Dethroning State Security: Introducing a Human Security Perspective to Absorb the Dangers of Climate Change to the Self-determination of Island State Inhabitants

Anemoone Soete

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/belj

Recommended Citation
Available at: https://digitalcommons.law.buffalo.edu/belj/vol24/iss1/5
DETHRONING STATE SECURITY: INTRODUCING A
HUMAN SECURITY PERSPECTIVE TO ABSORB
THE DANGERS OF CLIMATE CHANGE TO THE
SELF-DETERMINATION OF ISLAND STATE INHABITANTS

Anemoon Soete

One unmistakable and indisputable consequence of Climate Change is found in the realm of oceans. Sea-levels are currently rising at a pace unknown to mankind and as a consequence island states are destined to lose habitable land territory. Whereas some may lose parts, others will lose all of it in the current business as usual scenario. This reality first begs the question as to whether an island state will continue to be a state once bereft of a territorial basis. Secondly, it must be considered how islanders might retain legal personality should this is no longer be possible through the institution of statehood as it exists in positive law. Donning a long-term perspective and taking into account the need for a state to be an effective duty-holder for its citizens, a state may arguably no longer be an effective state when missing the statehood criterion of habitable territory. However, this finding need not create a non liquet situation where we can only point out a gap in law to stare at, or revert to creative solutions such as recognizing deterritorialized entities as states with permanent ex situ governments. When setting aside a classical approach focusing fixedly on ways to ensure state security, the islanders’ predicament can be viewed through a human security approach, which taps into the humanized side of today’s international law and allows us to acknowledge that the islanders’ situation is embedded in much more than the lore of statehood. With this awareness, it can be concluded that to attempt retaining the legal personality, cultural identity and effective empowerment of islanders without an island—a people’s human right to self-determination needs to take center stage.

INTRODUCTION

Climate change has a profound impact on our planet. One unmistakable and indisputable consequence is found in the realm of oceans. Sea-levels are currently rising at a pace unknown to mankind and water has already engulfed islands—such as the Carteret Islands—
to the extent of inundation or inhabitability due to complete salinization. As an obvious consequence, island states are destined to lose habitable land territory.\(^1\) Whereas some may lose parts, others will lose all of it in the current business as usual scenario. This first begs the question as to whether such an island state will continue to be a state once bereft of a territorial basis. Secondly, it must be considered how islanders may retain their identity as a people if this is no longer possible through statehood.

**STATEHOOD EFFECTIVENESS**

Regarding the first question, emerging statehood as we know it today relates to the criteria of having a permanent population, a government, the capacity to uphold international relations, and of course a defined territory.\(^2\) Regarding the criterion of territory, state practice teaches us that territory need not reach a threshold of size,\(^3\) nor need boundaries be fixed definitely.\(^4\) In addition, recognition by third states is a necessary confirmation of de facto statehood.\(^5\) These

---

\(^{1}\) The population of all the islands called most threatened by the IPCC are those of the Marshall Islands (73,376), Kiribati (106,925), Tuvalu (10,959), Tonga (106,513), the Federated States of Micronesia (104,719), and the Cook Islands (9,556) in the Pacific Ocean. That amounts up to 412,047. Also called threatened by the IPCC are Antigua and Nevis (no data available) in the Caribbean Ocean; and Maldives (392,960) in the Indian Ocean. **INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, WORKING GROUP II: IMPACTS, ADAPTATION AND VULNERABILITY 935 (James McCarthy et al eds., 2001); Central Intelligence Agency, The World Factbook 2016, https://www.cia.gov/library/publications/the-world-factbook/**


\(^{3}\) See James Crawford, THE CREATION OF STATES IN INTERNATIONAL LAW 46 (Oxford Univ. Press, 2d ed. 2006).


\(^{5}\) Apart from having a mere declaratory value, such acts of recognition may bring with it its own demands. In the process of creating the internationally administered state of Kosovo, the European Community put forward several demands such as general respect for human rights, which were deemed necessary for recognition of Kosovo as a state. EC, Declaration on the ‘Guidelines on the Recognition of New
requirements receive validity through the principle of effectiveness. Effectiveness serves legal order and derives from the fact that a state arising from the will of the people and their right to self-determination must be able to represent its citizens’ rights and entertain duties as an international legal personality. Effectiveness ensures practical usability of the notion of statehood.\textsuperscript{6} An effective state is a necessary component in the chain of command to enforce law for its citizens, as there exists no comprehensive international law enforcement mechanism.\textsuperscript{7} This means that according to current positive law, a state must have a certain degree of effectiveness and that degree of effectiveness is reached through having a territory, population, government and capacity to enter into international relations, and declarative recognition by third states.

However, the threshold of fulfilment of the de facto criteria for statehood and concomitant effectiveness is much lower for the existence and continuity of a state, in comparison to the emergence of a state.\textsuperscript{8} This low threshold boosts state continuity and maintains legal stability. Retraction of recognition of an entity as a state is not a likely occurrence. This is a primary reason failed states, those fully lacking the criterion of government, are still regarded as states by the international community irrespective of the fact that for an undetermined period of time, effectiveness has taken the backseat. In addition, a notion of legality prevents statehood discontinuance in obvious cases of breaches of international law, most likely in cases

\begin{flushleft}
\end{flushleft}

\begin{flushleft}
\end{flushleft}

\begin{flushleft}
\end{flushleft}

\begin{flushleft}
\textsuperscript{8} It must however be noted that also during cases of state creation, a partly faulty or non-independent government is at times accepted to satisfy the demand of effectiveness sufficiently (e.g. Republic of Congo). \textit{JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW} 57 (Oxford Univ. Press, 2d ed. 2006).
\end{flushleft}
of illegal annexation (e.g. Baltic States$^9$), despite the fact that all control over the territory is lost for an unforeseeable period of time. Hence, as the aforementioned examples demonstrate, a temporary deviation from a sufficient degree of effectiveness is tolerated in positive international law. In such situations, recognition acts as a stopgap to impede loss of statehood. However, a permanent deviation from a sufficient degree of effectiveness—such as losing territory permanently—is likely unacceptable since this would amount to a permanent deviation from effective statehood.$^{10}$

Current doctrinal considerations of the island states’ future have continuously focused on retention of the islands’ statehood with or without territory.$^{11}$ The first solution, i.e. in which the island state’s land is artificially restored or replaced, firmly clings to the principle of effectiveness. The second solution, i.e. wherein an island state remains a state in a deterritorialized form, essentially trades effectiveness for practicality or legitimacy. For both solutions statehood is maintained. Unfortunately, the first solution or artificial

---

$^9$ When forcibly annexed by the Soviet Union for a period of over 50 years. When the Soviet Union broke apart, the Baltic States were viewed by other states as continuing their legal personality as it was before the illegal annexation.

$^{10}$ Marek ascribes a permissible departure from Montevideo criteria and the effectiveness principle to the obvious temporariness of such a deviation. Krystyna Marek, IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW 102 (Librairie E. Droz 1954). On forming a resolution on ‘La reconnaissance des nouveaux Etats et des nouveaux gouvernements’ the discussion on article 5 on the recognition of a state demonstrates a useful consideration. The discussion concluded that a restriction on the irrevocability of recognition could only disappear in the case of a definitive disappearance of one of the statehood elements. Hence it was to be understood that the addition of the word ‘definitive’ was to be understood to avoid “que l’article 5 ne s’applique à un Etat victim de troubles passagers.” Emphasis added. Institut de droit international, Annuaire de l’Institut de droit international, Session de Bruxelles, Volume II 208–252 and 301 (Goemaere, Imprimeur de Roi April 1936).

$^{11}$ See for example Jane McAdam, CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW (Oxford Univ. Press 2012), Maxine Burkett, The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood, and the Post-Climate Era, 2 CLIMATE LAW 1 (Fall 2011).
island solution represents a permanent cost many island states cannot bear.

The deterritorialized solution seems incompatible with the theory on statehood as it stands today and would at most amount to the original island state’s government functioning *ex situ*, providing predominantly diplomatic protection for its diasporic population, as current states provide for nationals abroad. This solution is oriented towards keeping islanders on their island as long as possible and once the situation becomes untenable, ensuring—currently absent—migration possibilities for the population which remain citizens of the uninhabitable submerged island state. The two solutions focus solely on defending state security. However, given the problems a state security approach brings along, a solely state-focused approach may be deemed to fall short in today’s humanized international legal world which no longer focuses only on states as the core subjects of international law, but also on individuals and peoples as such. The emphasis in finding a solution for the islanders needs to include attention for communities, and embrace the human security perspective alongside a state security perspective, in order to deepen our understanding of all potential scenarios for the island states. Hence, this article situates itself within the hypothesis that

Nevertheless Island states which may be economically powerful enough can indeed expand or replace their territory with the construction of artificial islands, such as the Maldives have done with the artificial island of Hulhumalé. Indeed some projects find external funding such as a coastal protection project in Tuvalu. See http://www.greenclimatefund. However funding for such projects is often out of reach of or insufficient for economically less advantaged states, especially when international funds such as the Global Environmental Facility, Adaptation Fund and Green Climate Fund which are receiving a lot less money than third states are pledging to contribute to it. International Bar Association, *UN Special Envoy Mary Robinson on the Urgent Need for Action on Climate Change*, 68 No. 6 IBA GLOBAL INSIGHT 12.


See, e.g., Ioane Teitiota v. Chief Exec. of the Ministry of Bus., Innovation and Employment [2015] NZSC 107 (SC) (where the court declined to recognize a Kiribati national as a refugee fleeing from the inundation of the island Kiribati due to climate change).
when a state is permanently without a territory, it can no longer be
effective and as a result can no longer be recognized as a state in
positive international law for those without the capacity to recreate
habitable territory in a sustainable manner. In the sections which
follow it is explored how to consider the island states’ future from a
non-state-centered focus. By demonstrating first and foremost that
we have truly left the realm of an international community domi-
nated by states. Secondly, it will be demonstrated that the concept of
human security perfectly fits within the needs of today’s interna-
tional community. Finally, it is explored why the right to self-
determination can be the core of a people-oriented solution for
submerging island states.

**HUMANIZED INTERNATIONAL LAW**

Today, we are far removed from the Westphalian world of
1648, and even from the world of unison created through the
conception of the United Nations. By no means have individuals
taken over the place of states as the *grundnorm* of international law,
but principles of cooperation and solidarity, human rights of all
generations, international criminal law, the responsibility to protect,
international humanitarian law and disaster response law herald a
time wherein the individual and the community are no longer
rendered invisible by the shadows of the state at the international
level.\(^\text{15}\)

\(^{15}\) *See* **The Human Dimension of International Law: Selected Papers of
Antonio Cassese** (Paola Gaeta & Salvator Zappalà eds., Oxford University Press
2008) & Gerhard Hafner, **The Emancipation of the Individual from the
State under International Law**, 315–51, (vol. 358, Académie de droit
international. Recueil des cours 2011) for a discussion of the role of and protection
for the individual in international law.
A Brave New World: Cooperation, Solidarity, and Human Rights

With the United Nations arrived an era of explicit emphasis on international cooperation. In matters of environment the principle of cooperation has time and time again been endorsed. Moreover, for environmental management it has been proven that transnational cooperation, especially regarding shared resources, is a preferred and more beneficial strategy than clinging to compartmentalized territorial integrity. This indicates that sole governance over territory need not trump cooperative environmental governance and protection. Particularly in the context of climate change, the UNHCR stated that “[i]nternational human rights law complements the U.N. Framework Convention on Climate Change by underlining that international cooperation is not only expedient, but also a

human rights obligation.” A binding duty to cooperate with one another is nevertheless not adequately defined in international law.

Closely related, the principle of solidarity can be noted in the U.N. General Assembly Resolution 59/193 on the “Promotion of a Democratic and Equitable International Order” in which is stated that “[s]olidarity, as a fundamental value, by virtue of which global challenges must be managed in a way that distributes costs and burdens fairly, in accordance with basic principles of equity and social justice, and ensures that those who suffer or benefit the least, receive help from those who benefit the most.” Solidarity is a concept which increasingly pops-up in international law. It is referred to directly in the Desertification Convention, the ILC Draft Articles on the Protection of Persons in the Event of Disaster (DAPPED) and indirectly in the Rio Declaration, the U.N. Framework Convention on Climate Change (UNFCCC) and the Convention on Biodiversity (CBD). Solidarity has roots reaching to times of natural law. In the words of de Vattel, “when the occasion arises, every Nation should give its aid to further the advancement of other

---

21 G.A. Res. 59/193, Promotion of a Democratic and Equitable International Order, at 3 (Feb. 8 2002).
Nations and save them from disaster and ruin, so far as it can do so without running too great a risk [...]. To give assistance in [...] dire straits is so instinctive an act of humanity that hardly any civilized Nation is to be found which would refuse absolutely to do so... Whatever the calamity affecting a Nation, the same help is due to it.  

Though solidarity may appear to be a vague concept and difficult to put to use, the major asset of solidarity lies in its flexible and spontaneous character. After all, the concept can be found in a most practical form in the Law of the Sea Convention (UNCLOS), which dictates that persons and ships in distress at sea must be helped out. This particular notion of assistance is also described in International Convention on Maritime Search and Rescue (SAR) and International Convention for the Safety of Life at Sea (SOLAS) which were amended after the Tampa incident to impose “coordination and cooperation” of member states so that picked up passengers could be brought ashore a safe place as soon as possible, regardless of the nationality of those rescued.

---

25 Emmerich de Vattel, LE DROIT DE GENS OU PRINCIPES DE LA LOI NATURELLE (vol. 1, Carnegie Institution 1916) (1758)
29 In 2001, the Norwegian cargo ship ‘Tampa’ heeded a call of the Australian Rescue Coordination Centre, went off course and rescued 430 Afghan migrants from a sinking ship. When the Tampa, a ship designed to hold a maximum of 50 persons, tried to make port at the closest safe location which was Christmas Island—which is part of Australian territory—the Australian government refused the Tampa to enter Australia’s territorial maritime zone. This incident led to international dismay regarding the actions of Australia and to growing reluctance of private vessels to participate in rescue missions.
Finally, let us not forget about the increasing influence of the vast international and regional human rights bodies of law which have upgraded individuals and groups from objects to subjects of international law. Indeed, regional courts such as the European Court for Human Rights and the Inter-American Court for Human Rights are available for individuals to bring claims, just as much as the International Criminal Court is able to bring criminal individuals to justice. Furthermore, human rights have had an influence on international criminal law by being able to offer concrete remedies to individuals, for example through the 2006 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Law in Times of Disaster

When it comes to disaster law, times of war spring to mind. International Humanitarian Law (IHL) is a well-settled part of international law regulating jus in bello conduct. IHL sprung from old codes of conduct and ad hoc traditions and currently forms a part of customary international law, and is codified in the four Geneva Conventions (’49) and Protocol I and II (’77). IHL protects those struck by war but are innocent of partaking in it. IHL is the poster child for representing the customary principle of humanity that condemns unnecessary suffering of people. Owing to IHL, combatants are obliged to see their captured enemies no longer as just enemies, but also as humans.

International Disaster Response Law (IDRL) is a much newer addition to international law. It is not set in times of war as is IHL, but in times of peace and unintentional catastrophe. Here, the

---

32 G.A. Res. 60/147 (March 21, 2006).
object is to alleviate suffering of those innocent in producing the
catastrophe such as a natural hazard in the form of an earthquake,
hurricane or tsunami, and even manmade disasters such as nuclear
outbreak, or a mixed origin disaster such as climate change. Due to
the broadness and often lack of precise causal link between damage
and wrongdoer, IDRL has a hard time developing into maturity and
hard law. The UNHCR indeed confirms protection issues brought
on by natural disaster are less visible\(^{34}\) despite being omnipresent.\(^{35}\)
Already in 1999, Kofi Annan pointed out how the international
community cherry picks the crises tackled.\(^{36}\) Time and time again
calamitous events occurring through (man-induced) natural disaster
are treated as a lower priority disaster, though baby steps to progress
are visible.

Following U.N. General Assembly resolutions,\(^{37}\) the non-
binding Inter-Agency Standing Commission Operational Guidelines
on the Protection of Persons in Situations of Natural Disasters,\(^{38}\) the
Red Cross’ Guidelines for the Domestic Facilitation and Regulation
of International Disaster Relief and Initial Recovery Assistance,\(^{39}\)
and the 2003 Bruges Resolution,\(^{40}\) the International Law
Commission’s Draft articles on the Protection of Persons in the

\(^{34}\) Elizabeth Burleson, *Climate Change Displacement to Refuge*, 25 J. ENVTL. L. &
LITIG. 19, 22 (2010).
A/AC.96/1085 (June 30, 2010).
\(^{36}\) Press Release, Secretary-General, Secretary-General Presents His Annual
\(^{37}\) See G.A. Res. 75/43, Humanitarian Assistance to Victims of Natural Disasters
and Similar Emergency Situations (Dec. 8, 1988). See also G.A. Res 68/43,
Humanitarian Assistance to Victims of Natural Disasters and Similar Emergency
\(^{38}\) INTER-AGENCY STANDING COMM. IASC OPERATIONAL GUIDELINES ON THE
PROTECTION OF PERSONS IN SITUATIONS OF NATURAL DISASTERS. (The
\(^{39}\) INT’L FED’N OF RED CROSS AND RED CRESCENT SOC’YS, INTRODUCTION TO THE
GUIDELINES FOR THE DOMESTIC FACILITATION AND REGULATION OF
Event of Disaster (DAPPED)\textsuperscript{41} can be viewed as a tool that may lead to legally binding steps which point out that in certain situations state sovereignty should be pierced for reasons of humanity. The draft articles are innovative and refreshing in the sense that they focus strongly on preventive action in the spirit of the Sendai Framework for Disaster Risk Reduction.\textsuperscript{42}

Furthermore, DAPPED distinctly takes into account multiple interests throughout its text, i.e. of both state and victims, making it a balanced text. In addition, DAPPED focuses on both manmade and natural disaster as well as mixed origin disaster.\textsuperscript{43} Equally, its scope includes slow-onset and sudden-onset disaster,\textsuperscript{44} excluding armed conflict already covered by humanitarian concepts such as IHL. IHL has priority over DAPPED,\textsuperscript{45} and it is unfortunate to see that armed conflict and other causes of disaster are once again split up entirely when they ultimately have the same goal of victim protection.\textsuperscript{46} Though DAPPED does not carry a specified duty to provide assistance, the articles have inched closer to that line of thought by providing a procedural obligation for other states, the UN, and assisting actors in general to give due consideration to specific requests of assistance from affected States.\textsuperscript{47} In the past, the

---


\textsuperscript{44} Id.

\textsuperscript{45} Id. at art. 18.2.

\textsuperscript{46} See Sandesh Sivakumaran, Arbitrary Withholding of Consent to Humanitarian Assistance in Situations of Disaster, 63 INT’L & COMP. L.Q. 501, 514 (despite differences in situations of armed conflict, and situations of disaster, “the underlying issue is the same”). Another example of putting the underlying goal first can be found in the Convention on the Rights of Persons with Disabilities, which protects those with disabilities “in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters”, See G.A. Res. 61/106, at art. 11 (Dec. 13, 2006).

\textsuperscript{47} Draft Articles on the Protection of Persons in the Event of Disasters, supra note 41, at art. 12.2.
U.N. General Assembly has held that “the abandonment of the victims of natural disasters and similar emergency situations without humanitarian assistance constitutes a threat to human life and an offence to human dignity.”\(^{48}\) Simply refusing to aid those in need is deemed unacceptable as well by SOLAS with regard to its duty to aid those in distress at sea. In light of this, the masters of the ship need to put in the log book precisely why they were unable to aid those in distress. Furthermore, the master of the ship is responsible to treat those who have embarked the ship with humanity.\(^{49}\) Though states have mixed feelings towards DAPPED, they have been a truly significant step towards securing human dignity,\(^{50}\) and dealing with disaster in times of peace,\(^{51}\) a matter insufficiently covered by hard international law.\(^{52}\)

**A State Inherent Responsibility to Protect (R2P)**

Long before the current R2P concept, a group of doctors—the founders of *Médécins sans frontières*—pushed the term “droit

---

\(^{48}\) G.A. Res 75/43, supra note 37, ¶ 8.


d’ingérence” or “duty of intervention”. In humanitarian crises, the rights of victims needed to stand front and center, and not classical State sovereignty. Despite the desire to make the right to intervention a human right, this duty of intervention was left ambiguous, it was generally understood as a moral obligation incumbent on third parties beyond the affected state to provide assistance to victims. With this legacy, the present day notion of R2P emerged from a realization that states needed to “embrace the responsibility to protect, and when necessary … act on it.” R2P has a broader function than humanitarian intervention in that it focuses on preventive intervention and keeps use of force as a last resort. It also has a more narrow scope in that it is strictly limited to protect populations from genocide, war crimes, ethnic cleansing, crimes against humanity, and their incitement. This responsibility to protect is a secondary one for third states, and only a primary responsibility for the affected state which has the duty to protect its population against atrocities. As mentioned, R2P functions within a pre-disaster or preventive timeframe. However, R2P also functions during the disaster or reactive phase, and in the post-disaster or rebuilding phase. Furthermore, R2P does not receive its strength from U.N. mandates or international treaties, it is a sovereign responsibility inherent to all states.

Of course, it must be remembered that R2P was put in place for internationally well-recognized crimes and that the ‘responsibility to protect’ still does not offer a clear duty to protect. Prior to the emergence of R2P, in the Kosovo debate—wherein the illegal NATO intervention was a great stimulant for R2P, only Belgium wanted there to be a general norm permitting intervention, other

---

56 Nevertheless, in practice this secondary responsibility is not supported globally and knows only a few true supporters.
57 G.A. Res. 60/L.1, 2005 World Summit Outcome, ¶¶ 74, 97 (Sept. 20, 2005).
NATO members agreed there is only a possibility of a moral duty to act or a necessity.\textsuperscript{58} Though there are safety measures for unwillingness to act, they are not perfect. If the affected state does not act, then U.N. Security Council, U.N. General Assembly, and regional organizations are next in line.\textsuperscript{59} In this respect it is worth mentioning the conclusions of the High Level Panel on Threats, Challenges and Change, created by the U.N. Secretary General. The panel was mandated to examine contemporary global threats and future challenges to international peace and security, including the connections between them; to identify the contribution that collective action could make in addressing these challenges; and to recommend the changes necessary to ensure effective collective action, including a review of the principal U.N. organs. In 2004, the panel endorsed “the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort.”\textsuperscript{60} The panel also took the suggestion of the International Commission on Intervention and State Sovereignty to heart which indicated that self-discipline of the permanent members in exercising their veto would be necessary.\textsuperscript{61}

**HUMAN SECURITY**

Labels are powerful tools in the creation of law and policy. Security situations may bring with it out-of-the-ordinary solutions, when ordinary solutions bring no relief. How a problem is labeled and approached, is crucial for how it can be managed. If we bifurcate security, we wind up with the more traditional notion of

\begin{itemize}
  \item \textsuperscript{59} Id. at 124.
  \item \textsuperscript{61} Brunnee \& Toope, *supra* note 58, at 125.
\end{itemize}
national state security on the one hand and human security on the other. Both state and human security can encompass a wide range of issues such as environmental, minority group issues, and—predominantly—military issues.

Human security means ensuring security from a people’s perspective, instead of from a state-focused perspective. It must be understood that human security is complementary to state security. Human security broadens the focus of security from states and borders and moves it onto communities within and across those borders. Canadian Foreign Minister Lloyd Axworthy put it correctly when he stated that, “human security is perhaps best understood as a shift in perspective or orientation. It is an alternative way of seeing the world.”

Today much contemplation is given to retention of statehood of flooding island states, whereas given the concerns of the islanders about loss of their culture due to climate change, attention is due retention of cultural identity and the community cohesion of the islanders. Human security, as opposed to state security, supports such a take on the issue. The concept can be traced back to the 1994 UNDP Human Development Report, though its meaning was far from steady at that point. Proof that the concept was not a passing

---


64 Comm’n on Human Sec., HUMAN SECURITY NOW, 6 (2003).


66 See infra note 99.


68 Human security is described as a “concern with human life and dignity”. U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 1994, 22 (1994),
fad came from then U.N. Secretary-General Kofi Annan, who pointed out in 2000 that human security had already joined the main U.N. agenda items of peace, state security and development. 69

What’s in a name?

In 2012, the U.N. General Assembly agreed upon a definition of human security. It is an approach—not a process on its own—to assist Member States to address cross-cutting challenges to the survival, livelihood and dignity of their people. 70 It is obvious human security has grown from the previously discussed aspects of a humanized international order. As a result, human security features interfaces with these aspects. For one, just as traditional IHL, human security is about the survival of people. Differently from IHL however, is that as human dignity stands at the core of human security, human security goes beyond securing mere survival.

The human security approach must be people-centred, context-specific and prevention-oriented in order to strengthen protection and empowerment of people and communities. Indeed, different from IDRL is the fact that human security protection places itself largely in the preventive timeframe 71 and not the reactive one. As mentioned, human security is far from a one-sided concept. For example, when transboundary mass migration hits a third state’s population, human security concerns are present not only for the displaced, but equally for the receiving state, 72 hence prevention is indeed crucial. 73


69 HUMAN SECURITY NOW, supra note 64, at 4.


71 HUMAN SECURITY NOW, supra note 64, at 11.

72 As two interests of self-determination would clash.

As mentioned, R2P is a system of “bridging the gap between nation state system of political management and the global nature of risks and threats requiring cooperation and collaboration.”

R2P as such should not be expanded to encompass consequences of slow onset natural disaster, or as a way to intervene in the policy of a state refusing to limit climate pollution, but to unbundle it and use its legitimate underlying values by putting people first.

Indeed, much like R2P, human security too puts people before state structures and at the heart of foreign policy. Human security looks at the international community as an important secondary player when an affected state fails to protect its people. In order to fulfill this secondary role, regional and international cooperation are vital.

**Much ado about nothing?**

Human security has received its fair share of criticism and interpretations. It has been labeled as an annihilation of the intellectual coherence of security that need only focus on threats of war on the state. It has received the label of only being appropriate to focus on the basic needs of individuals as a minimum. Finally, the concept has been called fuzzy, unnecessary, weak, and most of

---

75 *Id.* at 65.
77 *The Responsibility to Protect*, supra note 77, at 17.
82 *Id.* at 103.
DETHRONING STATE SECURITY

all having too broad a scope. The last comment points out a concern not to be underestimated, and presumably one of the reasons why human security is often pushed aside too readily. It is part of the reason why R2P was eventually so strictly delineated to five core crimes. However, whereas R2P has the ambition of being a policy in itself, human security remains an approach which for obvious reasons is much broader than a specific policy. The concept also knows constraint. A word of warning has been added by states feeling threatened that human security by adding to the text that at all times R2P must respect sovereignty, territorial integrity, and non-interference for matters within the domestic jurisdiction of states. In addition, human security must not impose any new legal obligations on the part of states, which it does not do given the nature of the concept as an approach supporting existing rights and duties of states and people with a special focus on human rights.

Human Security Meets Climate Change

The human security approach is intended to be applied for critical and pervasive threats or situations. One of the threats envisioned is massive population movements created by climate change. Such threats may be sudden, but can also creep in with slow onset. Likewise, threats can be orchestrated, inadvertent, direct, or indirect. An indirect threat may grow due to insufficient support of the international community in supporting those displaced, especially due to slow onset events which were a long time coming. It is important that slow onset events are taken into account, as today

---

84 Indeed, human security has been described as to include issues ranging from AIDS to the use of light weapons or landmines and peace resolution. Barnett et al., Global Environmental Change and Human Security: An Introduction, in GLOBAL ENVIRONMENTAL CHANGE AND HUMAN SECURITY 15 (MIT Press, 2010).
86 Comm’n on Human Sec., HUMAN SECURITY NOW, 47 & 52 (2003)
87 Id. at 11.
these feature much less in disaster law. Finally, there is no doubt that human security is applicable to climate change issues, as already human security approaches are utilized in tackling climate change on a smaller scale, usually in close cooperation with local government. The human security approach was for example applied in tackling recurring droughts exacerbated by climate change. In 2011, a programme was launched in the north-east of Kenya and its border communities. By considering a people-centered approach, it was recognized that a primary concern was to ensure there would be no competition between neighboring communities over the limited resources during droughts. Hence a platform was constructed which enabled combining resources and capacities of communities and institutions to stabilize fragile livelihoods and prevent competition.

**Power to the People**

Naturally, in a humanized world order, human security seeks to support human rights and strengthen human development. Importantly, human security does not attempt “to securitize human rights issues, but rather to humanize security.” After all, human security arose to reorient security around the individual at a time when transnational norms of human rights started to emerge. An example of such arising norms can be found in a speech from U.N. Secretary-General Kofi Annan in 1999 when he said that “[t]he

---

State is now widely understood to be the servant of its people, and not vice versa. At the same time, individual sovereignty—and by this I mean the human rights and fundamental freedoms of each and every individual as enshrined in our Charter—has been enhanced by a renewed consciousness of the right of every individual to control his or her own destiny. [...] The Charter is a living document, whose high principles still define the aspirations of peoples everywhere for lives of peace, dignity and development. Nothing in the Charter precludes a recognition that there are rights beyond borders.\(^92\)

Truly accommodating this collective interest is to accept that individual security or human security in the broader sense\(^93\) means human security must trump the more traditional notion of state security without overwriting it.\(^94\) Hence the protection of individual human rights stands front and center\(^95\) in order to protect “communities”\(^96\) as well and to empower both categories to act on their own behalf.\(^97\) A human right which can bring empowerment to threatened communities such as those of the islanders is the right to self-determination.\(^98\)

---


\(^{94}\) Unlike what Suhrke seems to suggest, I put forward that we must be wary of forcing the choice of states to choose either for state security or human security. The concepts are complementary, not exclusive. Astri Suhrke, Human Security and the Protection of Refugees, supra note 63, at 94.

\(^{95}\) Id. at 99.

\(^{96}\) HUMAN SECURITY NOW, supra note 64.

\(^{97}\) Id.

SURVIVAL THROUGH EMPOWERED SELF-DETERMINATION

Recently, a study on linkages between climate change and migration was conducted by the United Nations University Institute for Environment and Human Security in Nauru, Tuvalu and Kiribati. The research concluded that “[o]ne of the more striking results from the Q study is the possible impact of migration on identity and culture.”99 Several ‘attitudes’ were distilled from the replies received from interviewees and indeed in almost every attitude the interviews considered future migration to have an impact on their culture and identity as a people. In addition, 7 out of 10 attitudes considered this impact to be negative, none considered it positive, 3 out of 10 considered it neutral or did not mention it. As can be deduced from this study, the inhabitants of the low-lying island states are most worried about how to preserve their culture and identity if climate change makes their land uninhabitable. Another study by Jane McAdam, an authority in the field of migration, reaches the same conclusion based on the interviews conducted by her. She adds that the interviewees from Kiribati and Tuvalu do not link sovereignty to borders, but rather to religious, tribal, landholding and language groups.100 The core value a human security approach supports more fully than a state security approach is a people’s human right to self-determination which underwrites the retention of a people’s uniqueness as a people, which is a major concern of the islanders.

Regarding its precise legal scope, self-determination has grown through the years. Self-determination sprung from Woodrow Wilson’s words as a political statement,101 and although unrecognized by the League of Nations, it was already put to use in the 1920

100 Jane McAdam, CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW 156 (Oxford Univ. Press 2012).
101 See Woodrow Wilson, Fourteen Points (Jan. 8, 1918).
Aaland Islands case\textsuperscript{102} and was used to support a decolonization policy.\textsuperscript{103} The right to self-determination became recognized by the United Nations in the U.N. Charter\textsuperscript{104} and was understood to go beyond decolonization.\textsuperscript{105} This was confirmed by embedding the right in the 1966 human right covenants, the International Covenant on Civil and Political Rights (ICCPR)\textsuperscript{106} and the International Covenant on Economic, Social and Cultural Rights (ICESCR).\textsuperscript{107}

According to the Human Rights Committee, the human right as described in article 1 ICCPR, especially paragraph 3, “imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination.”\textsuperscript{108} This reading of article 1 corresponds with the Friendly Relations Declaration by the U.N. General Assembly in which was stated that “Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples.”\textsuperscript{109} Furthermore the right was confirmed to function \textit{erga omnes} in the


\textsuperscript{104} U.N. Charter art. 1, ¶ 2.

\textsuperscript{105} The right to self-determination was clearly included in agreements not at all related to decolonization such as Organization for Security and Co-Operation in Europe, Conference on Security and Co-Operation in Europe: Final Act of Helsinki, August 1, 1975.

\textsuperscript{106} G.A. Res. 2200 (XXI), supra note 31.

\textsuperscript{107} Id.

\textsuperscript{108} Human Rights Committee, International Covenant on Civil and Political Rights, U.N. Doc. HRI/GEN/1/Rev. 9 at 6 (1984). Note that the obligation is valid vis-à-vis all peoples; not simply those residing within a respective state’s territory. \textit{Id.} Note also that the cause of deprivation is necessarily requested. \textit{Id.}

ICJ East Timor judgment\textsuperscript{110} as well as the ICJ advisory opinion on the Wall in the Occupied Palestinian Territory.\textsuperscript{111} Due to its \textit{erga omnes} status, a people’s right to self-determination is part of international customary law,\textsuperscript{112} and even part of jus cogens.\textsuperscript{113} Many a definition has been proffered regarding the content of self-determination itself. The U.N. Charter has not done much to help this complication by only mentioning the principle of self-determination of peoples in the Charter.\textsuperscript{114} The Charter’s preparatory works however do stipulate that the principle of self-determination implies the right to self-government, but not a right to secession if self-determination would be exercised within an existing state.\textsuperscript{115} Indeed, only such a principle seems enforceable. Though U.N. resolutions and declarations have continued to confirm and solidify the right to self-determination, it has not succeeded in entirely clarifying its contents.\textsuperscript{116} The ICJ has referred to self-determination as the “freely expressed will of peoples.”\textsuperscript{117} The ICPPR offers the following definition: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and

\textsuperscript{111} Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 §155 (July 9).
\textsuperscript{112} \textit{Id.} at § 157.
\textsuperscript{114} U.N. Charter art. 1.2; U.N. Charter art. 55.
\textsuperscript{116} \textit{See, inter alia, G.A. Res. 1514 (XV), supra note 103; G.A. Res. 2625 (XXV).}
\textsuperscript{117} \textit{Western Sahara, Advisory Opinion, 1975 I.C.J. Rep. 12 § 59 (Oct. 16)}
freely pursue their economic, social and cultural development."\textsuperscript{118} In order to secure economic, social, and cultural development, the right to use of their natural wealth and resources as part of customary law,\textsuperscript{119} is inherent to peoples and their right to self-determination.\textsuperscript{120} Of course, today’s principle of territorial integrity ensures that this right to self-determination remains limited by the right of self-determination of other peoples.\textsuperscript{121}

\textbf{Who are ‘we, the people’?}

Who as a ‘people’ are the beneficiaries of the right to self-determination, remains a matter of dispute in international law.\textsuperscript{122} From its preparatory works, it is obvious the U.N. Charter distinguishes between Peoples, Nations, and States. Whereas ‘State’ refers to a type of political entity, ‘Nation’ is a term which can be used for any political entity, states and non-states. Finally, in a rather broad interpretation, ‘Peoples’ was viewed to refer to groups of human beings which may but do not need to comprise states or nations.\textsuperscript{123} Hence the Charter speaks rather of political entities and groups of human beings, rather than persons in a particular geographically delineated area. Initially, the ICCPR crippled the broad definition of ‘Peoples’ of the Charter. At the very least state


\textsuperscript{120} G.A. Res. 1803 (XVII), Permanent Sovereignty over Natural Resources, (Dec. 14, 1962); G.A. Res. 2200 (XXI), supra note 31.

\textsuperscript{121} External self-determination resulting in increased autonomy of the people may however be justified if the people is severely suppressed.

\textsuperscript{122} In contemplating the ‘peoplehood’ of East Pakistanis by the Commission of Jurists, the Commission decided upon relevant characteristics of people. The list ranged from historical, ethnic, cultural, ideological, geographic, economic to quantitative characteristics. This already rather broad list was considered non-exhaustive, and no element of it considered essential.

\textsuperscript{123} In the verbatim records of the U.N. Charter, States, Nations, and Peoples are three distinct subjects.
inhabitants and colonized people would qualify as peoples, though the human rights covenants excluded minorities, therein including indigenous peoples. 124 Indigenous peoples and minorities have remained nebulous categories of alleged peoples. 125

Minorities consist of persons belonging to a group and sharing a common culture, language, and/or religion. 126 Importantly, minorities do not need to be recognized as such by the state in which they reside, a qualification as a minority is entirely dependent on objective characteristics. 127 In the past the Committee strictly pegged indigenous peoples as minorities and evaded any question on the applicability of the right to self-determination to indigenous peoples, 128 but in more recent years the committee has started

---

124 Human Rights Committee, CCPR General Comment No. 23: Article 27, Rights of Minorities, ¶¶ 2–3.1, U.N. Doc. CCPR/C/21/Rev.1/Add.58 (1994). Also preparatory documents to the human rights conventions demonstrate reluctance to equate people and minorities. On discussing the definition of peoples and whether or not it encompassed national groups, minorities or racial units inhabiting well-defined territories, it was thought that peoples should not be defined and must be understood in its most general sense, and that “[f]urthermore, the right of minorities was a separate problem”. Draft international covenants on human rights annotation by the Secretary-General, A/2929, 1 July 1955, §9.

125 There are few binding agreements on the topic. With regard to indigenous peoples, See Convention Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 28 I.L.M. 1382, 1384–85 (defining tribal and indigenous people that Convention applied to); Int’l Convention on Civil and Political Rights art. 27, Dec. 19, 1966, No. 14668 (conferring cultural, religious, and linguistic freedom onto minorities); Opinions of the Badinter Arbitration Committee, Opinion No. 2 § 2, Nov. 20, 1991 (stating International Law requires states to respect rights of minorities).

126 General Comment No. 23: The Rights of Minorities (Art. 27), High Comm’r H.R., § 5.1 (Aug. 4, 1994).


referring to the relevance of the right of self-determination of indigenous peoples as a means of interpretation of rights under article 27 as minorities.\textsuperscript{129} This evolution is also reflected in articles 3 and 4 of the U.N. Declaration of the Rights of Indigenous Peoples.

It is relevant whether migrants may qualify as a minority. The HRC affirms this in the positive.\textsuperscript{130} What is more, even visitors to a state may qualify as a minority.\textsuperscript{131} In order to temper this rather liberal definition of the HRC, a—nevertheless low\textsuperscript{132}—threshold of permanence may be required of the migrants. If such permanence would not be required at all, the rights of minorities would become applicable to rather most any group of people and render the rights of minorities void due to breadth and impracticality.

Minorities receive protection under article 27 of the ICCPR to preserve their culture, language or religion as an individual human right.\textsuperscript{133} The state in whose territory the minority resides has both negative and positive obligations to ensure this protection.\textsuperscript{134}


\textsuperscript{130} General Comment No. 23, ¶ 5.2 (1994); Though at times migrants are artificially distinguished from minorities due to the fact that they are deemed to have migrated voluntarily, or due to a lack of (historical) relationship with the state. Such considerations seem to spring more from political convenience rather than legal argumentation. See Will Kymlicka, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS (1996); Daniel Šimihula, RIGHTS OF PERSONS BELONGING TO NATIONAL MINORITIES IN INTERNATIONAL LAW 95 (2008).

\textsuperscript{131} General Comment No. 23, ¶ 5.2 (1994).

\textsuperscript{132} Article 27 ICCPR merely requests the minority to ‘exist’. No particular degree of permanence is requested. International Covenant on Civil and Political Rights art. 27, Dec. 16, 1966, 999 U.N.T.S. 171.

\textsuperscript{133} International Covenant on Civil and Political Rights art. 27, Dec. 16, 1966, 999 U.N.T.S. 171.

\textsuperscript{134} General Comment No. 23, §§ 6.1, 6.2 (1994).
For example, active measures of the state may be required to ensure retention of culture of a minority. Even more so, it may be necessary to ensure involvement of minorities in decisions which specifically affect them.\textsuperscript{135} To invoke such measures, the relevant group of minorities does not need to be a citizen of the state in which the minority group resides.\textsuperscript{136} However, additional guarantees for minorities to take part in public affairs and elections will only be available if the minority member is a citizen of the relevant state.\textsuperscript{137} Beyond minority rights as described within the scope of the ICCPR, it may be possible for severely oppressed minorities to become qualified as peoples having a right to external self-determination. Such a right to external self-determination may materialize in the form of seceding from a mother state. This right has been described as “an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees”\textsuperscript{138} to ensure the rights of minorities.

It appears at the very least the islanders—as a totality of inhabitants of a specific island nation today—can be viewed as a people enjoying the right to self-determination as materialized in their independence as a state. If the islanders were to move \textit{en masse} they would still objectively be able to qualify as a people and at the very least as a minority in their new place of residence. As a people, they would receive the right to internal self-determination and political representation, alongside every other citizen of the state in which they would reside. Additional, or as an alternative, to their rights as a people, or separately, as a minority, the islanders would have rights to support their culture, language and/or religion.\textsuperscript{139}

\textsuperscript{135} General Comment No. 23, § 7 (1994).
\textsuperscript{136} General Comment No. 23, § 5.1 (1994).
\textsuperscript{137} Int’l Convention on Civil and Political Rights art. 25, Dec. 19, 1966, No. 14668 (detailing rights of citizens and according this political right to “citizens” only).
\textsuperscript{139} A full exploration on distinguishing a people from a minority goes beyond the scope of this article. See Raic for more on the subject. Raic puts forward the uniqueness of a group of persons as the distinguishing factor. David Raic,
Self-sufficient Peoplehood

In order to substantiate a right to self-determination with a right to the use of their natural resources to further development, islanders would preferably retain economic benefits from their natural resources.\(^{140}\) The issue here is that once their original island territory wanes, so do baselines retract and maritime zones shrivel as they are measured from such a retracted baseline.\(^{141}\) This means that to be self-reliant the maritime paradigm of land dominates the sea is problematic. If it can be relinquished, it can enable islanders’ retention of economically important maritime zones without continuing existence of baselines. The last decade a development is visible of stabilizing maritime zones and translating maritime boundaries into agreements as much as possible in an attempt to congeal maritime boundaries. Lately the trend has intensified. The latest bilateral and trilateral agreements between several Pacific Island States—in which they settle almost all their thus far disputed maritime boundaries—are exemplar.\(^{142}\) In addition, in 2016 the Marshall Islands declared all their maritime boundaries to the United Nations declaring the exact locations of baselines and outer limits of their maritime zones.\(^{143}\) By doing this, the Marshall Islands hope to solidify their

\(^{140}\) For example, fishing—mostly in the form of granting fishing licenses to foreign fishers—is one of the two main economic activities of Tuvalu. Andrea Milan, Robert Oakes, and Jillian Campbell, TUVALU: CLIMATE CHANGE AND MIGRATION—RELATIONSHIPS BETWEEN HOUSEHOLD VULNERABILITY, HUMAN MOBILITY AND CLIMATE CHANGE REPORT No. 18. 28 (United Nations University Institute for Environment and Human Security 2016).

\(^{141}\) See, e.g., United Nations Convention on the Law of the Sea art. 3, 5, 1982 (detailing state territorial sea measurement where art. 3 indicates that the territorial sea has a breadth of 12 nautical miles as measured from the baseline and art. 5 states that the normal baseline is the low water line)

\(^{142}\) The agreements can be consulted in: Coalter Lathrop and the American society of international law (eds.), INTERNATIONAL MARITIME BOUNDARIES, VOLUME VII (Brill Nijhoff, 2016).

maritime boundaries *de jure* even if those zones would fluctuate or disappear *de facto*. In a world of globalization and global governance, it is not unthinkable that maritime zones can be managed perfectly well by other-than-state entities without a nearby territorial basis to operate from, as much of the area today is chopped up into exploration zones and governed by seabed mining companies with the approval of the U.N. and set up by the International Seabed Authority.

Empowerment of people is brought on by allowing them to be self-reliant. On a legal level, this can be done by provision of self-determination and supporting the attached right of a people to their natural resources. In addition, human security’s credo is to ask not what can we do but, how can we build on the efforts and capabilities of those which are directly affected by the circumstances. For the Small Island Developing States, this can mean building on their capacities to form an asset to the host state if transboundary migration becomes inevitable. Such a process of ‘migration with dignity’ has already begun on Kiribati which means to prep its residents by giving them the right skills to bode well abroad. One of the goals of Kiribati’s National Labour Migration Policy (NLMP) which was created in cooperation with the International Labour Organisation, is to “ensure that Kiribati as a nation, culture and people will not perish as a result of climate change.” This labour migration policy shows that islanders are planning ahead, yet receive conflicting assistance. Whereas the ILO has helped Kiribati develop its labour migration policy, much more international cooperation is needed between the Pacific Islands and potential host states.

---


Getting Priorities Straight

Future scenarios for the islanders need to be assessed in light of who the state serves, meaning its population. In this respect, I would like to evoke the U.N. Secretary-General’s speech indicating that “[t]he State is now widely understood to be the servant of its people, and not vice versa.” Human security translates the idea of putting people first as is fit in a humanized international order. It represents a novel view on the role of sovereignty and statehood and puts state security in perspective. Irrespective of practical difficulties, replacement of territory seems a straightforward and functional solution, if it is durable. The same cannot be said for deterritorialized solutions. On the recognition of a deterritorialized state, McAdam states that “the continuing recognition of a *non-existing* state is to some degree academic” and I could not agree more. Not only is a deterritorialized state incompatible with positive law on statehood, retaining islanders in situ for as long as possible may lead to rather quick, unstable and ad hoc approaches once territory finally becomes entirely uninhabitable. This may bring on scattered migration resulting in diaspora, which after an initial period of continued recognition as a deterritorialized state will likely lead to full integration in or assimilation with the host state, losing all avenues for retaining the islanders’ right to self-determination and their culture, one of the biggest concerns of the islanders in relation to climate change and migration.

Islanders will likely be better off focusing on the islanders’ needs instead of the island’s needs. This can be reflected by relinquishing the desire to uphold state security approaches at all costs when it leads to virtual statehood. Human security as an approach in today’s humanized international legal world draws attention to the islanders’ needs going beyond mere individual physical survival and aims for complete support of the islanders’

---

human right, here in particular the human right to self-determination.

This entails that self-determination is protected by providing the islanders with land territory, most preferably (artificial) land in the very spot their current island is found as the islanders’ cultural identity is closely tied to their territory. In this scenario, the islanders’ self-determination indeed still materializes in the form of statehood which is in line with objective statehood criteria. The willingness of the international community to cooperate on this matter should be great as they wish to avoid even more migratory issues. Should migration be unavoidable, staggered\textsuperscript{150} and negotiated mass migration is the preferable solution. This way ties through transnational communities with the new host community are slowly built up and can be consolidated through a self-determination right for the resettled islanders as a people or a minority with retention of cultural identity.

\textsuperscript{150} In an attempt to stabilize life for displaced communities, transnational networks of shared nationality or identity may provide a safety net for newcomers, as well as being a channel for information. Commission on Human Security, \textit{Human Security Now} 51 (2003).