Has Climate Change Rendered the Concept of Sovereignty Obsolete?

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Introduction

Since the 1648 Treaty of Westphalia, state sovereignty has been the driving force underpinning the independence of countries, giving them right to exist via decisions from an organised government without outside intervention. Further, it has traditionally been ‘used to legitimize a strong and undivided power that could secure law and order in times of civil and religious wars’. The 1933 Montevideo Convention on the Rights and Duties of states determined that to be recognised as a state in international law, there must be: a permanent population, a defined territory, functioning government, and the ability to engage in relations with other states. Whilst such qualifications are seemingly straightforward, they do not take into account the threat of climate change, which was very much in the background at the time. Currently, a rapidly changing climate is placing island states and atoll nations in particular risk of becoming submerged due to rising sea levels. Unless the concept of sovereignty is revised, there will be a growing list of populations that are undefined and undefinable populations under current international law, which could well lead to global crisis and international instability.

In this paper I argue that national sovereignty is not obsolete, but rather the concept must be redefined to take into account the effects of a changing climate. The core argument suggests that the discourse should shift away from whether sovereignty is useless and instead focus on the development of an all-encompassing definition for statehood, in order to protect the rights of countries and their citizens in the face of climate change, especially regarding the physical disappearance of their territory. By doing this, smaller states and populations will retain at least a small part of their culture and heritage, whilst also mitigating the chances of climate induced conflict and preventing the most polluting countries benefitting from a situation they heavily contributed to.

This paper has a particular emphasis on island states most vulnerable from climate change and proceeds as follows: firstly, I will introduce the concept of sovereignty, discuss its importance and briefly offer a defence of why it should be kept. The second section tackles the challenges that sovereignty is confronted with in the face of a changing climate, with particular focus on the impact of rising sea levels, and debates the potential for the ecological “responsibility to protect” to both help and hinder sovereignty. Finally, the last section explores the options states have to remain sovereign, focusing particularly on Rayfuse’s notion of the deterritorialised state.

The Importance of sovereignty

Sovereignty is inherently ambiguous. Authors have explored the many forms it may take, for example the implications for both domestic and international legalities. Therefore, a formal definition of sovereignty varies widely in the literature. Krasner defines it as “a system of political authority based on territory, mutual recognition, autonomy and control”. Similar to the aforementioned Montevideo Convention, territoriality appears to be a defining feature as it provides a clear dividing line between states to those that govern them. However, the other characteristics are vague and open to interpretation. I believe there to be several caveats within the existing criteria for statehood, including some definitional dilemmas. For example, Esteban
and Yamamoto note that there are two theories of sovereignty, one of which is the declatory theory. Under this theory of sovereignty, states exist due to the international acknowledgment by other established states, the UN as the highest power in the international system then formally recognises the state as an international power. The “recognition of a new State is a political act, which is, in principle, independent of the existence of the new State as a subject of international law”.5

It seems there is scope to broadly draw on a constructivist approach here. Deconstructing the traditional definition of sovereignty and reinterpreting it as a political act of acknowledgment would allow disappearing or disappeared states to retain their sovereignty. The existence of states is due to recognition by other sovereign states; they become legitimised when states within the international system choose to acknowledge them. A world based on the sovereign state has materialised through states’ own choice of how they wish to run the international game. Therefore sovereignty is vital “in that it identifies the territorial entities who are eligible to participate in the game”.6 This is a fascinating point, as it raises questions of a political nature. If countries can choose whether or not to formally recognise others as states, then by this theory of sovereignty and statehood the other qualifications, namely a permanent population and physical territory, may not be strictly necessary. The ability to enter into relations with others, the qualification I would argue was the most important stately function, would not be inhibited. The government of such a state would still operate with the required autonomy and control, but simply outside of the traditionally defined territory.

Yet, the importance of sovereignty goes beyond the political considerations: it is the foundation for self-determination and state independence; it provides the freedom for its people. Rabkin asserts that great importance is placed on the need for individual freedoms, so naturally the same must be said for sovereignty. Emphasising national independence allows nations to be distinctly different from each other, be it identity or culture. Such a concept provides the opportunity for individualism within the global system, whilst also serving as a prerequisite for peace, definite law, reliable rights and meaningful responsibility.7 Furthermore, many of the most vulnerable nations are those that value their cultures and heritage the most highly. Mortreux and Barnett studied the people of Funafati, Tuvalu, and found that despite the increasingly likely prospect of the islands becoming submerged, the population viewed retaining the unique culture and lifestyle as more important than migrating to safety.8 Many would rather risk their lives than be forced to migrate and adapt to a different way of life, with the inability to retain their sovereign rights. This surely illustrates the importance that sovereignty plays within the international system.

Nonetheless, this is not to say that sovereignty is without its flaws. States cannot be forced to do anything they do not want to, therefore many countries that benefit financially from their increased pollution can only be encouraged to reduce their emissions. For example, until recently China did little to tackle their colossal emissions because the pollution was a by-product of the processes needed to aid their economic development. Further, the global system is based far more on competition between, rather than cooperation with, other nations, with many willing to forego their environmental responsibilities for the pursuit of greater profits.

Having said that, in such an anarchic international system, sovereignty provides the one opportunity for any country to focus entirely on itself, which if approached correctly is an extremely powerful capability. The development of more thorough environmental frameworks such as the Paris Climate Agreement, has provided the foundation for tackling climate change problems, but this is only possible via cooperation, communication and mitigation between
states. Stein argues that the formation of such agreements manifests when state self-interests converge towards tackling common dilemmas that threaten the state. Whilst there is undoubtably a link between carbon emissions and productivity, it seems interests are beginning to align in order to focus on the bigger picture.

**Climate Challenges**

“Apart from the fabled demise of Atlantis, the world has never experienced the physical disappearance of a state”.9 According to the UN World Meteorological Organisation, fourteen of the fifteen hottest years on record have occurred since 2000, and this has been reflected in the rapid rise in sea levels. Throughout the twentieth century, the average yearly water rise was 1.7mm, yet since 1992 the rate has doubled to 3.4mm per year.10 As the rate of sea level rise continues to increase, it could well submerge thousands of islands, including those in the South Pacific.

The unequal distribution of effects of anthropogenic climate change means these tiny nations account for only a miniscule proportion of global emissions yet suffer the most. Many have expressed concern for the future of these states. The vulnerability of islands such as Tuvalu, Kiribati and the Marshall Islands to changing weather is so great that it is, for the first time, raising questions as to their physical existence in the future. A rapidly shifting shoreline due to human activity makes them far more susceptible to sea level rise.11 The populations of such nations may be forcibly displaced creating a wave of ‘climate refugees’ and possible migration crisis.12

With the many interactions of actors across state boundaries, the traditional label of a ‘state’ may not provide the appropriate frame of reference for climate change.13 Kavalski explains how, if there are many other actors in the climate dilemma, such as large businesses, then states cannot be viewed as standalone units but rather many smaller complex and integrated entities.14 Furthermore, the nature of anthropogenic climate change is inherently complex. Human impacts develop over time, meaning the effects of irresponsible actions are not always immediate. For instance, carbon emissions produced in London today could influence rising sea levels that lead to the sinking of the Maldives in several decades. Additionally, the indivisible nature of the atmosphere and global emissions makes establishing accurate chains of causality practically impossible.

However, perhaps the greatest test comes from the ecological responsibility to protect. This was the contribution to the discussion by Eckersley, who suggests that outside intervention should occur when there is grave environmental danger, including situations in which deliberate state inaction has led to the endangerment of human life.15 This builds on the traditional responsibility to protect doctrine that justifies humanitarian intervention in the case of genocide by arguing that environmental destruction and degradation too should justify intervention. Eckersley defines ecological intervention as “the threat or use of force by a state or coalition of states within the territory of another state and *without the consent of that state* in order to prevent grave environmental damage”.16
Outside intervention may provide the use of force to help the situation, but it undoubtedly undermines sovereignty. Many states would view this as a clear disregard for their laws and values, and could well exacerbate the problem by unintentionally causing further environmental destruction or perhaps sparking conflict. The justification of ecological intervention also poses several questions: at what point does the use of military action become commonplace? There is a clear case for outside help in the case of genocide, but does protecting ecology require such force? Surely if military intervention increases in frequency it will soon become the minimum standard in a vast number of situations, which would involve an enormous amount of resources, make situations unnecessarily dangerous and, as Dalby notes, almost certainly cause unintentional human casualties. 17

On the other hand, I believe an argument could be made for intervention helping to retain sovereignty, especially for those nations being bullied into undesirable positions. A real world example is that of Canada’s claim to the Northwest Passage. This region has been off limits except by permission of the Canadian government; however, as sea ice begins to melt as a result of climate change, it has made the passage more accessible for ships that are too large to travel through the Panama Canal. 18 States and shipping companies looking to profit argue that the break up of the ice from the land makes the passage an international body of water that does not lie within sovereign territory, meaning Canada could not lay claim to it and therefore could not invoke Article 234 of the United Nations Convention on the Law of the Sea (UNCLOS) preventing ships from using it. 19 The pollution from the vessels would endanger much of the wildlife in the region whilst contributing further to the ice sheet melt with the longer term consequence of sea level rises, a vicious circle of environmental carnage. Outside intervention in this case, albeit perhaps not military, could help Canada retain their sovereign rights over the passage whilst making a statement to the larger states that their harmful emissions should not be rewarded with easy profits.

In a similar vein, I would argue that a responsibility to protect exists from a moral perspective. Whilst land borders are easy to establish, many countries also have claims to underwater territory. The vast array of resources below sea level could provide a steady income for states long after the land has disappeared. Mineral and oil deposits alongside rare fisheries and the right to exploit them provide economic lifelines to otherwise poor economies. Maritime boundaries, as noted by Yamamoto and Esteban, are established based on the distance from the coastline. In the first 12 miles from the coastline the nation has full sovereign rights over its territorial waters. Between 12 and 24 miles from the coastline is the contiguous zone where full sovereign rights are no more but domestic law on pollution, customs and immigration holds. Beyond 24 miles, nations can claim an exclusive economic zone (EEZ) of up to 200 miles which would give the rights to exploit any resources under the sea bed, in the sea floor or in the water column itself. 20

However, climate change is causing sea level rise that continues to push back the coastline, thus restricting the area that can be claimed. Furthermore, current law does not account for submerged islands or barren rocks that were once part of territory, meaning the most vulnerable nations could relinquish all claim. Potential solutions to this will be discussed in the following section, but the moral aspect must be considered here. If international law is not amended to retain sovereign rights, it provides the opportunity for largest countries to lay claim to this maritime area that would no longer belong to the sunken nation. In effect, this would reward the most polluting and environmentally misbehaving nations with the opportunity for further profit. Such resource snatching would undermine the foundation that sovereignty is built on, which the UN describes as ‘sovereign equality for all nations’. Nations contributing to climate change,
offering no assistance to those that need it, and then auctioning off maritime resources to the highest bidder is a series of events that must be prevented. Instead, it is argued that “major emitters of greenhouse gas should work to protect those communities as they are very likely to be the ones responsible for sea level rise.”

Successfully tackling climate change requires a strong degree of accountability. To financially aid the worst performers is to take several steps back in the battle. Changing international law and sovereignty criteria would allow smaller nations to continue to exploit resources that could provide vital funds long after the land is lost, whilst simultaneously retaining their sovereign rights rather than becoming stateless.

A changing climate does pose questions of state control, but as Werner and De Wilde note, in times of competing claims to authority and autonomy is when the strongest claims to sovereignty are more likely to occur. So for vulnerable nations facing threats from larger states, the concept becomes more vital and requires a new approach. Eckersley describes this approach as inclusive rather than exclusive, suggesting that outside interference in state affairs regarding the environment could occur because climate issues in a single state often have spillover affects and therefore require continued cooperation. Scholars willing to suggest amendments to sovereignty not only shows that they realise how important the concept is, but also illustrates that such adjustments are not unrealistic.

Remaining sovereign

Whilst much of the literature portrays a distinct air of pessimism for the future of island nations, other academics believe that media reports of vulnerability have been overstated and insultingly downplay the communities’ ability to survive. Nonetheless, several options for the retention of national sovereignty have been proposed. Perhaps the most realistic, is Rayfuse’s concept of existence as a ‘deterritorialised state. This idea, similar to that of Burkett’s ex-situ sovereignty, argues that the existing government of a state could continue existing outside the confines of its territory, especially as land may become uninhabitable due to climate change. In this case the population of the state would elect a body of authority to act in their best interests within the international arena on issues such as the distribution of resource royalties to fund resettlement as well as international relations with other states. Democratic state elections would allow the displaced population to retain a strong sense of identity, a characteristic Nine asserts is required for groups to remain legitimate holders of self-determination.

As Odalen argues, the loss of independence can never be fully compensated, but existing as a deterritorialised state allows some measures of self-determination to be kept. Furthermore, Rayfuse’s use of real world examples (Knights of Malta and the Papal See) show how this proposal has worked previously and how, in the case of the European Union, international law already identifies that sovereignty and territory can be separate. This suggests international law has the capabilities to adapt to the dynamic changes of the environment without excessive legal reforms.
However, this option would still require the relocation of the population across many nations. It can be argued that although they may remain citizens of their homeland, it would mean a complete loss of culture, identity and would require having to abide by a completely new set of laws and societal norms that could be vastly different. Further, this possibility adds to the discourse surrounding outward migration and climate refugees. Encouraging migration as a solution to climate change insultingly plays down communities’ ability to adapt whilst also eradicating human agency, thus preventing people from “leading the kind of lives they value in the places where they belong.”

The ‘climate refugee’ label is one that has stigma attached to it that many communities have already rejected. It paints these communities as helpless and desperate when in reality such populations wish to have the choice to leave if and when the time comes. The response to climate migration has been mixed. Initially New Zealand declared the piloting of labour migration programmes to help resettle islanders, yet more recently they have said they will no longer be taking islanders and have even deported several. Nonetheless, I would argue this is the most probable scenario. Unfortunately, due to the self-interested nature of polluting nations, they are unlikely to fund costly projects to ensure the survival of others.

That being said, those countries facing the most immediate danger are considering more radical island-engineering technology. Kiribati are set to take inspiration from modern structures in the UAE by constructing artificial islands that will refloat their territory and resettle their people. This concept would allow the islands to conform to the standard sovereignty qualifications and is arguably the most desirable outcome for the population, who have expressed their desires to remain on the land. Furthermore, the Maldives have already built several islands comprising an area of 2 square kilometres. There are number of issues with this approach: the cost is enormous for such resource-scarce economies, the project would only provide security for two or three more generations before something else would have to be done, and the manmade creation of the islands itself may be emission heavy. Unfortunately, it may be too late for some nations. Lewis found that in order to protect several atoll islands in Tuvalu, comprising a total of 2.5 square kilometres, would require 54km worth of sea defences. Therefore, such a massive investment may be simply unimaginable. However, we must consider that people’s lives are at stake and so no value can be placed on them.

Returning to the issue of maritime boundaries, Soons argues that fixing the boundaries of EEZ so environmental changes do not affect maritime claims would solve the dilemma of exploitation by larger states. By freezing the existing boundaries where they currently lie, resource rents could be kept and dispersed to the population, even if they exist as a deterritorialised state. As a bare minimum, this would ensure some claim to the land, heritage and culture would be kept intact. Lusthaus argues that changing maritime boundaries could also manifest into violence: the lucrative potential of underwater resources could lead to hostility and displays of military power. Legislating so maritime boundaries are unaffected by climate change provides a final link to territorial lands of those displaced whilst also mitigates the possibility of re-opening dangerous territorial and resource disputes.

Whilst several of these possibilities appear farfetched and perhaps lack feasibility, the fact that academics have made such unusual suggestions in an attempt to retain sovereignty shows just how important it is. In each case the states would still have the ability to perform their stately duties, just not always from their own territory. With the current state of climate change, some nations will be forced to take up these options sooner rather than later. Adjusting the criteria for
statehood would simply allow these options to become codified into international law whilst permitting sovereign rights to be defended. Rayfuse’s assertion that international law is “fully capable of responding to the problem of disappearing states in a way that positively recognizes their sovereign rights without further victimizing them by the loss not only of their territory but of their sovereign existence as well” provides optimism for the future.

Conclusion

The challenges to the traditional concept of sovereignty are undeniable, but not unresolvable. I believe there is cause for at least a little confidence. Whilst the physical aspect of relocating thousands of people presents a logistical nightmare, many of the problems associated with sovereignty are legal in nature. This suggests that governments of nations within the global community can unite to readjust international law and climate policy accordingly to provide a solution. Furthermore, by reframing how sovereignty is conceived to view it as a political act, and the state itself as a social construction, opens the door for cooperation between nations when it comes to recognising and legitimising authority. Habib notes that successful re-imagination of sovereignty in the case of climate change “will require not only a reorientation of regional states’ perceptions of each other, but also a new understanding of the place of human societies as a wholly-owned subsidiary of the natural world”.

Now more than ever before we are witnessing global cooperation between nations on climate change whilst discouraging egoistic self interests, which suggests a promising future.

I am not blind to the argument that such a dramatic conceptual reconsideration could create an entirely new form of sovereignty, and perhaps so, but surely a reimagined framework provides better prospects than no framework whatsoever. It is clear that the importance of the current rigid concept is waning and that “the existing normative structure is inadequate to address this problem”, but tackling this with increased flexibility and international teamwork can overcome this. Sovereignty is not a relic of the past, and to concede that it has failed is to admit defeat before the most testing climate catastrophes have even happened. The global system is still founded and run on the basis of this concept, and whether people like it or not, no other framework has provided a successful alternative. Although attempting to adjust legalities to account for environmental problems that may not yet exist is an unenviable assignment, it is one that must continue into the future.

Notes


16 Ibid, p. 293


21 Ibid, p.8


29 Rayfuse, R., 2010. *International law and disappearing states: Utilising maritime entitlements to overcome the statehood dilemma*. s.l.:University of New South Wales Faculty of Law Research Series.


37 Rayfuse, R., 2010. *International law and disappearing states: Utilising maritime entitlements to overcome the statehood dilemma.* s.l.:University of New South Wales Faculty of Law Research Series.
