

Environmental Refugees: an emerging humanitarian and legal crisis

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Abstract:

The international community, with its various bodies, is working to develop an international legal system that protects all people as individuals, regardless of their freedoms and rights, be it social, cultural or even environmental, which fall within the framework of the third-generation rights. These rights are unfortunately witnessing serious violations as a result of environmental degradation and climate change. Therefore, it has become a priority for the United Nations, up to the Security Council, to find a legal status for "environmental refugees". Despite the humanitarian solidarity for the victims and a number of initiatives such as the Nanson and Lemoug's to establish international projects for this category, there is still a lack of international protection of their rights.

Keywords: environmental- refugee- environmental degradation- human rights- climate change- international security.

Introduction

For decades now, the Earth, our verdant tapestry, has borne the scars of relentless environmental degradation due to human and natural causes. The latter has manifested through natural disasters such as: droughts, floods, sea level rise, ice cap melting, etc. However, the human factor plays a bigger part in this regard, on account of heavy manufacturing as well as the abuse of natural resources. All of these repercussions and more are mere results of climate change that led to a potential threat of famine and made living conditions extremely difficult, if not impossible. This has created a state of insecurity for individuals, pushing them to flee their unsafe environments to seek a decent lifestyle, and take refuge in other peaceful parts of the world.

In this article we attempt to generate solutions for this international crisis of individuals who move to various regions across the globe, as well as making sure that their living conditions are similar to those of political refugees. Unlike the latter, who are legally well protected, environmental refugees do not enjoy the same luxury, even when both of them suffer greatly and undergo similar challenges. This leads us to ask the following question: What is the position of the environmental refugees in international law?

To address this issue, a two-chapter plan was drawn up. The first chapter includes the definition of environmental refugees, while the second one revolves around the challenges faced by international law in protecting environmental refugees.

Chapter I: Definition of Environmental Refugees

Since the dawn of humanity, populations have moved from one country to another or even from one continent to another one. This has been done individually and jointly, for a specific amount of time or permanently. There are, undoubtedly, numerous reasons behind these migrations, for instance we mention: human-caused disasters, natural disasters, climate change, epidemics, invasions, wars, political or religious persecution, etc. Owing to industrialization, the migratory process has developed considerably. This captured the attention of the Organization of the United Nations on behalf of the international community to urge its agencies in addition to its governmental and non-governmental organizations to adopt the idea that natural degradation caused by the human factor has resulted in an environmental crisis. This specific crisis has sparked what is now referred to as the climate or environmental refugee¹. For the purpose of understanding the definition of the aforementioned notion, it is deemed fitting to tackle its history and how international law can implement the right of environmental refugees in the context of the 1951 Convention and its 1967 Protocol, which will significantly advance international humanitarian law and human rights law.

1. The Historical Evolution of the Concept of Environmental Refugees

The term “environmental refugee” was officially used for the first time in 1985 in a report of the United Nations Environment Programme UNEP. Environmental refugees are defined as those who are forced to leave their land temporarily or permanently because of an environmental rupture of natural or human origin that gravely endangered their existence or heavily impacted their living conditions. It is worth highlighting that the term “environmental refugees” has had several other appellations such as: ecological refugees, climate refugees, eco-refugees, environmental migrants and people displaced due to natural disasters. The notion of climate or environmental refugee that the law deliberately chooses to ignore will be the spotlight of a lively debate.

First, the battle of the overall philosophy admits that the degradation of the environment has indeed a life-threatening effect on human beings, and thereby, nature is the causative factor of the present or the future displacement of the affected individuals. Then, they will go through another battle concerning the legal qualification of the environmental damage. However, the notions of The European Union have been a great success². Nevertheless, some still argue against solely shedding light on climate change as a cause of displacing environmental refugees, highlighting other factors

¹Richard Black, Environmental Refugees: Myth or Reality? New issues in refugee research. working paper no.34 March 2001.p.12

²Lydia Ayame Hiraide, Climate refugees, A useful Concept, Towards an alternative vocabulary of ecological displacement. Sage Journal, February 10, 2022.

such as natural disasters, land use, pollution, and industrial accidents and their direct and indirect effects on the population or the consequences of war.

The concept of environmental or climate refugees has been defined as people who have left instantly, or are about to leave in the near future owing to a sudden or gradual degradation related to their natural environment. This is caused by one of the three impacts of climate change: following the consequences of sea level rise, extreme climate events like cyclone storms, and droughts can lead to water scarcity.

There exist two legal points of view in this regard. On the one hand, the concept of “environmental refugees” seems inappropriate as far as the Geneva Convention is concerned. In the indefinite article, the refugee is viewed as the one who creates with reason to be persuaded to break through because of his race, religion, nationality, political opinions and his affiliation to a social group. On the other hand, a person must have left his home country, not necessarily due to only immediate threats, but it could also be because of a gradual degradation of living conditions caused by environmental factors linked to climate change. UNHCR prefers the concept of “internally displaced individuals” so that none of the existing international instruments are likely to provide this new category of refugees with direct and sufficient legal protection.¹

2. The Implementation of the Convention of 1951 on Environmental Refugees

Discussing the matter of environmental refugees means comparing them to those mentioned in the 1951 convention so as to distinguish and clarify the similarities and the dissimilarities. This is done for the purpose of attempting to provide legal protection for this type of refugees whose numbers are frighteningly multiplying on a yearly basis. This issue occurs subsequent to climate change and extreme weather disasters². The scale of the climate change crisis, coupled with the increasing number of people has led to a heated debate over finding the best methods to address this crisis as well as that of the plight of those currently displaced. A portion of this debate dealt with the terms of the 1951 Refugee Convention, which could be amended to meet the needs of environmental refugees.

The definition of the year 1951 is based on the notion of persecution, which is challenging to prove when it comes to environmental refugees. Nevertheless, it was implicitly recognized as a cause of human and international insecurity by the United Nations Security Council on February 2018. This has sounded the alarm about what will take place in the future due to climate change which is likely

¹International Migration Law Magazine, Glossary on Migration. Definition Climate Migrants-Beyond Semantics (iom weblog, June, 6, 2016) last accessed May, 2, 2018.

²Jeanhee Hongt, Refugees of the 21st Century: Environmental Injustice. Law and public policy, October 2017, pp.323-347.

to create situations of persecution leading individuals to move to comfortable areas with bright prospects. Others suggested developing an entirely new and alternative legal instrument to specifically address environmental refugees. However, there remains considerable and justifiable concern about the political will to do so in addition to conflicting opinions on the best way to determine the nature of responsibilities towards environmental refugees.

With the aim of better comprehending the potential risks of adjusting the definition of refugees within the 1951 Refugee Convention, we can always return back to the drafting of the 1951 Convention. That will aid us to see how the relationship between environmental disasters and human displacement was distinctively configured in the minds of those charged with developing a framework for refugee protection.

As delegates to the Conference of Plenipotentiaries met in Geneva to develop the legal definition of a refugee, severe flooding has occurred in the American Midwest due to the torrential rains. Nonetheless, the longer-term explanation was a story of human manipulation of the natural environment and the failure of dykes along the Missouri River drainage basin. However, no one thought that it can be changed in few years to a cause of refuge. For this reason, the concept of persecution is compacted to prove it in environmental refuge. Intriguing details regarding this matter are mentioned in the following points:

The environmental displacement must manifest a personal threat to be individually granted refugee status which is often difficult to move them environmentally.

a- The Persisting Personal Threat: international law requires the individual character of the recognition of the status of refugees, and at the same time excludes general and diffuse threats of persecution; sticking with only the fear of personal and restrained persecution. Widespread environmental degradation is not, in principle, sufficient to attest the existence “of a fear with reason”. Finally, if the displacement of the affected people is justified by an environmental disaster, the establishment of personal character will be challenging to prove.¹

b - Individual Inclusion of a Status in the Face of Emergency and/ or Massive Mobility: The Geneva Convention does not really react on the refugee status, it merely suggests it. It gives a starting point (the quality of refugee), and from which a set of standards (internal and international) will establish a refugee status. Nonetheless, the collective recognition of a group of individuals remains the most appropriate protection (the Prima Facie approach) that UNHCR has been

¹Christel Cournil, L'inadaptation du droit international des réfugiés face aux migrations environnementales et climatiques. L'observateur des Nations Unies, 2017, pp.97-117. hal-0226604

practising for a long time. International protection and assistance exist, but it is not enough to grant the refugee status.¹

Chapter II: the Challenges of International Law in the Protection of Environmental Refugees

Despite the fact that many experts, academics and scientists have proposed solutions to grant the legal status, and thereby, international protection to environmental and climate migrants, this matter has not seen the light until recently. The European Commission has made a number of proposals. In this context, the findings of the United Nations Committee on Human Rights adopted on October, 24th 2019, and published on January, 7th 2020 provide useful information for the legal debate. In these findings, the Committee rejects the individual communication of Mr. Loane Teitiota, a citizen of the Republic of Kiribati who aspired to become the “world’s first climate refugee” in the state of New Zealand. Although the UN body refuses to grant him his request, it establishes, in a completely unprecedented way, that the obligation to Article 6 of the International Covenant on Civil and Political Rights is likely to apply to individuals who have left their country for reasons related to the adverse effects of climate change. Faced with this strong statement, it is mandatory to measure the true contributions of the decision. It has several limitations and does not exhaust the questions surrounding the international protection of environmental and climate migrants.²

1- Propositions of Law to Protect Environmental Refugees

a- Strengthening Local Laws:

The concept of “internally displaced individuals” would contribute effectively, and add more value to their cause in the eyes of international law, thus push states to include in legislations, reception, and obligations towards this category of people (evacuation plan, assistance, non-discrimination, possibility of reasonable return or resettlement in other areas). This track would hold the advantage of offering protection to all internally displaced individuals regardless of the reason of their displacement overcoming the difficulty of a not yet consensual definition of environmental refugees. Nevertheless, it would have the disadvantage of diluting the protection of environmental refugees into those of internally displaced individuals and of not allowing the perpetrators to emerge. Moreover, its implementation is very costly in economically disadvantaged countries that are exposed to climate change and natural disasters.³

b - A Supplementary Protocol to the Geneva Convention:

¹Hocine Zeghib, Les refugies environnementaux Une categorie juridique en devenir ,revue L homme et migration ,juin1012,pp.132-142.

²prcd : Hocine Zeghib, Les refugies environnementaux Une categorie juridique en devenir, revue L homme et migration, juin1012, pp.132-142.

³Jerome Medelli, Des "refugies environnementaux ", les etudes du Lab'R juin2021page 5

The idea of creating a new international convention is indeed intriguing; except for the fact that it must go beyond the Geneva Convention by arranging a comprehensive protection that takes under its wing all environmental refugees in the country of origin. This, however, seems unlikely under the principle of international law and non-intervention principles. Its implementation seems impossible owing to the heavy obligations that would weigh on the States Parties and notably on economically disadvantaged countries.

c- Bilateral Protection Law:

Important political and legal questions will be raised because of the disappearance of a nation's state. This pressing issue undermines the principle of the sovereignty of states and the rights of citizens, although protected by article 13 paragraph 2 of the Universal Declaration of Human Rights (any person has the right to leave any country, including his own, and return to his country), by article 15 of the UDHR (any person may not be arbitrarily deprived of his nationality), or by Article 12, Chapter 4 of the International Covenant of Nations on Civil and Political Rights (no one may be arbitrarily deprived of the right of entry into his country), it also raises the question of a new form of statelessness and the survival of an individual as his territory physically disappears.

This agreement would establish a pre-established reception policy (number of people admitted, right to work, etc.). It would undoubtedly be the most pragmatic solution. Nonetheless, it has certain limitations such as the burden of reception, which may weigh heavily on the neighbouring countries. This lead to political deadlocks in the negotiations, unless the international community decides to distribute the financial burden according to the reception of these populations; such an agreement will be difficult to negotiate and conclude due to the inequality between the parties.¹

2- Case Study of Loane Teitiota:

Loane Teitiota, a citizen of the Republic of Kiribati, specifically from the island of Tarawa. He arrived with his wife to New Zealand in 2007, and sought there in 2013 to challenge his deportation after his residence permit expired. He claims to have been pushed to leave his country of origin with his wife because of the effects of climate change which made their lives impossible. They were deprived of all kinds of decent life conditions². In particular, he states that the impact of sea level rise caused frequent flooding, and also resulted in drinking water reserves to become contaminated; not to mention the farmlands that were polluted, making them uncultivable. This also was the reason behind overcrowding problems caused by the influx of people from the most affected areas

¹Robert A.McLeman, On the Origins of Environmental Migration, Fordham Environmental Law Review, volume 20, number 2 article 3 2017. pp.403-425.

²Samya Lemrini et Natalia Torres Orozco, Migrer pour survivre: la protection des migrants Climatiques dans le cadre du regime climatique international, magazine Droit et Politique 2020. pp.90-94.

to the island of Tarawa which lead to violent land conflicts and severely exhausted and limited drinking water supplies and resources.

The asylum application was first examined by the New Zealand Immigration and Protection Tribunal, which considered the Convention on the Status of Refugees and the Covenant on Civil and Political Rights to be inadequate, so the application was rejected. Particularly, the Tribunal recalled that persecution must be based on one of the five grounds provided for in the Convention; the Court considered that the applicant had not provided evidence of a real and imminent risk of threat to his right to life under Article 6 of the Covenant on Civil and Political Rights. This decision was then confirmed by the New Zealand High Court, then by the Court of Appeal and the Supreme Court, which, however, has not ruled out the possibility that the effects of climate change may be the cause of one of the five grounds for persecution in two cases: Firstly, when climate change causes conflict, certain categories of the population can easily become victims of targeted violence. Secondly, the distribution of humanitarian aid by the authorities in relation to a climate event may be carried out in a discriminatory manner towards certain categories of individuals.¹

The Loane Teitiota case against the state of New Zealand struggled to see the light of day. However, the efforts of the United Nations Human Rights Committee in this regard were hailed by the media as a major and “historic” advance in the international recognition of a legal status for climate migrants.

For the first time, the Committee recognises that the effects of climate change are likely to affect the right to life under Articles 6 and 7 of the International Covenant on Civil and Political Rights, and therefore, trigger an obligation of repression of host States towards climate migrants. This contribution aims at analyzing the impacts of this decision on the academic debate concerning the legal protection of climate migrants, specifically on the two main complementary approaches: the human rights approach and the climate law approach.² Although the Human Rights Committee’s decision is a major step, it remains insufficient to ensure effective legal protection for climate migrants at present. For the purpose of anticipating and managing climate change-induced migration, it is necessary to combine the two complementary approaches as well as strengthening the legal responsibility of greenhouse gas emitting states towards climate migrants.

Conclusion

¹MAjda Lamkhioued, la decision du Comite des droits de l homme des Nations Unies dans l affaire Loane Teitiota c Nouvelle-Zelande: une reelle innovation pour l anticipation et la gestion des migrations climatiques, revue Quecoise de Droit International, 16 février 2022.

²Christel Cournil, L’inadaptation du droit international des refugies face aux migration environnemental et climatique. l’observateur des Nation Unies, 2017, pp. 97-117. hal-0226604.

A policy of recognizing "environmental refugees" will channel international efforts towards dealing with the root causes of migration. It will compel those countries with the power to influence activities affecting the environment to make not only economic and political decisions, but also environmental decisions and precautions that will benefit the global environment as a whole.

The current legal system in the United States grants the President and the Attorney General access to immense powers in the favour of admitting or excluding the victims of environmental disasters based on "humanitarian considerations" and the "national interest". However, as lofty as the aforementioned two terms may sound, they are an invitation for shrewd political decision-making and leveraging whenever U.S. interests are at stake. There is no set and transparent evaluating process when it comes to the admission process, other than what consultation deems fitting to be "appropriate" for the time being. Notwithstanding the Executive's broad powers to determine immigration matters in the national interest, such powers do not explain a ratification of the application in question.

Undoubtedly, the refugee burden should be shared by the entire international community. Nevertheless, as international agreements are effective only insofar as they are upheld under domestic laws, different powerful states would do well to set an example by recognizing that this category people are entitled to the aid of the international community. Such a step would encourage the United Nations to revise the mid-century definition of refugee, and set a new international standard for refugee protection that will address their most pressing needs.

Broadly stated, refugee recognition is premised upon an international agreement to protect those who are forced out of their homelands due to all shapes and sizes of injustice either committed or condoned by their governments. Whenever this is case, and as far as this valid, then individuals displaced from their own home countries owing to human-caused environmental disasters are entitled to international recognition as refugees.

References:

1. Christel Cournil, Affaires Greta Thunberg; Teitiota et Torres (2019-2020) corrige le 13 octobre 2020. page (281-301). Dice. Les grandes affaires climatiques. 10, 2020, Confluences des droits. hal_02963252.
2. Christel Cournil, L'inadaptation du droit international des refugies face aux migration environnemental et climatique. l'observateur des Nation Unies,2017,pp.97-117. hal-0226604.
3. Hocine Zeghib, Les refugies environnementaux Une catégorie juridique en devenir, revue L'homme et migration, juin 2012, pp.132-142.

4. Jeanhee Hongt, Refugees of the 21st Century: Environmental Injustice. Law and public policy, October 2017, pp. 323-347.
5. Jerome Medelli, Des "refugies environnementaux ", les études du Lab'R. juin 2021. page 5.
6. Lydia Ayame Hiraide, Climate refugees; A useful concept, Towards an Alternative Vocabulary of Ecological Displacement. Sage Journal, February 10, 2022.
7. Majda Lamkhioued, la décision du Comité des droits de l'homme des Nations Unies dans l'affaire Loane Teitiota c Nouvelle-Zélande: une réelle innovation pour l'anticipation et la gestion des migrations climatiques, revue Québécoise de Droit International, 16 février 2022.
8. Robert A. McLeman, On the Origins of Environmental Migration, Fordham Environmental Law Review, volume 20, number 2 article 3 2017, pp. 403-425.
9. Richard Black, Environmental Refugees: Myth or Reality? New issues in refugee research. Working paper n.34. March 2001, p.12.
10. Samya Lemrini et Natalia Torres Orozco; Migrer pour survivre: la protection des migrants climatiques dans le cadre du régime climatique international, magazine Droit et Politique. 2020, pp. 90-94.
11. International Migration Law Magazine, Glossary on Migration. Definition Climate Migrants-Beyond Semantics (iom.weblog, June 6th 2016) last accessed: May 23rd 2018.