Climate-Induced Migration: New Challenges and Perspectives

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ABSTRACT

Climate change has a significant impact on humans and the environment. In this regard, there are people who can no longer gain a secure livelihood in their homelands because of different ecological phenomena, including climate change. These people have to seek shelter from the bad effect of climate change elsewhere, in spite of the hazardous nature of the attempt. In this context, the new definition applicable to such persons is emerging. The reality is that despite the very real nature of the problem, climate change displacement raises more questions than the international community is likely to agree on solving. Keeping this in mind, the present paper examines different perspectives of the definition, applicable international legal framework and proposals on possible means of filling the protection gaps.

Keywords: climate change, displacement, environmental migrants, refugees, migration

INTRODUCTION

There are about 24 small island states, many of which are vulnerable to flooding, increasing salinity of water, loss of land from coastal erosion and sea level rise. For example, “in 1998-1999 two islands under the jurisdiction of Kiribati disappeared under the water” [1]. In 2005 “thousands of inhabitants of the other islands were evacuated in Papua New Guinea” [2]. In 2006 “Lohachara, an island in the Ganges river delta, accommodates 10,000 residents, was completely immersed in the water” [3]. Bangladesh is another example of the climate-induced migration, as the Bangladeshi migrants ‘have expanded the population of neighbouring areas of India by 12 to 17 million’ over the last forty years [4] due to the environmental reasons among others. In Morocco the displacement due to extreme weather events is already a reality and slow-onset climate impacts influence the movement of people [5; x], although in this case migration is unlikely to be international, as the population generally does not cross the state borders due to bad environmental conditions. Scientists note that by 2050, hundreds of millions more people may become permanently displaced due to climate change and different natural disaster [6]. This was confirmed by the United Nations High Commissioner for Refugees (UNHCR) statement that “climate change will displace up to 250 million people over the next 35 years, many permanently” [7]. Undoubtedly, direct displacement will be caused by sudden and slow onset events such as cyclones, floods, rising sea levels, coastal erosion, etc. As for indirect displacement, it will probably consequence of the cascade effects of these events, such as increased environmental degradation in places of destination for environmental migrants and displaced populations, rapid urbanization. The international community has been working on resolving the problem of climate change, mitigating its effects and adapting to its consequences for quite a long time. The Organizations from the International Organization for Migration (IOM) to the United Nations Environment Programme (UNEP), and the Intergovernmental Panel on Climate Change (IPCC) have shown an interest in the concept of climate (or environmental) migrants. The Conferences of the parties to the UN Framework Convention on Climate Change (UNFCCC) are also bright examples showing the concern of the world society. However, it is unlikely to be enough comparing the scale and speed of the ongoing climate change problem with the effort that the international community takes to mitigate this phenomenon. The reality is that despite the very real nature of the problem, climate change displacement raises more questions than the international community is likely to agree on solving [8]. There are several quite complicated questions in this regard. What legal regime should apply to these people? Who is responsible for them if their state does not exist [9]? How should receiving state determine them? Are these migrants falling under the definition of refugees? The present paper seeks answers to these questions.

Methods

The paper uses non-legal sources to describe the phenomena of environmental migrants. The methodology comprises a combination of different technics of text analysis. Through the structural method components of the concept of “environmental refugees” are revealed and different criteria applicable in order to establish this status are
determined. Besides, the legal dogmatic method is used to describe the current state of international law in relation to the people migrating due to some environmental hazards and effect of climate change. Moreover, such method as a comparative legal analysis was used in order to evaluate different approaches to the interpretation of such terms as “refugee”, “migrants” and “displaced persons” in international law. The key resources for this type of the research methods can be found on the governmental websites, in international conventions, books, journal articles, legal documents and reports.

Results And Discussion
The diversity of concepts and definitions
The issue of the defining people fleeing their homes because of the extreme weather conditions or environmental hazards is not new to international law. Terms such as migrant, displaced person, and refugee are often used synonymously and interchangeably [10]. However, from a legal perspective, such words have relatively distinct meanings and also describe IOM, “words do matter” in this case and one should not confuse “refugee,” fleeing war and persecution, with “migrants,” fleeing poverty, hunger, or disaster [11].

This chapter is aimed to discuss different definitions in relation to the people seeking shelter from the adverse effect of climate change. The definition suggested by the IOM seems to be broader than other existing definitions and less controversial alternative to environmental refugee or climate refugee. Thus, according to the IOM Glossary on migration, environmental migrants are “persons or groups of persons who, predominantly for reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad” [12]. Meanwhile, such term as climate refugee is often being used in the media in relation to a person displaced in the context of disasters like droughts, sea level rise as well as extreme weather events like hurricanes, tsunamis or earthquakes. However, it does not exist in international law [13]. Neither does exist, such concept as environmental refugees, which was introduced by Lester Brown of the World watch Institute in the 1970s [14]. Further, it was subsequently addressed in a 1984 briefing document of the International Institute for Environment and Development (London) [15] and entered into common usage I academia after 1985. Essam El-Hinnawi, an Egyptian scholar who was then working for the UNEP, is considered to have first coined the term “environmental refugees” [16] in 1985 to refer to those people “who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life” [17].

The term “environmental disruption” in this definition means any physical, chemical and/or biological changes in the ecosystem (or resource base) that render it temporarily or permanently, unsuitable to support human life. El-Hinnawi’s definition of “environmental refugees” is thought to be a basic one, and other scientists use it for further study of this issue, for instance, by classifying refugees, according to the nature of the movement, the length of stay in another country and the specific reasons for migration. Myers’ definition adopts the similar approach. He describes environmental refugees as “those who cannot obtain safe access to livelihoods at home” [18] and have no choice but to seek shelter in another place. Furthermore, Myers specifies the reasons for such migration: drought, soil erosion, desertification, deforestation and other environmental problems associated with the problems of population pressures and profound poverty. Other scholars identify such criterion as the degree of coercion. The paper presented by Renaud [19] and his co-authors formulated three categories of the refugees: “environmentally motivated migrants” (who “leave their country because of the “deteriorating environment”), “environmentally displaced persons” (who must leave their place of residence “to avoid the worst consequences”), and “environmental refugees” (which leave their homeland because of environmental disasters, including natural disasters) [20]. As it was mentioned above, some authors indicate the nature of ecological disasters, natural or anthropogenic, as criteria of classification. In some cases, this is a significant difference: earthquakes relate to natural disasters, and flooding from artificial dams clearly has the human element among the contributing factors, but hurricanes can be caused by both natural and anthropogenic forces. Accordingly, in order to provide the most complete and optimal protection of people, some authors include into the new “refugee” concept all environmental migrants without considering the nature of the causes of the environmental disaster. Finally, the nature of environmental reasons was considered by the IOM, which distinguished following categories of the environmental migrants based on the type of their movement: (i) acute onset movements, with the possibility of return; (ii) acute onset movements, without the possibility of return; (iii) slow onset movements, with the possibility of return; (iv) slow onset movements with predictability (for example, displacement caused by large-scale development projects) with no possibility of return because of human activities; (v) slow onset movements, without the possibility of return because of the natural conditions of the area” [21, 8].

Summing up, such a large number of different
approaches to defining people leaving their homes due to climate change once again proves the urgency of this problem in both practical and academic aspects. For the most complete reflection of all the nuances, from the nature of the displacement to the specific type of environmental change, it is necessary to be guided by a broad definition that includes these criteria encompassing all types of migration caused by environmental factors, or divide migrants into subsections more specified according to the different needs of each group.

Legal framework and applicable regime

For the international legal framework for people fleeing their homes because of the environmental hazards, there are several instruments. Firstly, the UNFCCC is one of the key international instruments dealing with the issue of climate change [22]. Since the 16th Conference held by the Parties to the UNFCCC in 2011 states emphasized the significance of such issue as environmentally induced migration. The Parties to the UNFCCC agreed to undertake measures to “enhance understanding, coordination and cooperation with regard to environmentally induced displacement, migration and planned relocation, where appropriate, at national, regional and international levels” [23]. The adoption of the Paris agreement seemed to be a step forward to the solution of the problem of environmental migration, as in the Decision 1/CP.21 adopting the Paris agreement the Conference of the Parties requested the Executive Committee of the Warsaw International Mechanism for Loss and Damage “to develop recommendations for integrated approaches to avert, minimize, and address displacement related to the adverse impacts of climate change.” [24]

However, the wording of the agreement remains to be framework only and does not specify the crucial question of which countries will take in the very large number of people who will be displaced. Furthermore, the climate conventions they cover the relationships and the rights of states rather than individuals, and therefore the environmental migrants are not protected under the above international agreements. Secondly, there is a concept of “internally displaced people”, which on the one hand seems to be applicable in terms of the reasons to move. However, according to the treaties [25] and the Guiding principles on internal displacement internally displaced persons are “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border” [26]. These conditions are to be applied cumulatively. The definition includes natural disasters a reason to move, however, it covers only people who have not crossed an internationally recognized State border. Thirdly, the well-known Convention relating to the status of refugees 1951 [27] (1951 Convention). However, the Convention defines a refugee as a person “who is (1) outside his or her country of nationality; (2) has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and (3) is unable or unwilling to avail him or herself of the protection of that country, or to return there, for fear of persecution” [26; art. 1A]. This definition seems to be too narrow to be used in case of climate-induced migration. Therefore, the above-discussed use of the terms ‘climate refugees’ and ‘environmental refugees’ is inaccurate from a legal perspective as the concept of ‘refugee’ has a distinct meaning in international law. However, the practice of some states should be indicated in this relation. For instance, Sweden and Finland adopted legislation granting subsidiary refugee protection for anyone who, “by reason of an environmental catastrophe, cannot return to his home country” [28][29]. Moreover, despite the long practice of rejecting all applications for a visa from citizens of small island states, applying for asylum due to climate change impact on their home countries, New Zealand has launched an initiative to create a special visa for Pacific Islanders forced to relocate because of rising sea levels [30]. Thus, even considering that international law does not include environmental/climate migrants to the definition of refugees and does not oblige states to provide them with asylum; some states undertake such obligations voluntarily. Indeed, state-led solutions offer the best hope for this group of people so far. Finally, human rights could accordingly offer some protection as it provides minimum standards of treatment. However, the states are obliged only to afford persons within its jurisdiction [31] or within its territory [32]. In other words, third states have no obligation as long as environmental migrants are not under their “jurisdiction” or “within its territory”. And even if the principle of non-refoulement is considered, it is highly doubtful that the principle applies in the case of environmental migration, as under the customary international law, the principle of non-refoulement includes non-return to persecution, torture, or cruel, inhuman, or degrading treatment or punishment.

Filling the protection gaps

Simultaneously with the emergence of the concept of environmental migrants (and all the other definitions discussed in the §1) the ideas on the implementation of the definition appeared. The implementation of the term aims to make it mandatory and associate
this definition with any legal regime in order to provide people with a certain level of protection. On the one hand, some scholars propose absolutely new Convention recognizing the different types of environmental displacements. The proposed Convention calls for a monitoring system similar to that of UNHCR. This Convention would have recognized the obligation of the international community to assist states affected by natural disasters, as well as the right “to retain the citizenship of the state of origin for environmentally displaced persons... and to acquire a nationality of the receiving state”. This last right is especially important for nations such as Kiribati, Tuvalu and other small island states, where a complete loss of territory could lead to the destruction of its legal status as a nation. On the other hand, there is an opinion that the best solution to this problem is to expand the scope of the 1951 Convention without adopting a new one. The authors deny the urgent need for a new Convention on climate refugees, believing that the term “refugee” applies to this new group of the population due to international legal practice. There are some regional conventions extending the concept of “refugee” [33][34] and the scholars insist that the states already have the obligations grounding on international custom to give “environmental refugees” the same treatment as usual refugees.

Summary

Concluding all the above, it is found that terminological gaps exist and that it is crucial to provide a universal definition to this particular group of people in order to adequately address this issue. There are abundant typologies of ‘environmental refugees’ and ‘environmental migrants’, but little agreement on what these categories might really mean. Different definitions lead to a different international framework and level of protection. Secondly, it was concluded that current international law does not require states to provide asylum to those displaced by environmental degradation. However, the majority of scholars on environmental/climate migration are arguing for an extension of asylum law and/or humanitarian assistance to cover those forcibly displaced by environmental hazards or extreme weather conditions. The means may be different from the adopting a new treaty to amending existing international conventions. The example of national laws of some countries (Sweden, Finland, New Zealand) can be an assistance in the matter of asylum granting for climate-induced migrants.

Conclusion

Summarizing all the above, there is clear need to develop a new legal definition applicable to people displaced due to the climate change and other environmental phenomena. The various approaches to deal with this problem have both strong and weak sides. Even if a global agreement to protect environmental migrants is not feasible, it is possible to take many steps now to facilitate the problem. They may be national laws (unilaterally offering certain protections), bilateral agreements, or regional conventions; etc. However, whatever solution the international community develops on this issue, the measures must be expeditious and effective as the fate of millions of people, who already have lost (or will lose in the future) their homes and homeland, will depend on the decision.

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