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Conference Paper

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Provided in Cooperation with:

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Suggested Citation: Andeva, Marina; Salevska-Trajkova, Vasilka (2020) : Climate refugees or climate migrants: How environment challenges the international migration law and policies, University American College Skopje, Skopje, pp. 78-87, <https://doi.org/10.5281/zenodo.4393529>

This Version is available at:

<https://hdl.handle.net/10419/234161>

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CLIMATE REFUGEES OR CLIMATE MIGRANTS: HOW ENVIRONMENT CHALLENGES THE INTERNATIONAL MIGRATION LAW AND POLICIES

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ABSTRACT: Climate change is causing millions of people to migrate from their homelands. Climate impacts that unravel over time, such as desert expansion and sea level rise, are forcing people from their homes: A World Bank report projects that within three of the most vulnerable regions — sub-Saharan Africa, South Asia and Latin America — 143 million people could be displaced by these impacts by 2050 (World Bank, 2018). A study by Columbia University climate researchers in the peer-reviewed journal *Science* projected that if global temperatures continue their upward march, applications for asylum to the European Union could increase 28 percent to nearly 450,000 per year by 2100 (Missirian and Schlenke, 2017). The International Organization for Migration in the past decade focused on bringing climatic and environmental factors to the light and on building a body of evidence proving that climate change affects — directly and indirectly — human mobility. Nevertheless, climate migrants have been invisible for many years on the migration and climate debates concerning their legal status and regulation. This paper will focus primarily on analysis of these phenomena with a specific focus on the terminology used and the interpretations of the existing legal instruments. Furthermore, it put emphasis on case-law analysis in terms of preparedness of national governments to confront this new category of migrants. In order to do so, this paper presents a specific case in front of the UN Human Rights Committee, *Ioane Teitota vs. New Zealand*, and discusses the impact of this case over the definition of "climate refugees," who currently lack any formal definition, recognition or protection under international law. The paper also underlines several recommendations to address this phenomena.

KEYWORDS: *climate change, natural disasters, climate refugees, asylum, forced migration*

INTRODUCTION

As Oberleitner and Salomon (2015:5) observe, in 2015 over 65 million persons were forced to migrate, which constituted the highest number since the great migration of peoples after WWII. This number was reported by the UNHCR in June 2016, represent only one group of those affected by humanitarian crises — those fleeing persecution and conflict (Martin, 2016). In 2016, the number was similar (UNHCR, 2017) and it is generally increasing—in accordance with the data for 2017 the number was 68.5 million persons. It means that daily 44 000 people were forcibly displaced (UNHCR, 2018) due to persecution or conflict condition.

However, there is another category of persons who are displaced by other crises that, in some cases, present equally life-threatening situations. According to the Internal Displacement Monitoring Center (IDMC), more than 19 million people were newly displaced by disasters brought on by natural hazards in 2015 (IDMC, 2016). The 2015 levels were lower than average; annual displacement from these hazards since 2008 averaged more than 21.5 million per year. The majority of new displacements from natural hazards are in Asia, primarily from weather events but also from earthquakes, volcanoes, and other geophysical disruptions. India, China, and Nepal registered the highest numbers of newly displaced in 2015, with 3.7 million, 3.6 million and 2.6 million, respectively (IDMC, 2016). As a proportion of population, new displacements most heavily affected small island states; for example, a storm surge in Tuvalu uprooted 55 percent of its population of around 10,000. While the majority are displaced globally for a short period and then return home, an increasing number of those fleeing natural hazards are unable to return or to find permanent solutions in other locations (Martin, 2016).

The only statistics available until this day, on movements in the context of acute natural hazards pertain to *internally displaced persons (IDPs)*; there are no global and only few national statistics on cross-border movements. That means from today's point of view we do not have a clear number of how many persons so far have moved and returned home in the aftermath of disasters, in particular those caused by tropical storms, flooding, drought, tsunamis, and earthquakes. Only the Nansen Initiative identified so far 50 countries that in recent decades have received or refrained from returning people in these abovementioned conditions (Hansen Initiative, 2015).

According to the Fifth Assessment report of the Intergovernmental Panel on Climate Change, the climate change over the 21st century will increase displacement of people. While some of these movements precipitated by worsening environmental conditions are likely to be voluntarily planned by individuals and households, others will be clearly involuntary, including relocations planned by governments. (IPCC, 2014: 20).

The challenge that the world is facing with this new wave of migration is the length of average crises and the displacement they produce. Much of the existing systems for protecting and assisting refugees and displaced persons were designed to meet short-term emergency needs, not long-term ones. From the so far experience, the natural hazards are creating conditions that make it difficult if not impossible for people to return home quickly or ever! This trend is likely to accelerate as climate change renders larger areas uninhabitable or undermines traditional livelihoods. Thus, the new challenge ahead of us, require to find durable solutions to avoid the type of inter-generational displacement that has become too familiar in too many locations. Treating 30 year “crises” as on-

going emergencies puts the refugees and the displaced persons dependent on continuing humanitarian aid and deprives them of the opportunity to establish new livelihoods and resume normal lives (Martin, 2016).

CLIMATE REFUGEES OR CLIMATE MIGRANTS – DEFINITION AND DISTINCTION

Today's forecast is that up to forty nation-states are at risk of disappearing due to rising sea levels related to climate warming. Such a situation would lead to a form of statelessness never experienced before in history and would raise serious concerns about migration as well as important legal questions (Fornalé, Guélat and Piguet, 2016).

*The concept of environmental migration proved to be a controversial one, largely because of the difficulty in measuring the extent to which environmental factors compel people to move. Since the 1980s, when the term **environmental refugee** was coined, experts within the environmental and migration fields have differed in their characterization of the phenomenon (Martin and Warner, 2012).*

As early as 1990, the Intergovernmental Panel on Climate Change (IPCC) warned that significant levels of migration could occur as a result of changing climatic conditions (Fornalé, Guélat and Piguet, 2016). Those migrants are persons who for compelling reasons of change in the environment and in their living conditions were forced to escape their homes, either within their country or abroad (Clarín, 2011).

To define people displaced due to climate change Norman Myers in 2005 defined environmental refugees as “people who can no longer gain a secure livelihood in their homelands because of drought, soil erosion, desertification and other

environmental problems, together with associated problems of population pressures and profound poverty.”

However, the real question is whether these people are characterized legally as refugees. The UN nexus covering the refugee status states clearly that a refugee is a person who “owing to 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 is unable or, owing to such fear, is unwilling to avail himself of the protection of that country;” (Art.1, Convention relating to the status of refugees hereby Refugee Convention). The refugee convention clearly states that the legal ground for seeking asylum and requesting a refugee status is a persecution. Forced movement due to climate change has not entered still in the nexus as a situation under which one can be granted a status of refugee. The term ‘climate refugee’ is more colloquial than legally accepted as such. This term is also coming under increased examination on a number of grounds. At first, climate change is likely causing displacement, however the extent of that displacement does not depend only on the climate but also on the existence and effectiveness of adaptation measures helping individuals and communities to address the environmental stresses. It is a question whether there are such effective adaptation measures, which depend mostly on political economics at local, regional, national and international level.

It has been very popular to apply the label ‘refugee’ to any group of forced migrants, however on the other hand, UNHCR and IOM pay particular attention and caution against using the term environmental or climate refugee since there is no basis in international refugee law and could undermine the international legal regime for the protection of refugees. As it has been

in practice and as it has been discussed by many, an appropriate legal regime for climate –related migration may be human rights law (McAdam and Saul, 2008).

Migration experts and international organizations charged with managing different forms of human mobility and humanitarian needs have been particularly concerned about a potential backlash against migrants and misuse of terms like refugee, which is carefully defined in international law, by those who emphasize the likelihood of mass emergency movements. Although new research is emerging on the relationship between climate change and migration (Jäger et al. 2009; Kolmannskog 2009a,b; Corlett 2010; White 2011 ; Piguet et al. 2011), without exact information as how many people are likely to move, from where to where, and for how long, developing an appropriate policy framework is exceedingly difficult. But even where there is a recognition that some form of migration related to environmental change is likely to occur, addressing these movements is hampered by the paucity of policy or institutional responses deemed appropriate to these forms of migration (Martin and Warner, 2012). Climate change and migration is relatively new to the agenda of the Global Forum on Migration and Development. The Government GFMD discussions in Athens recommended that policy makers “Give serious consideration to the impact of climate change on migration and to joint efforts to face this challenge” and referred to the need for “mainstreaming and integrating migration into development planning processes, including ... National Adaptation Plans of Action concerning climate change (NAPAs).” (Martin and Warner, 2012).

Some migration may be temporary while others may be permanent. The decision as to whether return is possible involves a range of variables, including the extent to which the environmental causes either di-

rect or through other channels are likely to persist. Policies in the receiving communities and countries, depending on whether the migration is internal or international, will also affect the likelihood for return or settlement in the new location.

In addition to immigration policies, the policies affecting return and settlement include land use and property rights, social welfare, housing, employment, and other frameworks that determine whether individuals, households, and communities are able to find decent living conditions and pursue adequate livelihoods.

Return and reintegration is also affected by plans and programs to mitigate future dislocations from environmental hazards, coming full circle on the life cycle to a focus on prevention, adaptation, and risk reduction. Developing countries with a large proportion of people directly involved in agriculture, herding, and fishing are particularly sensitive to environmental changes and to natural disasters. As Collinson (2010) suggests, “many of the world’s poorest and most crisis-prone countries will be disproportionately affected by climate change owing to higher exposure to climate-related hazards such as droughts and floods, preexisting human vulnerabilities and weak capacities for risk reduction measures” (Martin and Warner, 2012). However, even highly destructive natural hazards will not necessarily result in humanitarian crises that cause massive displacement. Generally, the efficacy of national and international policies, institutions, and humanitarian responses influences whether people are able to cope with the aftereffects of natural hazards in a manner that allows them to recover their homes and livelihoods.

Understanding the history of this migration is essential to understanding the ways in which further desertification due to climate change may affect future movements. The potential scenarios presented above have implications that can

assume several areas of possible policy proposals: a) to create a platform for adaptation and disaster risk reduction or b) create International migration policies that will enable easier process of migrants moving.

THE CASE OF IOANE TEITOTA VS. NEW ZEALAND

Low-lying island chains, increasingly battered by storm surges, are among the communities most likely to face migration because of climate-related changes. Some islands are now planning to relocate entire communities, while a few build up their defenses against the rising sea levels. Kiribati island is one of them. With a population of 110,000 across 33 low-lying islands, Kiribati is developing its “option of last resort” relocation plans. The government included skill-building in these plans, to prepare the population to emigrate to Australia or New Zealand—or Fiji, where the Kiribati government has already purchased 20 sq km of land to resettle some of the population (Institute for the Study of Diplomacy, 2017).

The case of Ioane Teitota vs. New Zealand, in front of the United Nations Human Rights Committee, presents us with the evident struggle between the recognition of a refugee and labelling people as climate refugees and the protection of the basic human right, the right of life. This case also represent a significant landmark in the discourse of forced migration caused by climate changes. According to UN Human Rights Committee expert Yuval Shany, this case sets “new standards that could facilitate the success of future climate change-related asylum claims” (UN Human Rights Committee, 2019). What is also interesting for this case is that it gained international media attention as being the world’s first climate change refugee (Foreign Policy, 2015).

Ioane Teitota is a national of the Republic of Kiribati. Ioane Teitota claimed that the effects of climate change and sea level rise forced him to migrate from the island of Tarawa (Kiribati) to New Zealand. As he explained in this claim, the living conditions and the situation on the island became increasingly unstable, with fresh water becoming scarce, inhabitable land eroded, housing crisis and land disputes, making Kiribati as an untenable and violent environment for him and for his family. He applied for refugee status in New Zealand, however his application was rejected, although the Immigration and Protection Tribunal did not excluded the possibility that environmental deprivation could create pathways into the Refugee Convention. A number of facts and testimonies have been taken into account by the tribunal, and many supporting documents submitted by Teitota, including several scholarly articles written by United Nations entities and experts explained the situation in Kiribati. The Tribunal analyzed whether Teitota could qualify as a refugee or a protected person under the Refugee Convention, the Convention against Torture, or the Covenant. After an extensive and long analysis of international human rights standards, the Tribunal considered that “while in many cases the effects of environmental change and natural disasters will not bring affected persons within the scope of the Refugee Convention, no hard and fast rules or presumptions of non-applicability exist”. The Tribunal determined that Teitota did not face any real risk of persecution if he will be returned to Kiribati; he does not have any land disputes or evidence of suffering serious physical harm of violence, difficulties in proving accommodation, growing food or obtaining potable water. For all these reasons, according to the Tribunal he cannot be defined as “refugee” according to the Refugee Convention. After the decision by the tribunal, Teitota filed an appeal to the Supreme Court which ruled that there

are no evidence that the Government of the Republic of Kiribati was failing to take steps to protect its citizens from environmental degradation and that Teitiota would not face serious harm if returned to Kiribati. After this decision, and he was deported back to Kiribati. Following this, he filed a complaint to the UN Human Rights Committee¹ stating that New Zealand violated his right to life under the Covenant on Civil and Political Rights (Article 6(1)), by removing him from the territory of New Zealand (in September 2015) and bringing him back to Kiribati where his life has been threatened. New Zealand, as a state party to the Covenant on civil and political rights and the Optional Protocol, stated that Teitiota's claim to the Human Rights Committee is not sufficiently sustained and there are no evidence of actual or imminent harm done to Teitiota. New Zealand also pointed out that the right of life under the Covenant should not be interpreted narrowly; instead states should adopt positive measures to protect the right of life to its citizens. In this case, according to New Zealand, the right of life is interpreted broadly without any direct causal link between the deportation and the deprivation of his life. The Human Rights Committee acknowledged these arguments given by New Zealand, however considered that Teitiota has demonstrated sufficiently, for the purpose of admissibility of this case in front of the committee, that due to the impact of climate change, he faced, as a result of his removal from New Zealand, a real risk of impairment to his right to life under the Art. 6 of the Covenant. Furthermore, the Committee noted that the question is not whether he was, at the time of submission of the claim, a victim of a past violation of the Covenant, but rather whether he has substantiated

the claim that he faced upon deportation a real risk of irreparable harm to his right to life. The Committee noted that Teitiota's claims relating to conditions in Kiribati at the time of his removal do not concern a hypothetical future harm, but a real predicament caused by lack of potable water and employment possibilities, and a threat of serious violence caused by land disputes.

The Human Rights Committee determined that New Zealand did not violate Teitiota's right to life at the time of the facts, however Committee's examination highlights some important issues:

1. state parties are obliged not to extradite, deport, expel or otherwise remove a person when there are substantial ground for believing that there is a real risk of irreparable harm such as harm to this life (Art 6 of IC-CPR) and possibility to be tortured or treated inhumanly or degraded or punished (Art. 7 of ICCPR);
2. the obligation not to extradite, deport or otherwise transfer may be broader than the scope of the principle of non-refoulement under international refugee law, since it may also require the protection of aliens not entitled to refugee status;
3. the right of life cannot be properly understood if interpreted in a restrictive manner (it includes also the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death);
4. states may be in violation with Art. 6 even if such threats and situations do not result in loss of life;
5. climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right of life.

¹ The ICCPR's Optional Protocol establishes the right of individuals to complain to the Committee against States which violated their human rights. The Optional Protocol imposes an international legal obligation on State parties to comply in good faith with the Committee's Views.

6. without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under Art. 6 or 7 of ICCPR;
7. given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.

CONCLUSION AND RECOMMENDATIONS

Discussion of laws, policies, and organizational responsibilities to manage environmental migration is in its infancy. As understanding increases of the various ways that environmental change affects migration patterns, and vice versa, governments, civil society representatives, and experts are beginning to think through how to manage the implications of these interconnections. Much of the attention to date focuses legitimately (given that most movements are likely to be within countries) on internal migration, largely in the context of adaptation strategies and, to a lesser degree, movements that may arise as a result of natural disasters and climate change-induced conflict (Thym, 2019).

Resolving matters easily when it comes to climate refugee category can be done by firstly focusing on the most vulnerable issues than has proven to be lacking behind (Institute for the Study of Diplomacy, 2017):

1. **Clear definition of the concept “environmental migrants”, “climate refugees”**

Universally accepted definitions of people who leave their homes for environmental reasons are important for a host of legal, economic, and security reasons. The international community must work to cre-

ate definitions for these people that are socially and legally acceptable to all. The existing definition of “climate refugees” includes people who have to leave their habitats, immediately or in the near future, because of a sudden or gradual alteration of their natural environment, is taken for granted a climate crisis discourse while minimizing the possibility of taking difference into account (difference in regard to cultural, political or economic context or the manifestation of climate change effects) (Farbotko and Lazrus, 2012). The case presented in this paper, suggest that there is still an unclear combination of assessing the right of asylum and granting the status of a refugee under the Refugee Convention and assessing the violation of the right of life under the ICCPR. These interpretations and combinations need to be addressed seriously with a possible protocol to the Refugee Convention.

2. **Dialogue and exchange of best practices**

Governments should foster policy dialogues that review existing experience and identify emerging good practices in areas such as designing alternative livelihoods for those displaced or threatened by climate change, facilitating migration where appropriate, relocation, and resettlement of populations. There is little time to waste—earnest policy dialogue should begin now when there is still space and time to navigate some of the challenges and opportunities that arise with environmentally induced migration (Thym, 2019). Government should also consider planned relocations, which can be a positive and highly viable future alternative to ad hoc migration, done on the fly as a last resort. Dealing with some environment-related problems on a regional basis might help make these issues more workable. In many

instances of external migration, migrants are likely to traverse multiple international boundaries, with potential legal and security ramifications. Planning collectively for one nation or nations to serve as a safety valve for environmental migrants within a region would be a useful approach. Planning ahead of time allows each region, and potentially the international community, to create workable incentives for these safety valve nations—and provide the support these countries may need.

3. Proactive approaches

Governments and civil society need to get ahead of the curve. They should support effective adaptation strategies that take potential migration impacts of climate change into account. They should also seek implementation of effective disaster risk reduction, conflict mediation, and disaster management programs to reduce the likelihood of emergency movements with accompanying humanitarian consequences (Thym, 2019).

4. Collecting more data

There is an urgent need for a coordinated push for real and useable data and new research on environmental change as a driver of migration, which groups and societies are hit the hardest, the efficacy of resiliency interventions, and how to assist vulnerable populations that may not be able to raise the funds to migrate. Do drought insurance plans or new irrigation technologies ease the “push” factors that are likely to force struggling agricultural communities to relocate, for instance? More research is also needed on where people are heading—or where we think they will be going. Science and research that Governments and the community should support with more in-depth qualitative and quantitative research

in specific hot spot regions; the collection of necessary demographic, socioeconomic, and environmental data (such as through censuses); and rigorous research to understand the different patterns and scenarios of climate change, migration, and displacement in specific areas (Thym, 2019).

5. Make development assistance more adaptive

Largescale development projects in poorer nations and regions, once set in motion, are not necessarily adaptive to sudden environmental changes. Becoming more adaptable to the signs that communities are likely to migrate is a first step in recognizing that a project may need to shift gears. And national governments, NGOs, and international organizations can reframe and rethink the development planning process to reduce each project’s potential risk from extreme weather events, for instance. Also, they can prioritize those projects designed to assist communities that are most threatened by climate change.

6. Manage resources and infrastructure needs effectively

With adequate management of water and land resources in normal times, some communities at risk may not have to leave their homeland when extreme events occur. Building up the local physical and institutional infrastructure may enable people to continue making a living and remain in place despite the more frequent environmental stressors and permit additional mitigation and adaptation options. For communities receiving environmental migrants, managing resources and infrastructure will be just as vital to these communities to absorb an influx of newcomers.

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