



173-175 Phillip Street
Sydney NSW 2000
Australia

DX 983, Sydney
Tel: +61 2 9351 0354
Facsimile: + 61 2 9351 0200
Email: bsaul@usyd.edu.au

Mr Ulrik Halsteen
Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
CH 1211 Geneva 10
registry@ohchr.org

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Dear United Nations High Commissioner for Human Rights

Re: Climate Change and Human Rights

Thank you for the opportunity to make this submission on the relationship between climate change and human rights, pursuant to UN Human Rights Council Resolution 7/23 (2008). The Sydney Centre for International Law at Sydney University Faculty of Law is a leading centre of international law research, scholarship and policy in Australia and the Asia-Pacific.

In this submission, we argue that climate change poses serious and immediate threats to a bundle of inter-related human rights, with specific impacts on peoples in the Asia-Pacific region. It is of crucial importance that international law adapt to respond to these threats. This submission first addresses the likely impacts of climate change on key human rights (life, an adequate standard of living, self-determination, and indigenous and minority rights), before secondly considering the special human rights problems posed by mass climate-induced displacement of populations.

A. IMPACTS OF CLIMATE CHANGE ON HUMAN RIGHTS

The Australian Human Rights and Equal Opportunity Commission has stated that:

As the major human rights treaties were developed before climate change was understood to be a looming threat to human security, the environmental dimension of these rights has not been extensively articulated and the precise connection between climate change and the international human rights law system is as yet undeveloped.¹

However, the effects of climate change potentially impinge upon enjoyment of the full range of internationally protected human rights, as outlined below.

1. Right to life

A right to life under international law is enshrined in both the UDHR and the ICCPR.² The Inter-American Commission on Human Rights has recognised that the realisation of that right is necessarily linked to and dependent on the physical environment.³ The potentially severe impacts of climate change on the physical environment may threaten this fundamental human right in affected regions. These impacts include both the ‘immediate’ consequences of climate change, such as the aftermath of climate-change induced extreme weather, and the ‘gradual’ effects, such as erosion and desertification caused by global warming, and the consequential disruption to livelihoods, national economies, and the stability of government structures.

2. Right to an adequate standard of living

International human rights law also protects every person’s right to an adequate standard of living.⁴ The ICCPR specifies that this right includes the right to adequate food, clothing, housing and the continuous improvement of living conditions,⁵ and the right not to be deprived of means of subsistence.⁶ The capacity of the State to protect and ensure these rights is compromised where climate change leads to the destruction or degradation of the ability of particular populations to hunt, fish, gather or undertake subsistence farming.

Furthermore, the ICESCR enshrines each person’s right to enjoyment of the highest attainable standard of physical and mental health.⁷ The CRC and CEDAW contain similar provisions. This right to health may be similarly compromised by the effects of climate change. The IPCC, for example, has projected that climate change-related exposures are likely to affect the health of millions of people, especially in states with low adaptive capacity, through increased instances of malaria; diarrheal disease; cardio-respiratory diseases; malnutrition; and increased deaths, disease, and injury due to heat waves, floods, storms, fires, and droughts.⁸

3. Right to self-determination

The ICCPR enshrines a people’s right to self-determination.⁹ In the extreme case of the extinction of island states and the permanent displacement of their inhabitants due to climate change, this fundamental right is threatened, since the breakage of the link between the people and their land makes it difficult to sustain a continuing self-determination claim. By extension, the right to have a nationality and not to become stateless is also affected if the state from which that nationality flows disappears.¹⁰

4. Rights of Minorities and Indigenous Peoples

Under international law, ethnic, religious, linguistic, or indigenous¹¹ minorities must be allowed to enjoy their own culture, practise their own religion, and use their own language,¹² all of which may be jeopardised by climate-induced displacement and the severing of those minorities from the roots of their practices. In particular, it has been argued that forced relocation due to the effects of climate change may lead to forced assimilation, which the right to culture is intended to prevent.¹³

Specifically, under the 2007 United Nations Declaration on the Rights of Indigenous Peoples, it is recognised that indigenous people have the right to practice and revitalise their cultural traditions and customs,¹⁴ to maintain their distinctive and spiritual relationship with traditional lands and waters,¹⁵ enjoy legal rights in land,¹⁶ and to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.¹⁷

The destruction of these lands and forced relocation of indigenous communities, due to the impact of climate change, would likely impinge upon these rights. For example, it is anticipated that at least 8,000 people in the Torres Strait Islands, in northern Australia, could lose their homes if sea levels rise by one metre. This would sever essential links to their land.

B. CLIMATE INDUCED DISPLACEMENT AND INTERNATIONAL LAW

1. The phenomenon of climate-induced displacement

One of the gravest effects of climate change is likely to be mass human migration, with millions being uprooted by shoreline erosion, coastal flooding, and agricultural disruption.¹⁸ The question of how many people are likely to be displaced by climate change has been extensively debated.¹⁹ Estimates typically range from 50 to 250 million people by 2050, although there is a real need for further rigorous empirical research on this front.²⁰

Small island states (especially in the Pacific) are particularly vulnerable to climate change and thus climate-induced displacement, due to their small physical size, exposure to natural disasters and climate extremes, open economies, and low adaptive capacity.²¹ For example, the inhabitants of Papua New Guinea's Carteret Islands are preparing to leave for mainland Bougainville, as rising sea levels make their traditional lands uninhabitable.²²

2. Existing international law: applications and limitations

Those displaced are entitled to enjoy the range of civil, political, economic, social and cultural rights in human rights treaties and under customary international law. Further, international humanitarian law and international environmental law may offer some protection.

For the moment, however, those displaced by climate change are not yet recognized in international law as an identifiable group whose rights are expressly articulated, or as formal legal category of people in need of any special protection. There may thus be significant limitations in existing international law in responding to the threat, occurrence and consequences of climate-induced displacement.

(a) *International Refugee Law*

The phenomenon of climate-changed induced displacement has frequently been approached through the narrow lens of refugee law. However, there are significant problems with attempting to squeeze the notion of climate-induced displacement into the framework of the 1951 Convention relating to the Status of Refugees.

First, people forced to move as a result of climate change do not fit the international legal definition of 'refugee', which applies to individuals already outside their country of origin who have a well-founded fear of persecution *because of* their race, religion, nationality, political opinion or membership of a particular social group.²³

Secondly, the requirement of exile under the 1951 Convention poses difficulties for peoples who have not yet moved but are facing habitat destruction, or those who are internally displaced. While the UNHCR has agreed to assume some responsibility to ensure the protection of internally displaced peoples, this protection is limited to Internationally Displaced Persons (IDPs) forced to move as a result of conflict, rather than climate change.

Thirdly, those who have crossed an international border are faced with the further definitional obstacle of characterising ‘climate change’ as *persecution*, let alone persecution *on account of* the individual’s race, religion, nationality, political opinion, or membership of a social group.

As a result, the protection of refugee law does not adequately extend to those displaced by climate change, and their rights, entitlements and protection options remain limited. Furthermore, there is no international agency or institutional focal point, such as the United Nations High Commissioner for Refugees (UNHCR), with a specific mandate to assist them.

(b) *International Human Rights Law*

Human rights law is of particular importance to climate-induced displacement for three reasons. Firstly, it sets out minimum standards of treatment that states must afford to individuals within their territory or jurisdiction, and provides a means of assessing which rights are compromised by climate change and which national authorities have responsibility for protecting those rights and remedying past violations.

Secondly, if those rights are at risk, human rights law sometimes provides a legal basis on which protection in another state may be sought.²⁴ Thirdly, if relocation occurs, human rights law requires the host state to observe minimum standards of treatment, and is thus relevant to the legal status afforded to those displaced.²⁵

(i) *Human rights law sets standards of treatment*

As noted above, the effects of climate change potentially impinge upon enjoyment of the full range of internationally protected human rights. However, the ability under current international law to protect these rights is limited. For example, although climate change may lead to literal, physical statelessness (contravening the right to have a nationality and not become stateless), the two international statelessness treaties do not anticipate this eventuality and therefore people affected in this way are not protected by the statelessness regime.²⁶ This is because the legal definition of ‘statelessness’ is premised on the denial of nationality through the operation of the law of a particular state, rather than through the disappearance of a state altogether.²⁷

Moreover, as discussed above, climate change will unavoidably impinge on the rights to life, health, and an adequate standard of living, and the rights of minorities, including indigenous peoples. Under the UN Declaration on the Rights of Indigenous Peoples, it is recognised that indigenous peoples have the right to redress for damage to lands and resources traditionally owned, occupied or used.²⁸ Thus, to the extent that forced displacement arises from ‘damage’ caused by climate change to indigenous lands, there may be a right to redress.²⁹ However, the other human rights instruments discussed above do not provide similar means for enforcing compliance with their provisions.

Further, it is unlikely that international human rights law will be of assistance in holding, for instance, major carbon-emitting states responsible for violating the rights of those who live in areas susceptible to climate-induced displacement. One problem is that under human rights law, states generally only have human rights obligations to people already in their territory or within their jurisdiction (where the state is acting extraterritorially). Causation remains a background problem: the complexity of potential causes of displacement make legal attribution of climate ‘harm’³⁰—and therefore responsibility—difficult to establish.

(ii) *Human rights law as a basis for seeking protection in a third country*

It could be argued that the principles of ‘complementary protection’ provide a legal basis on which international protection may be sought by those displaced by climate change, analogous to the manner in which refugees gain protection abroad from persecution in their country of origin. ‘Complementary protection’ describes protection granted by states on the basis of an international protection need outside the 1951 Refugee Convention framework. Such protection may be based on a human rights treaty or on humanitarian principles.³¹

However, although the obligation of *non-refoulement* under treaty and customary international law now encompasses non-return to persecution, torture or cruel, inhuman, or degrading treatment or punishment, this does not necessarily mean that it will assist a person displaced by climate change. First, climate-induced displacement cannot meet the international definitions of torture³² or persecution.

Secondly, although climate-induced displacement jeopardises a number of human rights, current jurisprudence suggests that breaches of these rights will be insufficient to found a protection claim. This is because unlike the absolute prohibition on returning someone to torture or inhuman or degrading treatment, most other human rights provisions permit a balancing test between the interests of the individual and the state.³³

Thirdly, although the attempt may be made to re-characterise the impact of climate change on certain human rights (for example, violation of the right to an adequate standard of living) as forms of inhuman treatment, which *is* a right giving rise to international protection, it is doubtful whether such violations which are not inflicted by the state which the individual left will be seen as giving rise to protection, or be regarded as constituting the kind of ill-treatment recognised to date as giving rise to a protection obligation on the part of a third state.³⁴ Courts have carefully circumscribed the meaning of ‘inhuman or degrading treatment’ so that it cannot be used as a remedy for general poverty, unemployment, or lack of resources or medical care except in the most exceptional circumstances.³⁵

Therefore, it seems that the limited scope of international human rights law is currently insufficient to protect the human rights of climate-displaced peoples.

(iii) *Human rights law regulating the treatment of climate-displaced persons*

As humans, those displaced by climate change (whether internally or outside their own countries) are evidently entitled to fundamental human rights protections. The application of human rights standards in situations of displacement has been particularized in a number of special contexts. First, the 1951 Refugee Convention articulates the human rights owed to refugees (but its application to climate-induced displacement is limited as noted above).

Secondly, the 1998 United Nations Guiding Principles on Internally Displaced Persons seek to apply existing human rights, refugee, and humanitarian law norms to the special needs and circumstances of internally displaced persons, and cover *any* form of human-induced displacement. The Guidelines thus can provide a non-binding template to assist in framing a response to those *internally* displaced by climate change.

There remains a real question, however, whether the very particular circumstances of those displaced by climate change warrants the development of further specific norms which are responsive to those special circumstances, to better apply human rights under such conditions.

(c) *International Environmental Law*

International environmental law is in some respects more promising than human rights law in its potential value in preventing or responding to climate-induced displacement. It requires states to implement programmes for mitigating greenhouse gas emissions;³⁶ to prevent, reduce and control pollution of the atmosphere and the marine environment;³⁷ and to conserve biodiversity.³⁸ Each state has an obligation to refrain from using their territory in a way that causes environmental harm beyond their borders, and the customary law principles of responsibility for transboundary environmental harm are well established.³⁹

Furthermore, the concept of sustainable development, embodied in the Rio Declaration, places limits on the right of States to exercise their 'right' to development in a way that damages neighbouring states or jeopardizes the developmental and environmental needs of future generations.⁴⁰ Most environmental agreements uphold a duty to co-operate; mere ratification is not enough.⁴¹

Thus, international environmental law may provide the basis for establishing an evolving 'human right' to a healthy environment. In a recent claim brought by Inuit people, lawyers argued that these principles provided a context for assessing states' human rights obligations with respect to global warming, because the emission of greenhouse gases in one state causes harm in others.⁴² As Judge Weeramantry stated in the *Danube Dam case*:

The protection of the environment is ... a vital part of contemporary human rights doctrine, for it is [an indispensable requirement] ... for numerous human rights such as the right to health and the right to life itself.⁴³

While this statement does not necessarily suggest that there exists an independent human right to environment, it provides a persuasive, logical underpinning to the realisation of human rights more generally, premising their fulfilment on whether the physical environment is capable of sustaining humans as rights-bearers.

However, international law does not *expressly* contain a human right to environment, although a number of human rights necessarily require an environment of a certain quality in order to be fulfilled.⁴⁴ Further, the right to environment contained in two regional human rights treaties, the 1981 African Charter on Human and Peoples' Rights and the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, is not enforceable by individuals. Accordingly, the most that can be said is that international law recognises a close link between the protecting the environment and realising human rights.⁴⁵

Environmental law has other limitations in addressing climate-induced displacement. First, the plane of legal responsibility is primarily between states, and individuals enjoy lesser legal capacity than under human rights law. Secondly, there is considerable difficulty in quantifying the harm caused by the carbon emissions of any particular state, and identifying causation between emissions and detrimental effects. Thirdly, there remain difficulties in establishing the accountability of corporations for carbon emissions in a legal system in which states remain the primary duty-bearers.

(d) International Humanitarian Law

International humanitarian law may be relevant where climate-related displacement is connected with international or non-international armed conflict. While the rules provide for the protection of civilians affected by conflict, they are relatively sparse when it comes to the specific protection of those displaced by conflict. The rules do ensure basic protections such as the evacuation and relocation of civilians for specified safety or security purposes, and for their return once the causes of displacement no longer exist. However, humanitarian law pays little attention to the causes of conflict or displacement, and thus does not provide particularized rules for those displaced by conflicts generated by climate change.

3. Lack of a Global Institutional Framework

In addition to the normative gaps in the legal framework, there is an obvious institutional gap with no body currently mandated with responsibility for climate-induced displacement.

The UNHCR is seen as the institution most suitable to be charged with dealing with climate induced displacement, having the greatest experience. However, the root causes of displacement are very different in the context of climate change and go well beyond the UNHCR's mandate. Moreover, from a practical point of view, the UNHCR is already overburdened and there are real doubts whether UNHCR has the resources, expertise and capacity to assume a protection or assistance function for over double the number of people for whom it already cares.

Whether an inter-agency approach with a UN focal point is adopted, or a single organisation is established, an institutional framework is needed to specifically address the complex problem of climate induced displacement.

4. Developing Frameworks

(a) A human security approach? – the strategic advantage and limitations

In light of the limitations of international law, an alternative framework of analysis is to deploy the emerging concept of 'human security' in dealing with climate-induced displacement. The concept of human security seeks to change 'traditional security approaches by conceiving of security issues not just in terms of state security, but primarily in terms of human needs'.⁴⁶

The agenda of the Security Council has increasingly been expanded, especially in conceptualizing economic and social concerns, such as environmental degradation, as threats to peace and security. For example, the environment was listed among the seven core components of human security initially articulated by the UN Development Programme (UNDP) in its *Human Development Report* of 1994,⁴⁷ and was emphasized in the 2003 Report of the Commission of Human Security (CHS), which has called upon the Security Council to broaden its mandate, beyond the expanded categories recognised in the 1990s to include, for example, mass refugee movement, HIV/AIDS and serious rights violations.⁴⁸ Similarly, in March 2005, in his report on the Millennium Development Goals, *In Larger Freedom*, then UN Secretary-General Kofi Annan supported this widening of the security agenda.⁴⁹

It is thus conceivable that climate-induced displacement could also be added to the list of 'security' issues. There are several advantages of 'securitising' problems such as climate-induced displacement. First, as a conceptual and rhetorical device, it invokes a sense of urgency, which is more likely to attract the attention of international civil society and hopefully triggers international action to confront the problem.

Secondly, the new security discourse is partly a reaction against the domination of the international security discourse by Western states and an attempts to reclaim the agenda in the interests of the developing world. Thirdly, a security agenda that addresses the billions of people in developing countries may enhance the legitimacy of the UN Security Council.

Moreover, an implicit consequence of the new security agenda is the potential for triggering the Security Council's enforcement powers under Chapter VII of the UN Charter in response to non-traditional threats. This could provide a vital mechanism through which states can be compelled to respond to the climate change. Just as the Security Council imposed Resolution 1373 (2001), which effectively placed the obligations of the 1999 Terrorist Financing Convention upon even non-party states to that treaty,⁵⁰ so too could an emboldened Security Council (for example) demand universal compliance with Kyoto Protocol, or binding measures taken in response the challenge of climate-induced displacement or gaps in the existing regulatory frameworks addressing internal or external displacement.

However, a key concern with the human security paradigm is its lack of clarity and conceptual confusion, which may encourage states to exploit the concept for their own purposes. By lumping together climate-induced displacement with every other human problem now re-characterised as a human security issue, there is a serious risk that prioritising everything means the specific needs of that group evaporate into the ether of competing development issues.⁵¹

Moreover, human security may have a number of potentially adverse consequences for international law, as to a large extent, it is a 'political project ... built on the already existing precedents within international law'.⁵² The rhetoric of security may add little to the essential substance of international law, but rather obscure or displace these existing legal standards and replace them with a more ambiguous, non-binding, discretionary political agenda.

In our view, human rights law offers a more useful framework for analysing rights at risk. While the current human rights regime does not adequately address those externally displaced by climate change, the diffuse and politicised 'human security' response is unlikely to offer a permanent solution for people in this category.

Rather, a more fruitful and enduring path may be to further develop and extend the existing legal standards relating to 'complementary protection',⁵³ grounded in the human rights treaties, so that legal status accrues not only to those leaving their countries for fear of persecution or torture, but also due to the effects of climate change on survival, the sustainability of livelihoods, the maintenance of basic human health, and the overriding preservation of human dignity.

While climate-change induced displacement challenges contemporary assumptions which the international community has made about protection needs, the law is apt to develop and respond. As it did in the aftermath of the Second World War to deal with mass displacement of refugees, it must do so again, without being hamstrung by what appear to be the legal limits of protection at any given moment.

(b) A Responsibility to Protect?

The emerging doctrine of the ‘responsibility to protect’ (R2P)⁵⁴ emphasises that while the primary responsibility for the protection of a state’s people lies with the state, the sovereign principle of non-intervention must yield to an *international* responsibility to protect where a population is suffering serious harm, and the state is unwilling or unable to halt or avert it.⁵⁵

However, R2P sets a high threshold for any international action by requiring the existence of war crimes, crimes against humanity or genocide. Thus, at present, it is difficult to apply to threats to human dignity posed by climate change. However, if, over time, the R2P framework were expanded beyond violent threats to encompass other serious risks such as climate-induced displacement, then R2P could assist in conceptualising the problem, to the extent that the effects of climate change drive state failure which results in serious harm to a population.

Assuming that this is possible, the doctrine encompasses the three specific responsibilities to prevent, react and rebuild.⁵⁶ This schema might be applied to climate-induced displacement to recognise a responsibility of the international community to seriously address carbon emissions; to take appropriate and effective measures to protect those displaced by climate change; and to sustainably rebuild communities displaced by climate change.

R2P is more promising than ‘human security’ in addressing climate-induced displacement because it is a relatively well-defined and circumscribed doctrine, built around the existing planks of international law and intended to harmonise with the role of the UN Security Council under the Charter. However, like human security, R2P lacks the binding force of hard law and thus may be subject to political whim and pragmatic tendencies. The other danger inherent in R2P is its militant tendencies towards protecting human rights through violence.

Yours sincerely



Dr Ben Saul

Director, Sydney Centre
for International Law

Dr Jane McAdam

Director of International Law
University of NSW, Sydney

Alicia Lyons

Researcher
Sydney Centre

Danielle Mawer

Researcher
Sydney Centre

ENDNOTES

¹ HREOC Report, p. 3.

² UDHR art 3; ICCPR art 6(1).

³ *Report on the Human Rights Situation in Ecuador* OEA/Ser.L/V/II.96 Ch 8; *Yanomami case* (case 7615 of 5 March 1985), cited in annual report of the Inter-American Commission on Human Rights, 1984–85, OEA/Ser.L/V/II.66, Doc. 10 rev.1.

⁴ UDHR art 25; ICCPR.

⁵ ICESCR, art 11.

⁶ ICCPR, art 1(2); ICESCR, art 1(2).

⁷ ICESCR, art 12.

⁸ Intergovernmental Panel on Climate Change, ‘Summary for Policymakers’ in *Climate Change 2007: Impacts, Adaptation and Vulnerability. Working Group II Contribution to the Intergovernmental Panel on Climate Change Fourth Assessment Report* (Cambridge: Cambridge University Press, 2007), 7.

⁹ See ICCPR, art 1(1); ICESCR, art 1(1).

¹⁰ See Universal Declaration of Human Rights (adopted 10 Dec. 1948) UNGA Res 217A (III), art 15 (UDHR); CRC, arts 7 and 8; ICCPR, art 24(3); American Convention on Human Rights (adopted 22 Nov. 1969, entered into force 18 July 1978) 1144 UNTS 123, art 20; Convention on the Reduction of Statelessness (adopted 30 Aug. 1961, entered into force 13 Dec. 1975) 989 UNTS 175.

¹¹ Convention on the Rights of the Child (adopted 20 Nov. 1989, entered into force 2 Sept. 1990) 1577 UNTS 3 (CRC) art 30.

¹² ICCPR, art 27.

¹³ See Inter-American Commission on Human Rights, *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin* 76, OEA/Ser.L/V/II.62, Doc. 10, rev. 3 (1983), para II.B.15.

¹⁴ Art 11.

¹⁵ Declaration on the Rights of Indigenous Peoples, A/RES/61/295 (adopted 13 Sept. 2007), art 25.

¹⁶ Declaration on the Rights of Indigenous Peoples, art 26.

¹⁷ Declaration on the Rights of Indigenous Peoples, art 29.

¹⁸ Intergovernmental Panel on Climate Change, *Climate Change: The IPCC Scientific Assessment: Final Report of Working Group I* (NY: Cambridge University Press, 1990).

¹⁹ See Myers, 'Environmental Refugees in a Globally Warmed World'; Intergovernmental Panel on Climate Change, *Third Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2001). In 2005, Myers revised his estimate, suggesting that it could be up to 200 million: Myers, 'Environmental Refugees: An Emergent Security Issue'. Sir Nicholas Stern described this as a 'conservative' assumption: Stern, *The Economics of Climate Change*, 77. Myers has more recently revised this figure as closer to 250 million: interview with Christian Aid (14 March 2007), cited in Christian Aid, *Human Tide: The Real Migration Crisis* (2007), 50 endnote 10. Christian Aid adopted this figure in its own estimates: 6. Cf Black, 'Environmental Refugees: Myth or Reality?'; Castles, 'Environmental Change and Forced Migration'. See also discussion in R. McLeman, 'Climate Change Migration, Refugee Protection and Adaptive Capacity-Building', *McGill Intl J of Sustainable Development Law and Policy*, 4 (2008) (forthcoming, copy with author); S. Byravan and S. Chella Rajan, 'Providing New Homes for Climate Change Exiles', *Climate Policy*, 6 (2006), 247.

²⁰ An EU-commissioned study, due for release in late 2008, of 26 vulnerable states may address some of this, see: <http://www.each-for.eu>.

²¹ Mimura and others, 'Small Islands', 692–3. The report additionally lists the impacts of globalisation, pressures on infrastructure, a scarcity of fresh water, and, in the Pacific, internal and external political and economic processes, including the imposition of western adaptation models which are not readily transposable to the island context. These features have resulted in some small island States being recognised by the UN as Least Developed Countries or SIDS.

²² See, e.g., J. Stewart, 'Rising Seas Force Carteret Islanders out of Home', Lateline, ABC television (5 Feb. 2007) Transcript, available at: <http://www.abc.net.au/lateline/content/2006/s1840956.htm>. Though described as 'among the world's first environmental refugees', they are more accurately characterised as internally displaced people, since their movement does not require the crossing of an international border. On 'refugee' terminology in this context, see below; K. Romer, "'Environmental" Refugees?', *Forced Migration Review*, 25 (2006), 61. Much of the information on the Carteret Islands comes from a talk given by islander Ursula Rakova (Brown Street Community Hall, Newtown, 14 Sept. 2007).

²³ Art. 1A(2), 1951 Refugee Convention, read in conjunction with the 1967 Protocol.

²⁴ J. McAdam, *Complementary Protection in International Refugee Law* (Oxford University Press, 2007).

²⁵ McAdam, *Complementary Protection in International Refugee Law*, chapter 6.

²⁶ Convention relating to the Status of Stateless Persons (adopted 28 Sept. 1954, entered into force 6 June 1960) 360 UNTS 1171 Convention on the Reduction of Statelessness.

²⁷ Convention relating to the Status of Stateless Persons, art 1(1): 'For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.'

²⁸ Declaration on the Rights of Indigenous Peoples, art 28(1).

²⁹ Declaration on the Rights of Indigenous Peoples, art 28(2).

³⁰ Some suggest that the 'coral reef crisis' is 'almost certainly the result of complex and synergistic interactions among global-scale climatic stresses and local-scale, human-imposed stresses (Buddemeier et al., 2004)': Mimura and others, 'Small Islands', 699.

³¹ See generally J McAdam, *Complementary Protection in International Refugee Law*, Oxford, OUP, 2007.

³² See respectively ICCPR, art 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 Dec. 1984, entered into force 26 June 1987) 1465 UNTS 85, arts 3 and 1.

³³ See chapter XXX by Vesselina Vandova et al in this book, which considers the efforts of certain states to introduce a balancing test between the interests of the individual in *refoulement* cases even in the context of torture and other cruel, inhuman or degrading treatment and punishment.

³⁴ *R v. Special Adjudicator ex parte Ullah* [2004] UKHL 26; Human Rights Committee, 'General Comment 15: The Position of Aliens under the Covenant' (11 Apr. 1986), para 5; see also Human Rights Committee, 'General Comment 18: Non-Discrimination' (10 Nov. 1989).

³⁵ *D v. United Kingdom* (1997) 24 EHRR 423; *N v. Secretary of State for the Home Department* [2005] UKHL 31; *HLR v. France* (1997) 20 EHRR 29, para 42; see also the views of Committee against Torture, as in *AD v. The Netherlands*, Communication No. 96/1997 (24 Jan. 2000), UN Doc.

CAT/C/23/D/96/1997, para 7.2. See discussion in Goodwin-Gill and McAdam, *The Refugee in International Law*, 350–1.

³⁶ eg Stockholm Declaration, principle 21; Convention on Long-Range Transboundary Air Pollution (adopted 13 Nov. 1979, entered into force 16 March 1983) 1302 UNTS 217; Convention for the Protection of the Ozone Layer (adopted 22 March 1985, entered into force 22 Sept. 1988) 1513 UNTS 293; UN Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1993) 1771 UNTS 107; Kyoto Protocol to the Framework Convention on Climate Change (adopted 11 Dec. 1997, entered into force 16 Feb. 2005).

³⁷ eg Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) UN Doc. A/CONF/48/14/Rev.1 (16 June 1972), principle 21; Declaration of the United Nations Conference on the Human Environment (Rio Declaration) UN Doc. A/CONF/151/26/Rev.1 (1992), principle 2; UN Framework Convention on Climate Change; Kyoto Protocol; United Nations Law of the Sea Convention (adopted 10 Dec. 1982, entered into force 16 Nov. 1994) 1833 UNTS 3, arts 192–5.

³⁸ eg Biological Diversity Convention (adopted 5 June 1992, entered into force 29 Dec. 1993) 1760 UNTS 79.

³⁹ See eg *Trail Smelter Arbitration (United States v. Canada)* 1938–41 3 RIAA 1905; Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) UN Doc. A/CONF/48/14/Rev.1 (16 June 1972), principle 21; Declaration of the United Nations Conference on the Human Environment (Rio Declaration) UN Doc. A/CONF/151/26/Rev.1 (1992), principle 2; see also the International Law Commission's draft articles on the Prevention of Transboundary Harm from Hazardous Activities (2001), in *Report of the ILC* (2001) GAOR A/56/10; *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* 1996 ICJ 226, para 29.

⁴⁰ Rio Declaration, pins 2 and 3.

⁴¹ See eg Stockholm Declaration, principle 24; Rio Declaration, principles 7 and 27.

⁴² Earthjustice, 'Global Warming and Human Rights: Testimony of Martin Wagner before the Inter-American Commission on Human Rights' (1 March 2007), 3.

⁴³ *Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)* 1997 ICJ 92 (Separate Opinion of Judge Weeramantry), at para A(b).

⁴⁴ Asia Pacific Forum, 'Human Rights and the Environment: Background Paper' APF 12 (2007) 26. See also D. Shelton, 'Environmental Rights', and P. Alston, 'Peoples' Rights: Their Rise and Fall', in P. Alston (ed), *Peoples' Rights* (Oxford: Oxford University Press, 2001); Meeting of Experts on Human Rights and the Environment, Final Text (16 Jan. 2002) (see also background papers at www.unhchr.ch/environment); P. Birnie and A. Boyle, *International Law and the Environment* (Oxford: Oxford University Press, 2002), 252–267.

⁴⁵ Ramcharan suggests that the right to life implies a right to environment and a concomitant obligation on States 'to take effective measures to prevent and to safeguard against the occurrence of environmental hazards which threaten the lives of human beings': B. G. Ramcharan (ed.), *The Right to Life in International Law* (Dordrecht/Boston: Martinus Nijhoff Publishers, 1985) 13, as (mis)cited in Asia Pacific Forum, 'Human Rights and the Environment', 34.

⁴⁶ D. Newman, 'A Human Security Council? Applying a "Human Security" Agenda to Security Council Reform', *Ottawa L Rev*, 31 (2000), 213; see also UNDP, *Human Development Report 1994* (NY: Oxford University Press, 1994), 22–33; Commission on Global Governance, *Our Global Neighbourhood: Report of the Commission* (Oxford: Oxford University Press, 1995), 79–80.

⁴⁷ The other six core components of human security are economic, food, health, personal, community, and political: UNDP, *Human Development Report 1994*, 24.

⁴⁸ Commission on Human Security, *Human Security Now*, 131.

⁴⁹ UN Secretary-General's Report, 'In Larger Freedom: Towards Development, Security and Human Rights for All', UNGA (59th Session), 21 March 2005, UN Doc. A/59/2005.

⁵⁰ International Convention for the Suppression of the Financing of Terrorism (adopted 9 Dec. 1999, entered into force 10 Apr. 2002).

⁵¹ Yuen Foong Khong, 'Human Security', 232–4.

⁵² H. Owens and B. Arneil, 'Human Security Paradigm Shift: A New Lens on Canadian Foreign Policy', *Canadian Foreign Policy*, 7 (1999) 1 [start], 9 [pinpt] (emphasis added), cited in von Tigerstrom, *Human Security and International Law*, 4.

⁵³ See McAdam, *Complementary Protection in International Refugee Law* on the existing scope of complementary protection in international law.

⁵⁴ Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Dec. 2001) xi.

⁵⁵ Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Dec. 2001, xi. See, further, Ch. XXX by F. Nicholson in this book, who deals with the issue of international refugee law and the responsibility to protect.

⁵⁶ Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Dec. 2001, xi.