially in small island states, somewhat counterintuitively, CBI is a practice to which many locals respond with serious concerns as to the identity side of citizenship, all a while the entire country at the same time substantially depending on CBI proceeds. Godwin Ligo, ‘Sale of Vanuatu Passport degrading: Sokomanu’ (2019), July 8th, *Daily Post* (Vanuatu), available at https://dailypost.vu/news/sale-of-vanuatu-passport-degrading-sokomanu/article_7ff691d1-f7f0-5f35-aaa5-c19483f2ebc5.html>; The Fiji Times, ‘Reconsider sale of passport: Vanuatu Chiefs’ (2019) July 3rd, 3:20PM, *The Fiji Times*, available at <https://www.fijitimes.com/reconsider-sale-of-passport-vanuatu-chiefs/>>; Radio New Zealand, ‘Vanuatu founder rails against passport sales’, (2019) June 26th, 5:53pm, Radio New Zealand, available at

transformative, become informed with local culture as well as climate change and other paradigms heightening general perception of CBI as relevant for an evolving view on citizenship and nationhood itself.¹⁷¹

What does the future hold for CBI in view of addressing global issues? With the direct sale of membership entitlements, a global market of citizenship and residence entitlements has resulted, but remains currently one not informed by socially responsible visions or goals,¹⁷² and is also unregulated, global industry specific ethical guidelines such as by the Geneva Investment Migration Council aside.¹⁷³

Full local citizenship may become too static, virtually worth nothing vis-a-vis the restrictions imposed by global crisis. Addressing crisis, a new type of CBI could here be a fragmented 'membership', falling into commercially meaningful and more affordable specific sub-units of full citizenship. Akin to the logic of insurable events and insurance mechanisms, climate- and other justice- and solidarity considerations could become matched with- or transplanted into CBI citizenship bargains.¹⁷⁴

Beyond crisis response, disaster contributions for prevention and support in form of local-global cross-border CBI climate fund contributions may be a way forward in assisting global burden sharing including climate induced migrations:¹⁷⁵ A global fund tapping into existing

<<https://www.rnz.co.nz/international/pacific-news/393003/vanuatu-founder-rails-against-passport-sales>>; also see Radio New Zealand, 'Vanuatu chiefs want end to govt. sale of honorary citizenship' (2019) July 2nd, 6:05PM Radio New Zealand, available at <<https://www.rnz.co.nz/international/pacific-news/393480/vanuatu-chiefs-want-end-to-govt-sale-of-honorary-citizenship>>; At the same time, the sale is booming creating much needed revenue: Radio New Zealand, 'Passport Sales booming in Vanuatu' (2009) May 2nd 3:00PM, Radio New Zealand, available at <<https://www.rnz.co.nz/international/programmes/datetimepacific/audio/2018693282/passport-sales-booming-in-vanuatu>>. See also Radio New Zealand, 'Vanuatu MP wants stricter controls on passport sales' (2019) June 21st, 4:24PM, available at <<https://www.rnz.co.nz/international/pacific-news/392621/vanuatu-mp-wants-stricter-controls-on-passport-sales>>.

¹⁷¹ Krakat (2021) n10.

¹⁷² Through this market, CBI may assist to creating a system of citizenship that allows for market readiness, trust-based investments through global standardization and harmonisation of CBI laws, and sustainability through incorporation of globally acceptable goals. CBI's justifications are before CBI states but also before its own global market and the choices CBI purchasers make: Adding to the notion of individualism, elitism and migration of the wealthy that still informs larger parts of CBI, socially responsible environment-economy trade-offs should perhaps start from an idea of inclusiveness toward the marginalised suffering most from climate induced issues. See generally, Katrina Running, 'Towards climate justice: How do the most vulnerable weigh environment-economy trade-offs?' (2015) 50, *Social Science Research* 217-228.

¹⁷³ The Investment Migration Council, Geneva, *Code of Ethics and Ethical Conduct*, <https://investmentmigration.org/code-of-ethics-and-professional-conduct/>.

¹⁷⁴ These may lead to actual (public-private) trade (and trade-offs) of citizenship entitlements and such sub-units, requiring fragmentation of citizenship into issues including types of political and private protection, negotiated travel passes, optional access to local medical or social services, participation and the like. CBI may become fragmented into its tradable aspects, such as mobility certificates, forms of 'social credit points' that relate to citizenship rather than control, and forms of private protection emulating the political sphere. This may include options available in their own right, including protection, healthcare, social security but can also be reduced to pure admission, with further options available. The new CBI consolidated and in some analogy with climate goals could rise in reference of social credit points or units, absent any of their dystopian connotations pertaining to data mining for complete surveillance and excessive control. These points could be granted for sustainable lifestyle and the meaningful production, use and consumption of resources, with care for the global commons, addressing climate change with self-governance of individuals as well as states.

¹⁷⁵ Climate change funds for climate induced migrants exist, each with their own policies and procedures. While tying these contributions to carbon emission may be an unusual suggestion, this changes when one examines the list of countries selling residence or citizenship entitlements, which also includes major superpowers such as the US., being at the same time responsible for the world's second largest CO₂ emission output. In regards to global burden sharing, see: Simon Caney, 'Two kinds of climate justice: Avoiding harm and sharing burdens' (2014) 22 (2) *Journal of Political Philosophy*, 125-149. I propose a global fund-of-funds for CBI, see: Michael B. Krakat, 'A global fund-of-funds?' (2021) *The Investment Migration Insider* (forthcoming); Benoit Mayer has suggested an international legal framework, and with it, a global fund on Climate-Induced Migration: Benoit Mayer, *The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework*, (2011) 22 (3), *Colorado Journal of International Environmental Law and Policy*, 413; T. Alexander Aleinikoff and Sarah Cliffe have suggested a global action platform and fund for forced migrants, refugees: The

municipal CBI investor funds (a ‘fund of funds’) could here become an option akin to voluntary opt-in carbon offset contribution programs existing for airline-tickets.

CONCLUSION

Conventional law of citizenship, to stay relevant, is to become inclusive beyond the initial membership contract. The alternative is for alternative concepts to emerge, such as belonging adjacent but not part of a polity, to co-exist with certain specific rights. Comparative legal education plays an important role to communicate and critically discuss emerging concepts in the evolution of law. This paper has introduced Citizenship by Investment (CBI) as an exceptional form of naturalization, and reconciled aspects of it with emerging local-global denominators of change and global solidarity events taking the form of crisis.

proposal includes the following: ‘The need for action is apparent - both for the 60 million persons currently displaced by violence and conflict and because the “new normal” of large-scale displacement will define the future, as conflicts continue and climate change will soon be a major driver in forced migration’, see at Center on International Cooperation, New York University, <https://cic.nyu.edu/news_commentary/global-action-platform-and-fund-forced-migrants-proposal>.