

CLIMATE CHANGE AND THE PROTECTION OF HUMAN RIGHTS: THE ISSUE OF “CLIMATE REFUGEES”

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There have been many hot comments on the climate Agreement concluded in Paris in December 2015: In most cases, the opinions are favorable, but there are also some criticisms. It is important to maintain human rights at the core of climate action, but the Paris Agreement does not contain the provisions needed to tackle the human rights dimension of climate change and provide support for poorer countries whose capacities are strained by climate change impacts. Developed countries should seriously consider the issue of “climate refugees” and the scope thereof. In the last few years, several million people were forced to leave their homes because of floods, windstorms, earthquakes or other disasters caused by global warming. Nevertheless, the status of “climate refugee” is not yet recognized and leaves a legal loophole affecting victims that cannot benefit from such status.

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INTRODUCTION

Climate change is a reality of world politics in the twenty-first century, because it will fundamentally affect the lives of millions of people who will be forced over the next decades to abandon their homes and villages to seek refuge in other areas. A part of climate migrants may seek refuge in their own countries, but others will have to cross borders.

In the richer countries, some local refugee crises may be prevented through adaptation measures such as reinforced coastal protection, changes

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in agricultural production and water management. On the contrary, the poorer countries are the most vulnerable to climate change effects and have the least capacity to adapt.

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This paper begins by examining the essential features of environmental migration, highlighting the many consequences of the regulatory gap for this phenomenon: This analysis will allow us to indicate, therefore, some possible response strategies.

I. CLIMATE CHANGE

Environmental degradation such as land degradation and pollution of water, air or soil are brought about by the misuse of resources, poor planning, poor infrastructure and poor governance and monitoring. Carelessness, mismanagement of resources, industrial accidents and pollution are on the increase worldwide. These factors are superimposed on global climate change (change in rainfall patterns, sea-level rise, increased frequency of heat waves, etc.).

Climate change and environmental disasters may constitute the major causes for migration in the future¹.

To limit the consequences of climate change, there are two modes of action to be implemented without delay: The reduction of emissions to prevent further warming and adaptation to climate change already under way to prevent the forced displacement of people².

II. “CLIMATE REFUGEES”

Environmental migrants³ are extremely vulnerable because they are not

¹ Juliette Williams, *I Costi Umani Del Cambiamento Climatico*, 1 DIARIO EUROPEO, 58—66 (2012).

² Jon Barnett, *Adapting to Climate Change in Pacific Island Countries: The Problem of Uncertainty*, 29(6) WORLD DEVELOPMENT 977—993 (2001); Chris Methmann, Angela Oels, *From “Fearing” to “Empowering” Climate Refugees: Governing Climate-Induced Migration in the Name of Resilience*, 46(1) SECURITY DIALOGUE 51—68 (2015).

³ Elizabeth Marino, *The Long History of Environmental Migration: Assessing Vulnerability Construction and Obstacles to Successful Relocation in Shishmaref, Alaska*, 22(2) GLOBAL ENVIRONMENTAL CHANGE 374—381 (2012).

protected by international law. The classic definition of refugees does not include them⁴. However, statistics show that, at present, the environmental refugees outnumber refugees for political, religious and war conflicts⁵.

At the international level there is still no universally accepted definition of “environmental refugee”⁶. In 1970, this concept was introduced by Lester Brown of the Worldwatch Institute and, since 1985, it entered into common usage after report entitled *Environmental Refugees* prepared by Essam El-Hinnawi for the *United Nation Development Program*⁷. Since the Nineties, Norman Myers has studied this phenomenon, becoming one of the greatest scholars⁸.

The notion of “environmental migrants” includes “climate refugees”, even though its breadth makes it impossible to specify or quantify climate-related migration because a clear definition of “climate refugees” does not exist yet⁹. In literature, these terms are undefined and, only in 1997, “climate refugees” were taken into account by the United Nations High Commissioner for Refugees, although, just in the *State of the World’s Refugee* of 1993, environmental degradation has been identified among the main causes of emigration, along with political instability, economic tensions and ethnic conflicts.

The first difficulty in providing a precise and agreed definition depends on the fact that environmental phenomena and environmental degradation can be a cause of migration to more hospitable areas, but these are not the only reason, there are often other factors to consider: Economic reasons, wars or political instability, fears of political or religious persecution.

The second difficulty is the fact that those who leave the places of residence often remain within the borders of the country of origin: Including them within “environmental refugees”, the quantitative dimension of this category increases exponentially, in breaking away the figure of refugee present in international law which always presupposes the abandonment of

⁴ María José Fernández, *Refugees, Climate Change and International Law*, 49(May) FORCED MIGRATION REVIEW 42—43 (2015).

⁵ François Gemenne, *One Good Reason to Speak of “Climate Refugees”*, 49(5) FORCED MIGRATION REVIEW 70—71 (2015); Etienne Piguet, *From “Primitive Migration” to “Climate Refugees”: The Curious Fate of the Natural Environment in Migration Studies*, 103(1) ANNALS OF THE ASSOCIATION OF AMERICAN GEOGRAPHERS 148—162 (2013); Rafael Reuveny, *Climate Change-Induced Migration and Violent Conflict*, 26(6) POLITICAL GEOGRAPHY 656—673 (2007).

⁶ Janaina Freiberg Benkendorf Peixer, *O reconhecimento do status de refugiado ambiental: um problema conceitual?*, 16(2) BOLETIM MERIDIANO 34—40 (2015).

⁷ ESSAM EL-HINNAWI, ENVIRONMENTAL REFUGEES (Nairobi, UNEP, 1985).

⁸ NORMAN MEYERS, JENNIFER KENT, ENVIRONMENTAL EXODUS. AN EMERGENT CRISIS IN THE GLOBAL ARENA (Washington DC, Climate Institute, 1995).

⁹ Chris Methmann, *Visualizing Climate-Refugees: Race, Vulnerability, and Resilience in Global Liberal Politics*, 8(4) INTERNATIONAL POLITICAL SOCIOLOGY 416—435 (2014).

the state of residence and the search for asylum in another state.

However, in this essay the author used the concept of “climate refugees” to characterize people forced to abandon their place of origin because of an environmental stressor, regardless of whether or not they cross an international border.

III. POSSIBLE POLICY RESPONSES

Many scholars believe necessary to recognize internationally the *status* of environmental refugee and create a framework of protection especially in regulating migration policies that undervalue or not to consider the environmental pressures as a cause of emigration¹⁰.

Generally, several options are considered in this debate at global level: First of all, the expansion of the *United Nations Convention relating to the Status of Refugees* of 1951.

Proposals to this effect have intensified since 2001, criticizing the rigidity of the refugee definition used by the *1951 Refugee Convention*: According the Article 1, refugee is a person who, due to

... 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 to or, owing to such fear, is unwilling to avail himself for the protection of that country ...

However, there are also positions against the introduction of the figure of the “climate refugee” as a figure in its own right or as an extension of the definition contained in the *1951 Refugee Convention* because a part of the literature considers that there may be negative effects¹¹. In fact, the expansion of refugee *status*—introducing the desire to improve their living conditions among the reasons to be considered for granting asylum—would weaken the current conception of the right to asylum as a universally recognized human right because the discretion of governments to grant or deny asylum would be expanded. In addition, subject to the requirement of

¹⁰ Francesco Argese, *Threats from Sea-Level Rise to Small and Low-Lying Island States: Is International Law a Hope for “Environmental Refugees”?*, 65(3) LA COMUNITÀ INTERNAZIONALE, 435—454 (2010); MICHELLE FOSTER, *INTERNATIONAL REFUGEE LAW AND SOCIO-ECONOMIC RIGHTS: REFUGE FROM DEPRIVATION* (Cambridge, Cambridge University Press, 2007); Jean Lambert, *Migrazioni e cambiamento climatico: proposte politiche*, (1) DIARIO EUROPEO 48—57 (2012); Rafael Leal-Arcas, *Climate migrants: Legal options*, 37 PROCEDIA—SOCIAL AND BEHAVIORAL SCIENCES 86—96 (2012).

¹¹ Frank Biermann, Ingrid Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, 10(1) *Global Environmental Politics* 60—88 (2010); Karen Elizabeth McNamara, Chris Gibson, “*We Do Not Want to Leave Our Land*”: *Pacific Ambassadors at the United Nations Resist the Category of “Climate Refugees”*, 40(3) *GEOFORUM* 475—483 (2009).

border crossing, those who move within the country of origin would be excluded from international protection.

Another option is the broadening the 1998 *Guiding Principles on Internal Displacement* to environmentally-induced movements. Nevertheless, the *Guiding Principles* only provide guidelines and have no legal force. In order to be legally binding, the *Guiding Principles* have to be domestically incorporated, but very few governments actually have done it, often through incomplete laws and policies¹².

The addition of a protocol to the *United Nations Framework Convention on Climate Change* is another debated option to address climate-induced migration and to cover the recognition, protection and resettlement of environmental migrants¹³. However, this option is hard to materialise, mainly because of the potential lack of political will: Most receiving countries want to restrict the refugee regime, rather than improve it.

A further possible option is using various forms of temporary protection as a protection instrument for accommodating persons displaced because of environmental factors: Just think to the *United States Immigration Act* of 1990. Nevertheless, this protection is temporary and seems not be adequate to deal large migratory flows.

There were also proposals to attribute a specific mandate to the United Nations Security Council, believing climate change as a major threat to peace and international security. However, a part of literature criticizes the introduction on the agenda of the Security Council of the issue of climate change and many developing countries are wary of this institution, fearing that a broader mandate could extend the influence of the Security Council on their internal policies. In addition, the Security Council would lack legitimacy, because its five permanent members, namely the major producers of greenhouse gases, have veto power. Finally, the Security Council's functions are to preserve international peace and security and to authorize the use of force if necessary: Climate change has a completely different nature and, therefore, it does not seem to justify a stronger role of the Security Council.

At the international level, two other main approaches are considered: Planned resettlement and reducing the vulnerability of affected populations through tailored development cooperation measures. Particularly, development cooperation can contribute to a reduction of migration through

¹² Sara Ivanovitz, *I 'rifugiati climatici': una questione aperta*, 5(1) DIRITTI UMANI E DIRITTO INTERNAZIONALE 141—148 (2011).

¹³ See Biermann, Boas, *cit.*

adaptation measures. Other possible solutions are bilateral or regional agreements, e.g., to permit to the population of the small island states the resettlement in foreign countries, before being submerged by the sea¹⁴: In 2000, this option was followed by the Government of Tuvalu, which has concluded an agreement with New Zealand, given the geographical proximity, to accommodate citizens when the sea will have reached the point where the evacuation will become inevitable¹⁵. However, the few resettlement programs implemented to date have dealt mainly physical resettlement rather than the social and cultural integration of displaced people in host communities, although the biggest problem is how they can maintain their community identity even after the loss of the territories.

IV. THE PARIS CLIMATE AGREEMENT

The solutions described above are designed to act on already existing phenomena, but economic aid and emergency interventions in case of disaster are not sufficient to limit the causes of mass migration. It is necessary to prevent and take into consideration the political, technological and scientific solutions to limit the effects of climate change, bearing in mind that the rich countries are the major causes of these changes¹⁶.

The *Paris Climate Agreement* of 2015 has historical significance because it was approved by almost all countries of the world which have recognized that global warming is a world-wide phenomenon that must be tackled. Furthermore, the *Paris Agreement* states the need for a rapid end of the period of the energy produced through fossil fuels to pass to the use of renewable sources.

The *Paris Agreement's* objectives are ambitious; However, the proposed means of achieving them are weak and lack credibility. The *Agreement* strategy for the implementation of emissions reductions is based primarily on the *Intended Nationally Determined Contributions*, but there are no sanctions for countries that do not respect their commitments. In addition, the *Paris Agreement* does not consider among its objectives the issue of “climate refugees”.

¹⁴ Holly D. Lange, *Climate Refugees Require Relocation Assistance: Guaranteeing Adequate Land Assets Through Treaties Based on the National Adaptation Programmes of Action*, 19(3) PACIFIC RIM LAW & POLICY JOURNAL ASSOCIATION 613—640 (2010).

¹⁵ Carol Farbotko, Heather Lazrus, *The First Climate Refugees? Contesting Global Narratives of Climate Change in Tuvalu*, 22(2) GLOBAL ENVIRONMENTAL CHANGE 382—390 (2012); Colette Mortreux, Jon Barnett, *Climate Change, Migration and Adaptation in Funafuti, Tuvalu*, 19(1) GLOBAL ENVIRONMENTAL CHANGE 105—112 (2009).

¹⁶ Stefano Nespore, *I rifugiati ambientali*, (4) FEDERALISMI.IT 1—10 (2007).

European Parliament, in view of the Paris Conference, adopted a Recommendation¹⁷ with which it stresses the necessity to implement global emission reduction pathways by 2050 and calls for a comprehensive review process every five years to ensure dynamism of the implemented mechanism and reinforce the level of ambition of reduction commitments¹⁸. Moreover, European Parliament calls for general reinvigoration of the European Union's climate policy and urges the Member States to consider complementary commitments that build on the agreed 2030 target, including action outside of the European Union¹⁹. Furthermore, European Parliament considers that the European Union and its Member States would have to agree on a roadmap for scaling up predictable, new and additional finance, in line with existing commitments²⁰.

Finally, European Parliament stresses the importance of maintaining human rights at the core of climate action and considers necessary to address the human rights dimension of climate change and provide support for poorer countries whose capacities are strained by climate change impacts. European Parliament insists on the full respect for the rights of local communities and indigenous peoples particularly vulnerable to the adverse effects of climate change²¹.

The European Parliament notes with concern that "climate refugees" will need to rely on effective protection and support from the international community. Developed countries should seriously consider the issue of "climate refugees" and the scope thereof: 166 million people were forced to leave their homes because of floods, windstorms, earthquakes or other disasters caused by global warming between 2008 and 2013. Nevertheless, the *status* of "climate refugee" is not yet recognized and leaves a legal loophole affecting victims that cannot benefit from such *status*²².

Through this recommendation, the European Parliament wants to insist²³ that the increased efforts to tackle global climate change should be undertaken jointly by developed and developing countries, in accordance with human rights and the problem of "climate refugees", since they are closely related.

¹⁷ European Parliament resolution of Oct. 14, 2015 on *Towards a New International Climate Agreement in Paris (2015/2112(INI))*.

¹⁸ See §§ 9 and 12.

¹⁹ See § 14.

²⁰ See § 55.

²¹ See § 17.

²² See § 71.

²³ European Parliament, *Climate Refugees. Legal and Policy Responses to Environmentally Induced Migration—Study* (Brussels 2011).

CONCLUSION

The lack of recognition of the *status* of “climate refugees” has many implications: They are not provided with adequate protection and their condition is not addressed effectively by the international community. Recognition is needed for planning of measures to limit the causes of mass migration through appropriate solutions which cannot be reduced to only *ex-post* interventions, such as economic aid or extemporaneous interventions of the international community.

Developing countries, in particular least developed countries and small island developing states, have contributed least to climate change, are the most vulnerable to its adverse effects and have the least capacity to adapt, because the poorer countries are not able to initiate sufficient adaptation programs, and climate-induced migration might be the only option.

For these reasons, developing countries need tangible assistance in their transition to sustainable, renewable and low-carbon forms of energy, guaranteeing therefore that their adaptation needs will be met in both the short and the long term. As a result, the major developed economies should harness their existing advanced infrastructure to promote, enhance and develop sustainable growth and commit to supporting developing countries in building their own capacity, so as to ensure that future economic growth in all parts of the world is achieved at no further cost to the environment and to prevent the increase of the phenomenon of so-called “climate refugees”.

However, to prevent massive migration flows, it is necessary that the issue of “climate refugees” is tackled together with the problem of reducing the negative effects of climate change: The two issues cannot be separated.

From this point of view, the *Paris Climate Agreement* is not satisfactory.