

Examining the Applicability of the Refugee Label to Environmental Migrants

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Abstract:

The current international situation involves many threats to human security, due to the exacerbation of many problems, especially environmental ones. Environmental problems and international security have become very close due to their global nature. Through its periodic reports, the Intergovernmental Panel on Climate Change confirmed the increase in the frequency of harmful effects of climate change such as extreme weather events and natural disasters, sea level rise, floods, heat waves, drought, desertification, and water shortages..., which significantly contributed to the spread of the phenomenon of global climatic migration. This study also shows the shortcomings of international protection for environmental migrants. It also highlights attempts to recognize them as refugees, even in the long term.

Keywords: Climate change. environmental immigrant. refugee

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Introduction

The Human Rights Council has highlighted the importance of addressing human rights in light of ongoing discussions related to the United Nations Framework Convention on Climate Change. In addition, it highlights the 2030 Agenda for Sustainable Development. The Council has repeatedly made available the results of its discussions, studies, and activities to sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change, and the outcome document for the 2015 United Nations Conference on Sustainable Development, entitled "The Future We Want" stresses the importance of human rights to achieve sustainable development and to maintain world peace. This is because the relationship between human rights and international security is close and needs no clarification ¹.

On the other hand, the report of the Global Team on Migration on the impact of climate change on migration indicated that displacement and migration events due to climate will lead to economic instability in host countries, as it will cause a surplus in the labor market, low wages, and forced labor. And socially, through the imbalance of religion or ethnicity and the spread of human trafficking and sexual exploitation. And even politically, as it would cause tension between the host countries and the countries exporting these immigrants, which could lead to military friction ².

In the same context, the International Organization for Migration explicitly recognizes that climate change may be a cause of migration. Even the member states of the International Organization for Migration agreed in 2007 to define the term "environmental migrants". This definition is the result of twenty years of diligent work. It is a result of increased awareness of the impact of the environment and climate on migratory movements ³.

The importance of the topic lies in that the two main causes of forced migration worldwide—extreme weather and conflict—are jointly to blame for the eviction of roughly 30 million people each year. Fragile nations and areas that are suffering from conflict or violence are also most vulnerable to climate change. Without effective prevention measures, climate-related impacts may strain already vulnerable communities, raising the risk of conflict, displacement, and marginalization, especially in locations with poor infrastructure for conflict resolution and governance and in developing peri-urban areas.

Resource scarcity and food and economic insecurity are two direct impacts of climate change leading to migration which brings together new groups, which may change power dynamics, exacerbate resource shortages, or arise conflicts among previously segregated groups. These unstable factors may have disproportionate effects on coastal regions, and population centers that are key to political or economic stability ⁴.

Is it possible, even in the long term, to legally recognize the status of environmental refugees for migrants due to climate change?

To address this issue, we will examine two dimensions:

Firstly: The concept of environmental migration

Secondly: Dropping asylum conditions in environmental migration cases

Firstly: The Concept of Environmental Migration and environmental refugee

The IPCC report states that between 2008 and 2014, floods, earthquakes, droughts, and sea level rise forced 184 million people to leave their homes. A one-meter rise in sea levels could cause 150 million people to flee, unless dams, seawalls, and similar measures are built to protect vulnerable areas. The report also confirms that the number of people forced to leave their homes due to natural disasters globally in 2012 was estimated at about 32 million people⁵. Are they considered environmental migrants or refugees?

1. The Concept of Environmental Migration

The International Organization for Migration confirmed that the term “environmental migrants” applies to those fleeing an imminent environmental threat or danger that threatens them, as well as to those who leave their homeland relatively freely. That is, its definition covers all forms of migration under the influence of environmental changes. This includes severe natural disasters and the gradual deterioration of environmental conditions.

1.1 The Definition of Environmental Migration

The United Nations Environment Program (Nairobi 1985) defines environmental migrants as: “People who have been forced to leave their traditional habitation, temporarily or permanently, due to an apparent disturbance of the environment (naturally or through human intervention) that endangers their existence or seriously affects their standard of living.” He also defines environmental disturbance as: “the physical, chemical, or biological alteration of an ecosystem or resource source, making it temporarily or permanently unsuitable for supporting human life.”⁶

On the other hand, the International Organization for Migration explicitly recognizes that climate change may be a cause of migration. Even the member states of the International Organization for Migration agreed in 2007 to define the term “environmental migrants”. This definition is the result of twenty years of diligent work. It arose during the Copenhagen Climate Conference preparations within the International Organization for Migration. On the one hand, there was a better understanding of how the environment and climate affected migratory movements. On the other hand, it was evident that environmental conditions were worsening due to climate change. As a result, this definition has become widely used in the international debate, despite many criticisms.

The International Organization for Migration emphasizes that its definition does not correlate with normative findings, but simply describes who an “environmental migrant” is. The most common reasons people leave their homes due

to environmental conditions are floods, droughts, and changes in rainfall seasons... Also, this definition covers all forms of migration caused by climatic changes including acute natural disasters and the gradual deterioration of environmental conditions, such as soil deterioration. That is, the term “environmental migrants” applies to those fleeing an imminent ecological threat or danger that threatens them, and also to those who freely choose to leave their place of residence due to climate change⁷.

The UN Guiding Principles on Internal Displacement define IDPs (which is the most common form of climate-related displacement) as people forced to flee elsewhere within a state due to “armed conflict, generalized violence, violations of human rights, or natural or human-made disasters”. Despite these guiding principles, there are still gaps in international frameworks, domestic implementation, and multilateral operations to safeguard internally displaced people (IDPs).

The only legally binding international agreement that specifically addresses IDPs is the 2009 Kampala Convention, which declares that “Parties should take measures to safeguard and assist persons who have been internally displaced due to natural or human-created disasters, including climate change”⁸.

1. 2 Statistics on Environmental Migration

On the other hand, some studies indicate that there are some countries that will completely disappear in the future, leaving their citizens homeless, and forced to take refuge in any other place, but also stateless, as the phenomenon of evacuating the islands began to appear, as happened with some of the Alaska islands and the Bay of Bengal as a result of the high-water level and the rapid erosion of the coasts of these islands. Between December 2006 and March 2007, Madagascar and Mozambique were hit by five successive cyclones, causing multiple population displacement waves. Also, flood disasters recorded over the past 20 years have increased by 300 percent. This is from 50 to more than 200 disasters. This means that governments will need to support large coastal population movements, due to sea level rise by 2080⁹. Drought will also affect agricultural products, as rainfall is expected to halve in some African countries by 2020 and beyond. It is clear that climate change will contribute to an increase in temporary displacement and long-term migration¹⁰.

We do not find a better place to represent the interrelationship between climate change and migration than the Fergana Valley region, which is inhabited by about 10.5 million people, where these people are forced to internally migrate, and even migrate between 3 countries: Kazakhstan, Kyrgyzstan, and Tajikistan, which leads to increased unrest in most of the countries. Pasture and grazing areas, in addition to the desecration of lands capable of absorbing newcomers¹¹.

Nigeria suffers from increasing disease outbreaks, increasing numbers of heat waves, erratic weather patterns, the occurrence of floods, and lack of rainfall in areas prone to desertification in the north, decreased food production in central regions, and destruction of livelihoods due to rising water levels in coastal areas, where the population depends on fishing and agriculture; climate change turns some lands into

uninhabitable lands, which threatens the basic needs of the population, and raises the rates of displacement, as the easiest way to adapt to climate fluctuations in Nigeria is internal migration¹².

Given the flood catastrophes that struck the country and prompted a state of emergency in 1997, 2002, 2006, 2010, and 2013, the Czech Republic is of particular significance in the European context. The most intelligent and energetic groups of people were frequently displaced from their homes as a result of these disasters. Indeed, the progress of society was adversely affected by their departure (and the loss of their dwellings)¹³.

2. The Concept of environmental refugee

There are two conflicting schools of thought regarding the concept of environmental refuge. The first is the extreme school, whose supporters argue by citing the high number of current environmental refugees and predicting even larger numbers in the future. Consequently, they believe that the relationship between environmental changes and human migration is solely due to separate reasons. The second school, known as the "minimalist" school, emphasizes the complex interaction between ecological and social systems. They propose the existence of a direct and definitive causal link between environmental change and migration¹⁴.

The concept of environmental asylum has undergone gradual development over many years. Initially, there were attempts in jurisprudence to define an environmental refugee. Subsequently, the definition of an environmental refugee was incorporated into several international documents, which we will discuss in the following section.

2.1 Jurisprudential definitions of the environmental refugee

In 1948, William Vogt first mentioned people who were displaced due to a deteriorating environment. In 1976, Lester Russell Brown became the first to establish a connection between increased internal and international migration and environmental degradation. Later, in 1988, Judy Jacobson incorporated the impact of "climate change" into the concept of "environmental refugees". For instance, desertification became a primary cause of the displacement of nearly four million people from the Sahel region. Additionally, Judy Jacobson expanded the scope of environmental refugees to include individuals displaced by development projects or industrial accidents, such as the Chernobyl incident. Since then, this term has gained traction across academic circles and has been evolving toward achieving a unified definition. However, as of today, a universally agreed-upon definition has not been reached¹⁵.

2.2 Definition of environmental refugee in international documents

- The report from the United Nations Environment Program in 1985 defines environmental refugees as "individuals who have been forced to temporarily or permanently leave their habitual residences due to the significant degradation of their environment caused by natural or human factors, resulting in a major imbalance in their living environment." This displacement has caused them to lose a sense of security in their lives.";

-The International Organization for Migration provides a definition of environmental refugees as follows: "Individuals who are compelled, primarily due to sudden or gradual environmental changes that negatively impact their lives or living conditions, to leave their customary place of residence, either voluntarily or involuntarily, on a temporary or permanent basis."¹⁶.

- The Arab Convention on Refugees of 1994 added natural disasters to its definition of a refugee. This was the first international agreement to officially recognize climate impacts as one of the reasons for asylum. However, it has not entered into force yet¹⁷.

It should be noted that, given the absence of any legal instrument that grants protection to migrant persons affected by climate change or environmental factors, specialists from the University of Limoges drafted a first draft on this subject in 2008, and in 2010 a second version was presented. It is a valuable contribution because it combines protection, assistance, and responsibility. It integrates the elements of spatial proximity, the proportion of influence, vulnerability, and non-discrimination, and also highlights the principle of common and differentiated responsibilities at the same time. However, the major obstacle facing the establishment of an international agreement is the political will of states. Even if the required agreement is adopted, it will not achieve the number of ratifications required for its entry into effect¹⁸.

Secondly: Dropping Asylum Conditions on Environmental Migration Cases

Despite the increasing number of people fleeing their homes and lands towards other areas inside or outside their countries due to the deterioration of the environment, the United Nations' discussions on migration do not currently make any precise distinction regarding the elements that encourage voluntary or forced migration for environmental reasons. Thus, environmental migrants are not recognized yet, due to the difficulty of finding a consensus on the definition of environmental migration or migration driven by climate change causes. This is due to the difficulty of separating environmental factors from other factors driving migration. On the other hand, is it sufficient to prove the causal relationship between climate change and migration to call them refugees? Or must a causal relationship result in a certain kind of persecution or violation of rights before they are granted refugee status, as understood in the 1951 Convention?¹⁹

1. Conditions for Acquiring Refugee Status according to the United Nations Convention on Refugees of 1951

A refugee, according to the United Nations Convention on Refugees of 1951 and its supplementary protocol of 1967, is every person who exists because of a well-founded fear of being persecuted because of his race, religion, nationality, affiliation to a certain social group, or political opinions, outside his country of nationality, and is unable or does not wish because of that fear to be under the protection of that country. Or it is everyone who does not have a nationality, and is outside the country of his usual residence. He is unable or unwilling to return to that country²⁰.

From this definition, it is possible to deduce the conditions for acquiring refugee status, namely:

1- The person is outside the country of his nationality or his usual residence:

A person is not considered a refugee unless he is outside the country of his nationality, or outside the country of his usual residence for stateless persons, as he must prove that he already possesses the nationality of the country in which he has become afraid of being persecuted, whether on the entire territory of the country of the refugee's nationality or on only part of the country. In this case, a person is not deprived of refugee status just because he could have sought asylum in another part of their country of nationality;

Individuals who did not have refugee status when they left their home country can nevertheless apply for it while they are abroad. This is if they are unable to return home due to their fear of persecution as a result of the events and developments that have occurred since they left²¹.

2- There is a well-founded fear of being persecuted because of their race, religion, nationality, membership in a particular social group, or political opinions:

The subjective aspect of fear means the internal psychological state that afflicts a person and causes him to consider fleeing his country;

Where he refers to the subjective aspect of terror, which is the internal psychological state that afflicts a person and causes him to consider fleeing his country's boundaries;

Regarding the "objective" component of fear, this is what is meant by the term "justified," which is achieved by the existence of a particular set of circumstances in the nationality or residence country as well as how the government of this country treats a particular category of people, such as being subjected to arrest or harassment due to political activity or religious belief. These requirements are typically verified by the authorities who issue refugee status to guarantee their validity²².

According to the 1951 Convention's Article 33 First Paragraph, persecution is any grave and serious threat to a person's right to life or liberty based on their race, religion, faith, nationality, political views, or membership in a specific social group. For the same reasons cited in Article 1 / Paragraph A / 2 and Article 33 / 1 of the 1951 Convention, the UNHCR Manual of Procedures and Criteria for Determining Refugee Status and Guidelines on International added another form of persecution, which is represented in other serious violations of human rights²³.

The Rome Statute defines "persecution" as: "the intentional and serious denial of basic rights in violation of international law by a group of people because of the identity of the group."²⁴

3- The impossibility of enjoying the protection of the country of nationality:

The state of nationality is generally expected to protect its residents, its failure to do so serves as a prerequisite or a primary justification for awarding refugee status. This is accomplished in two situations:

- The first scenario is when a person does not want his government to protect him, because of his fear of being persecuted, as is the case of the Muslims of Burma.
- The second is if a person is unable to benefit from his country's protection, due to circumstances that prevent it from doing so, such as international or civil wars²⁵.

Finally, it should be noted that with the availability of these conditions, a refugee status can be granted to those who meet these requirements. However, this person cannot occupy the legal status of a refugee and benefit from its privileges, unless with the approval of the country of refuge or the UNHCR²⁶.

2. Obstacles to Recognizing Refugee Status for Environmental Immigrants

It is still difficult to achieve global consensus on the link between international population movements and climate change. For example, a sample of documents was selected among the resolutions of the United Nations General Assembly, totaling 65 documents, 23 percent of which mentioned climate change and 25 percent related to refugees, but only 6 percent established a relationship between the two phenomena²⁷.

But on the other hand, can environmental migrants be treated legally as refugees, if their governments deliberately harm the environment in which they live, discriminate against them in providing aid, or exploit the consequences of a natural disaster in persecuting ways ?

2.1 Environmental Migration or Refuge as an Unburdening Force for Countries:

The widespread misconception is that victims of climate change, particularly those affected by natural disasters, do not flee their nations and that their governments hurry to offer emergency aid. In Mozambique, this occurs almost yearly after the Zambezi River floods. In other words, they rarely find themselves outside the borders of their nations, with occasional exceptions. This is the case with Vietnamese immigrants who came to Cambodia because of floods, as well as the typical border migration between Tajikistan, Kazakhstan, and Kyrgyzstan driven by natural disasters. In such cases, it is impossible to send them back to their own countries for humanitarian purposes²⁸.

In the same context, in January 2020, the United Nations Human Rights Committee issued a historic decision in the Teitiota case V. New Zealand. While, although Mr. Teitiota's claim for protection was dismissed because he was not in imminent danger, the Commission decided that people fleeing climate change effects and natural disasters should not be returned to their country of origin if their basic human rights would be at risk when back;

This decision has far-reaching implications for the international protection of refugees in the context of climate change and disasters, as it recognizes that international refugee law is applicable in the context of climate change and displacement. The Committee has concluded that where such risks are imminent, it may be unlawful under the International Covenant on Civil and Political Rights - whose articles cover a wide range of civil and political rights that also apply to asylum-seekers and refugees - for governments to return people to countries where

they may be a risk to their lives due to climate change (Article 6 of the International Covenant on Civil and Political Rights 1966) or when they are facing a real danger of cruel, inhuman or degrading treatment (Article 7 of the International Covenant on Civil and Political Rights)²⁹.

2.2 Victims of Climate Change as a Non-special Category:

The problem facing environmental migrants is mainly represented in the absence of an international legal system that recognizes them as refugees, or at least as a special category that provides them with the necessary assistance. That is, the international community is not bound by legal obligations towards them.

In this context, the United Nations General Assembly adopted in 1988 Resolution of No. 43/131, which is related to humanitarian assistance to victims of natural disasters and emergencies, and then Resolution No. 45/100, which was also adopted in 1990 with regard to the same subject. However, these provisions are not sufficient to provide protection effective for this category. Likewise, the International Convention to Combat Desertification, which was adopted in Paris in 1994, did not refer to the link between international migration and environmental damage, nor did this agreement provide for any mechanism to protect this class, although it referred in its preamble to the existence of a link between environmental damage and its consequences for humans³⁰.

In 2020, the United Nations High Commissioner for Refugees also issued a set of legal considerations regarding the phenomenon of refuge in general in a study entitled "In Danger", in which appeared the term "climate refugees" was not approved by the Commission. Moreover, it is more accurate to refer to them as "people Displaced in the context of disasters and climate change. This is because climate change affects people within their countries, and usually leads to internal displacement before it reaches the displacement of people across borders. However, the refugee criteria contained in the 1951 Convention can be applied if the consequences of climate change overlap with armed conflicts, violence, or any other reasons that bear them on the refuge application³¹.

Conclusion

Environmental asylum will constitute a major challenge in the next few years. Hurricane Katrina in the United States of America in 2005 displaced nearly 250,000 people. The earthquake in Japan in 2001 damaged nearly a million people who remained homeless. The same applies to the earthquakes in Turkey and Syria in February. This year, it is estimated that more than 3 million people have been forced to leave their homes.

Elaborating on the various aspects of the phenomenon of environmental migration, which is poised to escalate into environmental refuge in the near future, has yielded the following enlightening outcomes:

- The primary cause of climate change can be attributed to human activities, with developed countries emerging as the foremost contributors due to their rapid economic development.

- Alarming and realistic statistics corroborate the escalating trend of environmental migration, affecting numerous countries across the globe.

- The migratory population groups affected by climate change, they are an emerging category in need of protection, given that existing legislative frameworks are not sufficient to protect them. It is difficult to formulate an agreement specific to their status right now, so a definition must be developed that distinguishes them from other groups, as a group with its own unique characteristics.

- The impact of climate change on human rights is profound and immediate, as these changes obstruct the fundamental rights and well-being of individuals. Furthermore, unpredictable environmental hazards like tsunamis pose additional challenges.

- Despite notable efforts to mitigate the effects of climate change and the establishment of various international agreements to curtail greenhouse gas emissions, these agreements have primarily focused on economic and environmental considerations.

Based on the aforementioned findings, the following proposals can be put forth:

- It is imperative for countries to recognize that climate change necessitates a global solution. This entails addressing and regulating the human activities that contribute to global warming, while committing to reducing greenhouse gas emissions and maintaining them at levels that do not significantly impact the overall climate.

- Granting priority, or at least equal importance, to humanitarian considerations in the realm of mitigating the adverse effects of climate change, alongside economic considerations.

- Establishing international mechanisms that impose deterrent penalties on countries that violate international agreements aimed at reducing emissions and combatting global warming.

Margins:

¹ OHCHR and climate change : [https://www.ohchr.org/en/climate-change\(10/3/2023\)](https://www.ohchr.org/en/climate-change(10/3/2023))

² Statement of the Global Migration Panel on the impact of climate change on migration (15/11/2012): <https://www.unhcr.org/ar/538700416.html>

³ Eva Mankeh/Nahla Taher, Environmental Migration: A Complex Phenomenon(10/11/2013) <https://p.dw.com/p/1A6S5>

⁴ Report on the Impact of Climate Change on Migration, The White House, Washington, October 2021, p 7: <https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf>

⁵ See :

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⁶ Olivia Dun and François Gemenne, Defining 'environmental migration', Climate change and displacement, Forced Migration Review, University of Oxford, Issue 31, October 2008, p 10.

⁷ Eva Mankeh/Nahla Taher, op. cit.

⁸ Report on the Impact of Climate Change on Migration, op. cit , p 20.

⁹ see :

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¹⁴ Norman Myers, Environmental refugees: a growing phenomenon of the 21st century, the royal society , 2001: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1692964/pdf/12028796.pdf>

¹⁵ Etienne Piguet , Climate change and forced migration ,new issues in Refugee, Research Paper No 153, January ,2008: <https://www.unhcr.org/media/26697>

¹⁶ Christel Cournil, Les "réfugiés environnementaux" : enjeux et questionnements autour d'une catégorie émergente ,Centre d'information et d'études sur les migrations internationales, Migrations Société , 2010 : <https://www.cairn.info/revue-migrations-societe-2010-2-page-67.htm>

¹⁷ First Article of the Arab Convention for the Regulation of Refugee Status of 1994.

¹⁸ محمد سعادي، اللاجئين البيئيون: نحو حتمية تطور القانون الدولي لحماية اللاجئين، الطبعة الأولى، المصرية للنشر والتوزيع، القاهرة، 2018، ص 50.

¹⁹ المرجع نفسه، ص ص 20 و 21.

²⁰ See:

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²² Handbook On Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the Protocol Relating to the Status of Refugees, Geneva, February 2019 : <https://www.unhcr.org/publications/legal/5ddfc4dc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>

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²⁴ Article 7, paragraph 2/g of the Rome Statute.

²⁵ Handbook On Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection, op. cit.

²⁶ Yahia-Bacha Mouloud, op. cit, p 263.

²⁷ María José Fernández, Refugees, climate change and international law, Disasters and displacement in a changing climate, Forced Migration Review, University of Oxford, Issue 49, May 2015, p 42.

²⁸ Eva Mankeh/Nahla Taher, op. cit.

²⁹ UN Human Rights Committee decision on climate change is a wake-up call, according to UNHCR (24 January 2020): <https://www.unhcr.org/news/briefing/2020/1/5e2ab8ae4/un-human-rights-committee-decision-climate-change-wake-up-call-according.html>

³⁰ Etienne Piguet, op. cit.

³¹ Displacement caused by climate change and disaster : <https://www.unhcr.org/en/4be7cc27725>