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International Law Reform towards the Flood of Future Climate Change Refugees

Mohamed Mowjoon Athambawa¹

The popularity of the term "climate change refugees" has been dramatically increasing with the awareness and the disaster of the global warming. The prophecy for mass forced migrations as the consequence of climate change is deplorable. A scandalous statistics revealed that 200 million people would become climate change refugees by 2050. However there is a huge fortification gap in the international legal system which addresses the climate change refugees. Recently academics, lawyers and governments have identified the issues related to climate change refugees and realised the urgency of the formation of policies regarding the protection of the climate change refugees in remedying the plight of this category of the world population. As the first step in handling this dilemma, academics, lawyers, governments and all the stakeholders find it tricky to define the term climate change refugees. Because no one factor, event or process, inevitably results in forced migration and there are a wide range of variables contribute to the definition of the term "climate change refugees". Different theorists have defined the term differently to distinguish a new category of displaced people. Forced migration and dislocation caused by environmental factors or natural disasters such as earthquakes and floods and manmade disasters, such as war and industrial accidents have affected the universe since its existence. Before looking at the international legal constitution, it is necessary to look at the causes of environmentally displaced people in order to offer a complete protection for 'climate change refugees'. This paper aims to identify who are the 'climate change refugees', the gaps in the international legal system which addresses the dilemma of the climate change refugees and proposes a fresh definition for the term "climate change refugees" and a novel approach for dealing with the plight of this class of people in international legal system.

Keywords: climate change refugees, forced migration, displaced people, dislocation, protection

I. Introduction

The Intergovernmental Panel on Climate change (IPCC) and the stern review² warn the effects of climate change will cause large scale human displacement. Even though precise figures cannot be known, Meyers estimates that by

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2050, 200 million people or one in every forty-five could be overtaken by such events.³ In the World Bank policy research in 2007 Dasgupta et al advocated that

‘The overall magnitudes for the developing world are sobering: Within this century, hundreds of millions of people are likely to be displaced by the sea level rise; accompanying economic and ecological damage will be severe for many. The world has not previously faced a crisis on this scale, and planning for adaptation should begin immediately’⁴

The history shows that in most of the cases developing countries are more vulnerable to climate change where the large portion of the population lives directly from agriculture and many of these from subsistence farming.

II. Definition of the term “climate change refugees”

A number of scholars have defined the term climate change refugees. The most widely accepted and used definitions are offered by El-Hinnawi and Myers. El-Hinnawi defines climate change refugees as ‘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 jeopardised their existence and/or seriously affected the quality of their life. By environmental disruption, it is meant any physical, chemical and/or biological changes in the ecosystem (or resource base) that render it, temporarily or permanently, unsuitable to support human life.’⁵ Myers and Kent form the definition of climate change refugees as ‘persons who no longer gain a secure livelihood in their traditional homelands because of what are primarily environmental factors of unusual scope.’⁶

² Nicholas Stern, *The Economics of climate change: The stern Review*, Cambridge University Press, Cambridge, 2007.

³ Norman Meyers, ‘Environmental Refugees: An Emergent Security Issue,’ 13th economic Forum, Prague, May 2005

⁴ Susmita Dasgupta et al, *The Impact of Sea Level Rise on Developing Countries: A comparative Analysis*, world Bank Policy Research Working Paper 4136, World Bank, Washington, DC, February 2007

⁵ El-Hinnawi, E (1985) *Environmental Refugees*, United Nations Environment Program (UNEP), New York

⁶ Norman Meyers and Kent J (1995), *Environmental Exodus: An Emergent Crisis in the Global Arena*, Climate Institute, Washington DC.

However there is no universally agreed definition for the term climate change refugees. The critical difficulty in dealing with the definition is that the causes of forced migration or climate change refugees are not clearly formulated or agreed upon by the international bodies. While formal definitions vary theorists accept a certain basic tenets. Foremost among them is that the main cause of the formation of climate change refugees is the disruption of the environment. This disruption may be stimulated by manmade disaster such as war, e.g. due to war, a number of forest and natural resources could be destroyed to protect the citizens of a country from war, on the other hand it has converted beautiful lands into barren lands and causes a lot of problems globally and a wide variety of natural disaster such as earthquakes, floods, volcanic eruptions, storms and bush fire. The increase of global average air and ocean temperature stimulate the melting of snow and ice which provokes the rising sea level. Today the green house gases are emitted due to human activity which is a main cause of global warming. Deforestation impacts on the climate as plants clean air. Moreover floods are associated with temperature and rainfall which is again a man-made environmental change. Keane defined the term natural disaster as 'events such as volcanic eruptions, droughts, earthquakes and all other types of disaster generated by an unstable natural environment'.⁷

III. Refugee Law and the climate change refugees in the international legal system

Climate change refugees are not included in the international law. The 1951 Geneva Convention was the first international instrument to codify a general definition of the term refugee. 'Any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and unable or owing to such fear, unwilling to avail himself of the protection of that country or who do not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it'.⁸ From this definition, a number of key

⁷ David Keane, 'The Environmental Causes and Consequences of Migration: A search for the Meaning of "Environmental Refugees"' (2004) 209 *Georgetown International Environmental Law Review* 211

⁸ *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, Office of the United Nations High Commission for Refugees, UN Doc. HCR/IP/4?Eng.Rev.2(1979)

rudiments can be extorted. Firstly, the person must have well-founded fear of being persecuted based on race, religion, nationality, membership of a particular social group or political opinion, secondly person must be outside his own country, thirdly, the person is unwilling to return to his habitual residence, in order to qualify as a refugee in the international legal system.

Moreover, it is clear that the climate change refugees are not protected under the current refugee structure in the international legal system. In the first instant, the definition of climate change refugees has not been included in the 1951 Geneva Convention, in other words the exclusion of climate change refugees begins with the definition itself. Therefore, there is an urgent need for finding resolution to include the highly increasing flood of climate change refugees in the convention to protect people who are displaced due to climate change. Even though the issue of climate and global warming has been widely addressed in a wide range of conferences and the world has been looking forward to reach a consensus to protect people of this kind, still it lacks an efficient and long lasting solution. A good example is the failure to reach a favourable agreement at the Copenhagen World Business Summit on Climate Change organised in 2009 where all key leaders of the world participated.

At this event, CEOs have discussed how their firms can help solve the climate crisis through innovative business models, new partnerships, and the development of low-carbon technologies and how to remove barriers and create incentives for implementation of new solutions in a post-Kyoto framework. It is clearly argued that Copenhagen could actually have delivered a significant result for the benefit of future generations, but business leaders and governments did not think beyond the climate myths which lead to the failure of the summit.

The UNHCR has determined that 'although many persons displaced for environmental reasons cross international borders, they do not meet the traditional criteria for refugee classification, therefore they are not subject to automatic protection under the refugee convention and any corresponding domestic laws'⁹ environmental refugees usually look to their governments as the first call

⁹ United Nations High Commissioner for refugees' The state of the world's refugees, at http://www.unhcr.ch/refworld/pub/state/97/box1_2.htm

¹⁰ David Keane, 'The Environmental Causes and Consequences of Migration: A Search for the Meaning of "Environmental Refugees"' (2004) 209 *Georgetown International Environmental Law Review* 216

for protection and aid in the event of an environmental disaster. The UNHCR therefore can make a distinction by noting that refugees lack the protection of their state and therefore look to the international community to provide them with security.

IV. Proposed solutions in the literature

Some scholars have been working on the issues related to the protection of climate change refugees and one of them is David Keane, who suggested that it may be possible to broaden the 1951 definition along the lines of human rights.¹⁰ This argument is supported by Coopers by the accumulation of concept as the Refugee Convention realises that refugee status is the consequence of the denial of human rights.¹¹ Everyone has the right to seek and to enjoy in other countries asylum from persecution and this right may not be invoke in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.¹² Both the international Covenant for civil and Political Rights and the International convention for economic and Social rights acknowledge the 'inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources' and 'in no case may a people be deprived of its own means of subsistence'¹³

Kean's solution to the problem of environmentally displaced people would be to extend the 1951 definition contained in the Refugee convention in line with the developments in the international human rights law"¹⁴. However the simple extension of the definition would not help to solve the problem of climate change refugees and the extension might degrade the current protection for refugees. Even if it is possible, the extension would be limited as the increasing flood of climate change refugees could not be accommodated in the extended definition.

On the other hand, Hong argue that the extension of the refugee definition

¹¹ Jessica B. Cooper Environmental Refugees: Meeting the Requirements Universal Declaration of Human rights , General Assembly Resolution 217 A U.N Art 14

¹² Jessica B. Cooper Environmental Refugees: Meeting the Requirements Universal Declaration of Human rights , General Assembly Resolution 217 A U.N Art 14

¹³ International Covenant on Civil and Political Rights Art 47,999,U.N.T.S 171,185; International Covenant on Economics ,Social and Cultural rights art 1 993 U.N.T.S 310

¹⁴ David Keane, 'The Environmental Causes and Consequences of Migration: A Search for the Meaning of "Environmental Refugees"' (2004) 209 Georgetown International Environmental Law Review 216

to include climate change refugees would open the door for the flood of climate change refugees which cannot be handled by the international community.¹⁵ Hong also suggested that differentiating environmental events and rendering the applicants unable to avail themselves of their government's protection within a designated period of time.

Falstrom advocates that the protection offered to refugees under the 1951 refugee convention are very specific and the current international human rights and environmental documents do not provide any similar protections to environmentally displaced people.¹⁶ Interpreting the current definition of refugee to cover environmentally displaced persons therefore is not possible based on the wording of the definition as it currently stands in the international law. Revising the definition to specifically include the phrase to protect environmentally displaced people is not the answer either.¹⁷

The evaluation of the definition of refugees in the Refugee Convention and the UNHCR opinions on the refugees' classification as well as the arguments of the scholars such as Kean, Falstrom and Hong, it is obvious that the climate change refugees do not meet the required criteria established in the Refugee convention. This factor leads to the lack of protection for climate change refugees which increases the fearful future of this category of population.

With the framework of the Convention Against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment (1985)¹⁸ in mind, Falstrom has suggested that 'a treaty could be drafted offering both temporary protections for those displaced due to environmental factors and requiring the state parties to work towards ensuring that similar types of environmental problems do not occur'.¹⁹

¹⁵ Jeanhee Hong, *Refugees of the 21 Century: Environmental Injustice*, *Cornell Journal of Law and Public Policy* 2001 340

¹⁶ Dana Zartner Falsrom, *Stemming the flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment* (2001) *Colorado Journal of International Law and Policy* 12 1

¹⁷ Dana Zartner Falsrom, *Stemming the flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment* (2001) *Colorado Journal of International Law and Policy* 12 1

¹⁸ *Convention Against Torture, and Other Cruel, Inhumane, and Degrading Punishment*, opened for signature Feb 4, 1985 S. Treaty DOC. NO. 100-20 (1988). 1465 U.N.T.S. 85

¹⁹ Dana Zartner Falsrom, *Stemming the flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment* (2001) *Colorado Journal of International Law and Policy* 12 1

V. Extended approaches along the contour of the proposed solutions to remedy the plight of climate change refugees

Along the contour of this suggestion offered by Falstrom, I could argue that:

1. Similar types of environmental problem could be avoided by the implementation of proper early warning and early action system to protect people from the natural disaster such as tsunami and volcano eruption. It is the responsibility of the international legal system to help the needy countries to overcome the environmental disaster in a predefined and pre organized manner. This argument is supported by the world disaster report 2009 where the focus of the report was to implement early warning and early action to protect people from environmental disaster.
2. A concise definition of the climate change refugees could be provided
3. Implement the system internally that could be intra-state before it elevates to the inter-state consideration and finally to the international consideration
4. In order to implement a treaty, the treaty should include the following aspects
 - a. International community must recognize that the climate change refugees are in need of international protection
 - b. The root causes of environmental problems should be addressed
 - c. The precise definition of climate change refugees should be included in the treaty
 - d. A wide variety of mechanisms should be identified and clearly discussed in order to make the classification of really needed assistance and the protection should be offered only to the real needy away from political and other influences and biases
 - e. Various mechanisms should be included in the treaty such a way that varying protection such as short-term protection, instant protection and long-term protection could be offered to people depending on the needs of the real climate change refugees
5. The treaty should also motivate to recognize the issues of climate change refugees at the domestic level and try to achieve the solutions at the local point before it escalates to the international level

Moreover, the definition of the term climate change refugees could be flexibly formed and strictly adhered to protect this kind of people. However the definition should be governed and monitored by the international legal system.

The flexibility should be provided to cope with the plight of climate change refugees in the regional area before it escalates to the national level. This notion is supported by Williams by introducing a regional approach to climate change displacement.²⁰ Williams has also illustrated four key advantages of regional approaches. Firstly, the regional approach provides an opportunity to further the implementation of the framework for Internally Displaced Persons. Secondly, good practices of regional programs could be exchanged between regional groups. Thirdly regional structure enables the engagement and the development of the country to deal with the plight of climate change refugees depending on the capacity of the country to deal with the issues related to the climate change refugees. Finally, in the long term the acceptance of the need for protection of climate change refugees at the regional level will lead to the acceptance of the framework and the solution in the international legal system

Corporation rather than conflict within the affected country may be better response to some environmental challenges. For example sudden disasters such as storms and flood often exaggerate the existing domestic problems by revealing the weaknesses of the government in power and may induce conflict in the community. This situation may finally lead to forced displacement due to environmental issues

VI. Novel approach to diminish the issues of climate change refugees

In my novel approach, each human being should be well educated to understand the plight of climate change refugees and the causes of the flood of climate change refugees. The world population must be made well aware of their own actions which affect the whole population. Most frequently forced migrations are induced in the developing countries as they are more vulnerable to environmental disaster there by creating more climate change refugees. I argue that it is the responsibility of the government of the vulnerable countries as well as the responsibility of the international legal system as well as the international community especially the developed countries to get involved in remedying the situation. Otherwise, in near future everyone on earth has to be accountable in this regard. The developed countries can contribute in remedying the climate change refugees' problems by funding needy countries to promote the

²⁰ Angela Williams, *Turning the Tide: Recognising Climate Change Refugees in International Law*, *Journal of Law and Policy*, 30 (4) October 2008

solution at the regional level. Recent flood disaster in Pakistan and volcano eruption in Indonesia could be some examples of this kind of circumstances.

The most vulnerable countries must be well educated and funded with significant amount in order to avoid future issues related to climate change refugees. Also the developed countries should be justified such a way that they themselves voluntarily come forward to remedy the plight of climate change refugees.

VII. Proposed Climate change refugees' resolution process

My proposed process consists of 7 stages and at each stage a number of tasks need to be carried out to make the step live and active which will successfully leads to a possible drop in the rate of increase of the climate change refugee population.

Step 1. People minds have to be changed to accommodate the climate change refugees in the protection structure

Step 2. Identify the causes of climate change refugees

Step 3. Define the term climate change refugees precisely based on the context

Step 4. Once the definition is agreed, determine how this category of people be protected

Step 5. Make awareness of this category of population locally or regionally

Step 6. Bring the awareness to the international level

Step 7. Make international and local community capable of protecting the rights of this group of people

It is arguable that, the development of climate change refugees cannot be stopped completely by any means, however my new approach would open the eyes of the international community, world leaders, relevant governments, scientists, business personnels, experts and the scholars in remedying the plight of climate change refugees and the scandalous statistics of 200 million climate change refugees by 2050 would be significantly reduced and the plight of this category of community can be saved with care.

My novel definition to the term "climate change refugees" is not to offer a common definition which will cover all aspects of the recently identified this category of people but to split the whole group into sub categories namely, short term climate change refugees, long-term climate change refugees, permanent climate change refugees and instant climate change refugees.

VIII. Conclusion

Even though the international legal system has made huge advances in the field of human rights, refugee protection and environmental protection, the issues related to climate change refugees illustrate a significant amount of revision needed to face the challenges of the climate change refugees. The growing number of climate change refugees will definitely make this issue utmost significant in the near future which can never be ignored by the international community and the international legal system itself. Amendment of existing Refugee Convention would not be fruitful. Drafting a new convention to accommodate the protection of climate change refugees would be better utilized.

The devastating truth is that there will be real flood of climate change refugees in the near future and if the changes in the existing system are not accelerated along the effect of environmental factors, many of the victims will have little choices which will lead to more flood of climate change refugees in the consequent years. Moreover, human are the main cause of climate change therefore the whole human population is responsible for the protection of climate change refugees. This notion must be grown in each human being on earth.

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