

SUBMISSION

CLIMATE CHANGE AND STATELESSNESS: AN OVERVIEW¹

submitted by the
United Nations High Commissioner for Refugees (UNHCR)

supported by the International Organization for Migration (IOM) and the Norwegian Refugee
Council (NRC)

to the 6th session of the Ad Hoc Working Group on Long-Term Cooperative Action
(AWG-LCA 6) under the UN Framework Convention on Climate Change (UNFCCC)
1 to 12 June 2009, Bonn, Germany

This note relates to the implementation of paragraph 1(c) of the Bali Action Plan and requests UNFCCC negotiators to ensure recognition in the follow-up Protocol of the need for early action to prevent statelessness as outlined below, and to permit funding for adaptation to be made available for such early actions.

‘Sinking island states’ present one of the most dramatic scenarios of the impact of climate change. The entire populations of low-lying States such as the Maldives, Tuvalu, Kiribati and the Marshall Islands may in future be obliged to leave their own country as a result of climate change. Moreover, the existence of their State as such may be threatened. Entire populations of affected states could thus become stateless.

Article 1 of the 1954 *Convention Relating to the Status of Stateless Persons* defines a stateless person as “a person who is not considered a national by any state under the operation of its law”. Should a state cease to exist, citizenship of that state would cease, as there would no longer be a state of which a person could be a national.¹ The question is then the extent to which climate change could affect statehood.

Although there is no internationally agreed definition of what constitutes a State, there is agreement in the existing doctrine that there must be territory inhabited by a permanent population under the control of an effective government. Additionally, independence has been cited by publicists as a central criterion of statehood. The criteria are not absolute and are, moreover, applied less strictly once a State is established. The temporary exile of a government even for an extended period would thus not necessarily lead to extinction of the State. There is no precedent for loss of the entire territory or the exile of the entire population; presumably statehood would similarly not cease if such loss or exile were temporary. The implication, however, is that where such a situation would be permanent, statehood could be questioned.²

¹ This note is a summary overview of a more extensive note on climate change and statelessness prepared by UNHCR pursuant to its mandate to prevent and reduce statelessness and to protect stateless persons. More detailed information may be obtained by contacting UNHCR through park@unhcr.org

Should, the entire territory of a State be permanently submerged, inevitably there could be no permanent population attached to it or a government in control of it. The loss of all territory has been cited most frequently as a possible ground for loss of statehood. It appears, however, unlikely to occur before the end of the century, even with the upwardly revised rates in rising sea-levels announced by scientists recently.³

A threat to statehood may nonetheless arise far earlier. It is projected that the number and severity of extreme events such as storms and flooding will increase considerably. Extensive loss of fresh water and arable land due to contamination and seepage is expected. As well, destruction of the economic base is additionally expected due to erosion, as well as damage to corals and fishing grounds due to rising sea levels and global warming. The Intergovernmental Panel on Climate Change (IPCC) has thus indicated that “rapid sea-level rise that inundates islands and coastal settlements is likely to limit adaptation possibilities, with potential options being limited to migration”.⁴ It has also confirmed that rising sea-levels are unavoidable.⁵

Low-lying island States are thus very likely to be entirely uninhabitable long before their full submersion, causing entire populations and the governments to be externally displaced. Unless territory could be protected or territory was ceded by another State, the exile of the population and the government would presumably be permanent. The population and the government would be entirely dependent on the status the host State would be willing to grant it. The government's independence could thus also be questioned. The IPCC itself has noted the threat to the sovereignty of low-lying island States likely to be affected.⁶

Should statehood cease, the population would be rendered stateless. Disappearance of a State due to loss of territory or the permanent exile of the population or the government is without precedent. The international community could agree that the affected States would continue to exist nonetheless. Even in such a case, however, governments of affected States would face many constraints in practice,⁷ and their populations would be likely to find themselves largely in a situation that would be similar to if not the same as if statehood had ceased. The population could thus be considered *de facto* stateless.⁸

To the extent that statelessness is foreseeable, efforts should focus on preventing it from arising. The principle of prevention of statelessness is a general one recognized in international law as a corollary to the right to a nationality. Both have been iterated in numerous international and regional human rights instruments.⁹ As well, specific instruments address prevention and reduction of statelessness, including *inter alia* the *1961 Convention on the Reduction of Statelessness* (hereafter the 1961 Convention).¹⁰ In addition, the General Assembly in 1996 entrusted UNHCR with a global mandate to engage in preventing and reducing statelessness as well as to protect stateless persons.¹¹

To prevent statelessness in the context of low-lying island States, one option would be that territory elsewhere would be ceded to the affected State to ensure its continued existence. If other States agreed that this was the same State, statelessness would not arise. Union with another State would be another option. In such a case, the *1961 Convention* and the *Draft Articles on the Nationality of Natural Persons in Relation to Succession of States* provide for specific safeguards to prevent statelessness.¹² Otherwise, the acquisition of the nationality of another State would need to be foreseen. As existing instruments do not provide specific guidance for such a case, situation-specific arrangements would be required.

Ideally, multilateral comprehensive agreements would provide where, and on what legal basis such populations would be permitted to move elsewhere and their status. To prevent temporary statelessness, acquisition of an effective nationality should be foreseen prior to the dissolution of the affected State. Dual nationality may therefore need to be permitted at least for a transitional period. As well, a waiver may be required of formal requirements for renunciation or acquisition of nationality which might be difficult to fulfil for affected populations. Such arrangements would need to provide *inter alia* for the right of residence, military obligations, health care, pensions and other social security benefits. Citizens of affected States that might have been displaced earlier, possibly to third States not party to the agreement, may also need to be considered. Provision should also be made to ensure that any resettlement be environmentally, socially and economically viable and sustainable over the longer term. Further, the principle of family unity should be considered and due regard given to permitting the affected populations to protect their identity as a people, including their language, culture, history and traditions.

The early introduction of educational and other measures to prepare for such displacement, such as labour migration schemes, could serve not only to increase the resilience and ability to adapt in the host country, but also provide further resources and reinforce the resilience of the population remaining on the islands. Although complete relocation of the entire population would be a measure of last resort, early preparedness could also help avert a humanitarian catastrophe by promoting orderly movements of affected populations and increasing the viability of the move.

Such arrangements would ideally be elaborated on the basis of participatory involvement of the population as well as the Government of affected island States. Other interested States, and relevant organizations and agencies could be involved as partners, with due account being taken of existing links with other States.

To this end, recognition would be required *inter alia* in the United Nations Framework Convention on Climate Change (UNFCCC) that external displacement will be inevitable and that statelessness may arise as a consequence of climate change, particularly in the case of low-lying island States. Funding should be made available at an early stage to prepare for prevention of statelessness and for displacement and/or migration as a possible adaptation measure.

In view of its mandate to engage in preventive actions related to statelessness, UNHCR would be pleased to support efforts by States to devise appropriate solutions for potentially affected populations, in partnership with other actors.

Endnotes

¹ This was also confirmed by the International Law Commission: “[w]hen a state disappears by dissolution, its nationality also disappears”, International Law Commission, *Draft Articles on Nationality of Natural Persons in Relation to the Succession of States (With Commentaries)*, 3 April 1999. Supplement No. 10 (A/54/10), UNHCR Refworld, Commentary (1) to Article 23, <http://www.unhcr.org/refworld/docid/4512b6dd4.html> (accessed 16 September 2008)

² See *inter alia* Ian Brownlie, *Principles of public international law*, Sixth edition, Oxford: Oxford University Press, 2003, pp.64, 70-79, 86-88, 105-107, 117-118; James Crawford, *The Creation of States in International Law*, Second edition, Oxford: Oxford University Press, 2006, pp.3-74; Malcolm N. Shaw, *International Law*, Sixth edition, Cambridge: Cambridge University Press, 2008, pp.211-214; Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, Seventh revised edition, London, New York: Routledge, 1997, reprinted 1998, pp. 75-79, 88, 152-154. In the absence of an internationally agreed definition under treaty or customary law, resort is had here to the writings of publicists as a subsidiary source of international law in accordance with Article 38 of the Statute of the International Court of Justice.

³ In the context of the International Scientific Congress on Climate Change held in March 2009 in Copenhagen, scientists highlighted that likely sea-level rise by 2100 could be up to one meter or more, and was unlikely to be less than 0.5m, see *inter alia* Climate Secretariat, University of Copenhagen, “Rising sea levels set to have major impacts around the world”, 10 March 2009, http://climatecongress.ku.dk/newsroom/rising_sealevels/ (accessed 18 March 2009).

⁴ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2007*, Fourth Assessment Report, “Report of the International Working Group II Report “Impacts, Adaptation and Vulnerability”, p.733, <http://www.ipcc.ch/ipccreports/ar4-wg2.htm> (accessed 18 September 2008). The IPCC is a scientific inter-governmental body established by the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP) to provide decision-makers and others interested in climate change with an objective source of information about climate change.

⁵ *Ibid*, p.317.

⁶ *Ibid*, p.736

⁷ See Brownlie, *supra*, pp.64, 86-88, Crawford, *supra*, pp.26-28, 93, Malanczuk, *supra*, p.84,.

⁸ There is no universally accepted definition of *de facto* statelessness. It has been referred to in different instruments as well as by publicists. The Final Act of the 1961 *Convention on Reduction of Statelessness* indicates that “persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality”, thus indicating that lack of effective nationality would be considered as a form of *de facto* statelessness. See also Council of Europe *Convention on the Avoidance of Statelessness in Relation to State Succession, Strasbourg*, 19.V.2006, Council of Europe Treaty Series, No. 200, Explanatory Report, Article 3 Prevention of statelessness, para. 16. “State succession may well create situations of *de facto* statelessness where persons do have the nationality of one of the States concerned but are unable to benefit from the protection of that State”.

⁹ Article 15 of the 1948 *Universal Declaration of Human Rights* provides that “[e]veryone has a right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”. The right to a nationality is iterated as well *inter alia* in the 1966 *International Covenant on Civil and Political Rights*, and the 1989 *Convention on the Rights of the Child*, as well as the 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, although the formulation varies. The 1979 *Convention on the Elimination of All Forms of Discrimination Against Women*, the 1965 *International Convention on the Elimination of All Forms of Racial Discrimination* and the 1957 *Convention on the Nationality of Married Women* also contain relevant provisions. At a regional level, see the 1990 *African Charter on the Rights and Welfare of the Child*, the 2005 *Covenant on the Rights of the Child in Islam*, the 1948 *American Declaration on the Rights and Duties of Man*, the 1969 *American Convention on Human Rights* and the 1997 *European Convention on Nationality*. The principle of prevention of statelessness is iterated in many of the same instruments. Additionally, both principles have been iterated numerous times by the General Assembly, the Human Rights Council and the International Law Commission.

¹⁰ Other instruments include *inter alia* the *Draft Articles on the Nationality of Natural Persons in Relation to Succession of States* and, at a regional level, the 2006 *Council of Europe Convention on the avoidance of statelessness in relation to State succession*.

¹¹ General Assembly Resolution GA/RES/50/152, 9 February 1996, paras.14-15. This mandate is additional to its earlier mandate to undertake the functions foreseen under Article 11 of the 1961 Convention first given in 1974 and then extended through Resolutions GA/RES/3274 (XXIX), 10 December 1974, and GA/RES/31/36, 30 November 1976.

¹² The 1961 Convention in Article 10 provides that in the absence of any treaty ensuring that no persons are left stateless, any contracting State to which territory is transferred shall grant its nationality on persons who would otherwise be stateless. The *Draft Articles on Nationality of Natural Persons in Relation to the Succession of States* are also relevant. Article 21 prescribes that citizenship should be automatically extended to all citizens of the predecessor island State. As well, habitual residents who may have left owing to climatic change, should have right of option to obtain same status in successor state including acquired rights; see commentary (3) to above Article. The International Law Commission noted that Article 21 in its view embodied a rule of customary international law; see commentary (6) to above article.