

The Legal Status Of New class Of People-‘Environmental Refugees’-A Problematic Issue In 21st Century

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Abstract

In 1985, El Hinnawi identified a new class of persons, called as Environmental Refugees. He defined them to be those who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption that jeopardized their existence, and/or seriously affected the quality of their life. It is estimated that there are currently about 10 million environmental refugees world over. The concept of environmental refugees is a relatively new phenomenon. Environmental refugees are essentially people who can no longer gain a secure livelihood in their homelands because of drought, soil erosion, desertification, deforestation and other environmental problems, together with associated problems of population pressures and profound poverty. In their desperation, these people feel they have no alternative but to seek sanctuary elsewhere, however hazardous the attempt. Not all of them have fled their countries, many being internally displaced. But all have abandoned their homelands on a semi-permanent if not permanent basis, with little hope of a foreseeable return.

As the world delves deeper into the realms of technological advancements, the consequential environmental changes pose new challenges to international law. As predicted in the intergovernmental panel on climate changes synthesis report the average temperature of the air and the sea, pollution and other symptoms of a changing climate will likely lead to a rise of the sea level, desertification, deforestation, extreme storms and earthquakes. There are an estimated 25 million environmental refugees today and the numbers are likely to grow even faster in future. The primary questions which have to be addressed in regards to the aforementioned issue are:

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- If the Environment is sometimes linked with other reasons for leaving a state , what legal status can an environmental refugee be given?
- Has the term environmental refugee to be included in the Convention in order to fit international human rights law?
- How feasible is a separate genre of environmental poverty law, in dealing with the issue of environmental refugees?

History is full of examples of people driven from their homes by a hostile environment- and it's increasingly hard to distinguish these factors from economic ones. Throughout the world, particularly the less developed rural countries, there's probably no meaningful difference- the environment is the direct source of people's livelihoods. But the scale and speed at which humans are altering the global environment has over the last two decades altered perceptions in two ways. First, there is a new awareness of environmental factors as the triggers for major population movements. Second, it's recognized that humans are pulling the trigger- that what were once considered "natural" disasters are increasingly man-made.

Key Words: Environmental Refugees, Environmental Disruption, Jeopardized, Internally Displaced, Environmental Challenges.

Introduction

A continual rise in the increase of migration caused by environmental reasons has led academics, lawyers and governments to identify a new category of displaced people the 'environmental refugee'. With evidence suggesting that over 50 million 'environmental refugees' are created each year, it is evident that this group of people represents a growing cause of concern to policy makers at a national and international level. Most problematic is the seemingly inexistent domestic and international protection afforded to victims of environmental events. The current international refugee mechanisms, created to suit the needs of Post World War II Europe, are out of date as are the domestic laws of many treaty parties.

Consequently international law, in its current form, no longer offers sufficient protection to a category of displaced people which outnumbers those displaced by war and other conflict.

'Environmental Refugee' is a controversial concept which has increased in currency and generated considerable discussion in the 2000s as policy-makers, environmental and social scientists attempt to conceptualise the potential societal ramifications of climate change and general environmental degradation. The concept 'environmental migrant' is highly nebulous and controversial, and so this article is necessarily focused on the debate concerning the validity of the term itself.

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History Of The Term

Beginning with the use of the phrase ‘environmental refugee’ by Lester brown in 1976, there has been a proliferation in the use of the term, and later ‘environmental migrant’ and a cluster of similar categories, including ‘forced environmental immigrant, environmentally motivated migrant, climate refugee, climate change refugee, environmental displace, eco-refugee, ecologically displaced person and environmental-refugee-to-be (ERTB)’. The differences between these terms are less important than what they have in common: they all suggest that there is a knowable relationship between environmental drivers and human migration which is analytically useful, policy-relevant and possibly grounds for the expansion of refugee law. There has been an explosion of institutionally funded research into the topic as a corollary of the ‘mainstreaming’ of the concern with climate change which began in late 2006.

Problems

Much of the literature produced on ‘environmental migration’ assumes the nexus to be self-evident. The category is both emotive and commonsensical, and therefore has widespread currency in the media and among policy makers, non-social scientists and Neo-Malthusianist social scientists. However, there is no evidence that the concept can be used to achieve generalizable truths. In brief, this is because the degree to which any given environmental factor is meaningful at the societal level-let alone to any specific aspect of human activity, such as migration-is entirely conditional on socio-economic and political contingencies. In other words, it is impossible to isolate an environmental factor as an independent variable from which to deduce its impact on a particular (or general) form of social outcome in any way that will be generalizable useful; the relationship will be different depending circumstance. There has been

little work that has bolstered the conceptual integrity of the concept. The concept lacks an agreed definition, and as a consequence, also lacks clear-cut evidence. Predictive models have therefore proved elusive, despite high-profile 'scoping studies' such as that conducted by the European Commission funded EACH-FOR project. Research conducted in areas of 'environmental degradation' which attempted to demonstrate a statistically significant correlation between migration and environmental degradation (including climate change) have so far lacked falsifiability, and have been marked by an absence of counterfactual evidence that has made it impossible to draw any generalizable conclusions from the findings.

What creates an 'Environmental Refugee'?

El-Hinnawi identified three broad categories of environmental migrants: persons who are displaced temporarily, but can return to their home when the damage to the environment is repaired; persons who are permanently displaced and have resettled elsewhere; and persons who migrate from their original home in search of a better quality of life when their original habitat has been degraded to such an extent that it does not meet their basic needs. The international community has been urged to officially recognize environmental refugees and to better understand the causes of environmental migration. It would seem a truism to note that the grave consequences of environmental hazards affect the economically and socially backward segments in society. In particular, it is sometimes difficult to differentiate between refugees driven by environmental factors and those impelled by economic circumstances at home feel drawn by opportunity for a better livelihood elsewhere. They are not so much pushed by environmental deprivation as pulled by economic promise. This ostensibly applies to many Hispanics heading for the United States.

It is difficult to distinguish among the different causes of displacement, because, as stated earlier, displacement occurs due to a combination of several factors. A general consensus among scholars on five broad causes of displacement-natural disasters, long-term environmental degradation, development, industrial accidents and remnants of war.

- 1) Natural Disasters:

The term 'natural disasters' refers to events such as volcanic eruptions, droughts, earthquakes and all other types of disasters generated by an unstable natural environment. Natural disasters have been a major cause of migration throughout history. It is estimated that between 1973 and 1997, about 3.6 billion people were affected by natural disasters. The 1990s were declared to be the International Decade for Natural Disaster reduction by the United Nations, with an aim of preventing the contribution of man-made activities towards causing certain kinds of natural disasters. However, there has been a sudden surge in the number of natural disasters, as depicted by the Geoscience Division of the Munich Reinsurance Group. This is partly due to the global temperature anomalies such as the El Niño and La Niña effects. The focal point is that natural disasters disproportionately affect Africa, Asia and South America. Research shows the 96% of all deaths from natural disasters occur in developing countries. Most countries in the aforementioned regions are amongst the poorest in the world. Combating natural disasters clearly, thus, requires a better policy alternative. Because natural disasters constitute only one of the many causes of environmental migration, the development of appropriate policy priorities depends on the quantification and the classification of the broader problem of environmental displacement.

2) Industrial Accidents:

There are a plethora of examples of industrial accidents causing large numbers of persons to be displaced. The infamous Bhopal Gas Tragedy witnessed a chemical accident that killed over 1000 people and displaced over 200,000 people, many of whom are still reeling under the after effects. A nuclear accident at Three Mile Island in the United States of America displaced 10,000 people. In Seveso, Italy, an explosion at a chemical factory released chemical compounds akin to defoliants in Vietnam, into the atmosphere. The Chernobyl incident witnessed the evacuation of thousands of people by the Russian government. Till date, a thirty-mile radius around Chernobyl remains uninhabited. Radiation contamination, possessing a half-life of about 25,000 years, assures contamination forever. Most cases ensuing from the displacement of individuals out of industrial accidents depicts instances of seeking refuge within the borders of the country itself.

3) Armed Conflicts:

War stands at the centre of environmental destruction. This occurs because environmental destruction is itself used as a weapon of war, and most conflicts originate from disputed claims for natural resources and land. An example explaining the former is the war in Vietnam, where the US resorted to the deliberate military tactic of destroying the environment. The countryside was emptied and people were forced to migrate to the urban areas. A massive campaign of deforestation resulting in the use of herbicides and the bombardment of agricultural zones soon followed suit. Another example of the same is the case of El Salvador, in the early 1980s, where the destruction of the environment was resorted to in order to eradicate guerrilla bases in the forests. The Gulf war depicted a case of ecocide, too, where oil fires and spillages by Iraq in Kuwait destroyed the environment. In what was deemed a historical move, the United Nations security Council, in the contest of the Gulf War, had passed Resolution 687 on April 3rd 1991, reaffirming that Iraq was liable under international law for any direct loss or damage, including environmental damage. More recently, the Rome Statute of the International Criminal Court, entered into force on 1st July, 2002, listed the launching of long-term and severe damage to the natural environment as a war crime.

An example of the fact that the conflict itself originates with the environment and its allied resources as a focal point, would be the case of Gaza and Israel. According to the World bank, 90% of the water in the region is used for Israel's profit, while the Palestinians use only 10%. The seizing of resources results in economic marginalization caused by forcing people to move from fertile to less rich lands. The result of such conflicts is best evidenced by the example of Senegal. In 1989, close to 70,000 Mauritians were expelled from the valley of the River Senegal as a direct result of the seizure of natural resources.

Definition of a 'Refugee' under current International Law

The 1951 Geneva Convention relating to the Status of Refugees was the first international instrument to codify a "general definition of who was to be considered a refugee". Those states who signed the agreement effectively accepted that a refugee was to be defined as "any person who owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of

that country; or who, 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". The convention was then supplemented with the 1967 Protocol relating to the status of Refugees, which incorporated all elements of the Convention's definition of refugee" except the requirement that the events giving rise to displacement have occurred before January 1, 1951. From this definition four principle elements may be extracted.

Firstly, the person must be outside their country of origin and secondly, they must be unwilling or unable to avail themselves of the protection of their country or return there. Thirdly such inability or unwillingness must be attributable to a well founded fear of being persecuted; and the persecution feared must be based on reasons of race, religion nationality, membership of a particular social group, or political opinion. Prima facie the current legal definition of 'refugee' excludes those fleeing environmentally hazardous conditions caused by natural or man made environmental disasters. This may be attributed to the emphasis on persecution which effectively eliminates an possibility of such a category being accepted. Can 'Environmental Refugees' seek protection under the current refugee structure? While the refugee definition contained in Art 1A (2) does not seem to encompass 'environmental refugees', David Keane has suggested that it may be possible to extend the 1951 definition along human rights lines. In support of this argument is Jessica B, Cooper's comments which imply that the Refugee Convention recognizes that refugee status results from the denial of human rights. As the five freedoms contained in the definition are all rights set forth in the Universal Declaration of Human Rights, the Refugee Convention may also recognize the right to seek safety, as contained in Article 14(1) of the Universal Declaration. 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" Keane's solution to the problem of environmentally displaced persons, therefore, would be to extend the 1951 definition contained in the Refugee Convention in line with those developments in international human rights law. However, such an extension would meet severe opposition from states for a number of reasons. Firstly, as Masters points out, expanding the definition would lead to a devaluation of the current protection for refugees. This is because migration due to environmental factors, is rarely if ever, a result of government oppression.

Secondly, for reasons already outlined, the vast majority of environmentally displaced persons are internally displaced because they are not fleeing state persecution, eliminating them from protection under Art 1 of the Refugee Convention.

Thirdly, only a limited expansion of the definition would be possible given the enormous number of environmentally displaced persons.

Hong takes this point further suggesting any reinterpretation or revising of the refugee definition to include all environmentally displaced persons who lack the protection of their states would “open the door to a flood of refugees far beyond what the international community is able to manage.” Such an interpretation, therefore, would have to be limited by specific requirements outlined in the definitions, These may include a differentiation between the different types of environmental event, such as manmade or natural, and the existence of specific circumstances rendering the applicants unable to avail themselves of their government’s protection within a designated period of time.

Another point of opposition comes from Falstrom in response to Jessica Cooper’s comments (which were used to support Keane’s arguments for an extension of the current Refugee convention along humanitarian lines). Cooper argued that “expanding the established refugee definition to encompass environmental refugees may require no more than an easy extension of human rights policy. Since the 1951 refugee definition is heavily imbued with human rights notions, and environmental refugees are no less entitled to their basic rights and needs than their traditional counterparts, using human rights concepts to expand the refugee definition has natural appeal.” Although this solution may have natural appeal, Falstrom highlights that, the protections offered to refugees under the 1951 refugee convention are very specific, and current international human rights and environmental documents do not offer any similar protections to environmentally displaced persons. 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 international law. Furthermore, as the solution to the problem involves looking at causes as well as the effects, revising the definition to specifically include a phrase protecting environmentally displaced persons is not the answer either. The solution may

require looking further than solely within the confines of the current refugee mechanisms to ensure all of the key issues surrounding 'environmental refugees' are remedied. Recent Climate Refugees Across Africa desertification and a consequent decline in agricultural output is displacing increasingly large amounts of people. An estimated 10 million people within Africa have been forced to migrate over the last two decades due to decades due to desertification or environmental degradation. In 1995, half of Bhola Island in Bangladesh became permanently flooded, leaving 500,000 people homeless. The Bhola Islanders have been described as some of the world's first climate refugees. In 2007, a Bangladeshi scientist stated: "We're already seeing hundreds of thousands of climate refugees moving into slums in Dhaka". These refugees were fleeing flooded coastal areas.

The inhabitants of the Carteret Islands in Papua New Guinea are also among the first climate refugees due to sea level rise attributed to global warming and climate change. Other inhabitants of low lying islands and Island states are also at risk. Tuvalu, Kiribati and the Maldives are especially susceptible to changes in sea level and storm surges.

In Alaska, the village of Shishmaref, located on the 100 km long barrier island of Sarichef, also faces evacuation as rising temperatures cause the melting of sea ice and the thawing of the permafrost.

Present Remedy

There is much scope for preventive policies, with the aim of reducing the need to migrate by ensuring an acceptable livelihood in established homelands.

First of all, an expanded approach towards refugees generally in order to include environmental refugees in particular, is necessary. If official standing were to be accorded to these refugees, this might help to engender a recognized constituency.

While desertification entrains costs of \$42 billion a year just through the loss of agricultural produce, the United Nations' Anti-Desertification Action Plan would cost no more than \$22 billion a year. Yet the amount subscribed so far falls far short of the target, ostensibly on the grounds that arid-land dwellers have no constituency and hence lack political leverage.

Secondly, a widened and deepened understanding of environmental refugees by establishing the root causes of the problem is needed. Not only environmental causes but associated problems such as security concerns, plus the interplay of the two sets of forces, are to be understood. There are many conceptual grey areas as concern proximate and ultimate causes, the contributory roles of population pressures and poverty, the linkages to ethnic tensions and conventional conflict, and so lengthily forth. Consider too the root causes of famine. If a famine has been human-made, it can be human-unmade, whereas natural factors can only be managed and accommodated.

Probably most important of all is that there can be little progress except within an overall context of what has come to be known as Sustainable Development. This applies notably to reliable access to food, water, energy, health and other basic human needs – lack of which is behind many environmental refugees' need to migrate. In big picture terms, sustainable development represents a sound way to pre-empt the environmental refugee issue in its full scope over the long run. There would be a handsome payoff on investment to foster Sustainable Development in developing countries through greater policy emphasis on environmental safeguards. A prime way to tackle desertification, salinization, in fact several sorts of land degradation, is through planting trees for shelter belts, to retain soil moisture, and to resist soil erosion. Certain types of trees offer additional benefits-leguminous species add nitrogen to infertile soils, or they supply built-in insecticides, or they offer industrial timber. Probably the biggest benefit lies with reforestation in montane areas, in order to rehabilitate hydrological systems and watershed functions, and thus avoiding floods and drying-outs for river systems downstream. All in all, and in whatever part of the world, restoring tree cover almost always presents an exceptional win-win outcome.

Conclusion

While the international legal community has made huge advances in the field of human rights and refugee protection, the issue of 'environmental refugees' demonstrates that it is still faced with significant challenges. As a leader in the Asia Pacific, an area that is particularly affected by this problem, Australia is in a position to make a large contribution to the solution of this issue. While the current refugee structure may not cope with such a burden it is within the international community's power to establish a new Convention that would extend basic human rights

protections to people who have been displaced by environmental events. History has demonstrated that the creation of a binding and effective international convention is no small feat. As with most international issues, creating a treaty for the protection of environmental refugees encompasses a wide range of issues that go well beyond the protection of people and the elimination of the causes of their displacement. However, the growing number of 'environmental refugees' has made this an issue which, in coming years, will be hard to ignore. By adopting a new Convention, the international community will protect human rights and significantly reduce the environmental events which lead to migration and displacement.

Furthermore, such a convention would demonstrate that the international community is willing to advance refugee protections that have remained stagnant for over half century. The epithet of 'environmental refugees' is as a cause for the creation of refugees are plenty. It is not practical to advocate an extension of the definition of the term refugee to include those who are environmentally displaced. The significance of the term lies in its application to environmentalist literature as opposed to asylum literature-highlighting the environment as a sole cause or consequence of large migration movements will increase interest in its protection. While there can be a link between the environment and migration, there is a lack of evidence that the environment can be a sole and substantive cause of migration, or that migration can have a direct and substantive impact on the environment. The focus must be on the environmental causes and consequences of migration. It signal the need to tackle the refugee issue preventatively, by seeking the cause of mass displacements. Preventable environmental damage is rarely the sole factor in large-scale migrations. There is a certain appeal in citing refugees as a reason for protecting the environment, and in citing the environment as a reason for protecting refugees. However it has little practical benefits for either. What is of more practical import is to understand the relationship between people and the environment as a part of the analysis of the causes and consequences of the movement, rather than as the sole cause or consequence.

References :

Books:

1. Dr. S. R. Myneni. (2008). Environmental Law. Hyderabad: Asia Law House.

2. Dr. U. Chandra. (2005, 6th Ed) Human rights. Allahabad: Allahabad Law Agency Publication.
3. Thakur, K (2005 Reprint). Environmental Protection Law and Policy In India. Deep and Deep Publication Pvt. Ltd.
4. R..K. Kothari. Research Methodology.
5. S. K. Verma and M. Afzal Wani.(2001, 2nd Ed).Legal Research and methodology.Indian Law Institute.

Research Paper:

- New Issues In Refugee Research; Paper No. 153; Etienne Piguet: Climate Change and Forced Migration.
- 2. New issues In Refugee Research; Paper No. 33; Richard Black:Environmental refugees: Myth or Reality.
- Essam El-Hinnawi, UNEP, Environmental Refugees 4 (1985).
- Jodi Jacobson, Environmental Refugees: A Yardstick of Habitability 6 (World Watch Inst., World Watch Paper No.86, 1988).
- Inter governmental Panel on Climate Change: Synthesis Report: <http://www.ipcc.ch/ipccreports/index.htm>
- Derek R. Bell, “Environmental Refugees: What Rights? Which Duties?”, Res Publica 10 (2004) : 135.
- International Federation of the Red Cross and Red Crescent Societies, World Disasters Report 20 (1999)
- Munich Reinsurance Group, Topic 2000: Natural Catastrophes- The Current Position 62 (1999).

- Suzette Brooks Masters, Environmentally Induced Migration: Beyond a Culture of Reaction, 14 Geo Immigr. L J 855 (2000)
- Robert E Ebel, Chernobyl and its Aftermath ix (1994)
- Richard H. Wagner, Indochina: The War against an Environment, Environment and Man, 360-74 (1971)
- James K. Glassman, Counter-Insurgency, Ecocide and the Production of Refugees, Refuge, June 1992, 28.
- Adam Roberts, Destruction of the Environment During the 1991 Gulf War, Int'l Rev. of the Red Cross, 1992 at 538
- Res 687, UNSCOR, 46th Session, 2981st meeting, at 16 UN Doc S/RES/687 (1991)
- Rome Statute of the International Criminal Court, art. 8(2)(b)(iv), UN Doc. A/CONF.183/9 (1998);
- Mark A. Drumbl, Waging War against the World: The need to Move from War Crimes to Environmental Crimes, 22 Fordham Int'l L J. 122, 126 (1998).
- Joseph Yacoub, Minorities in the World, Facts and Analyses, 94 (1998)
- Thomas F. Homer-Dixon, Environmental Scarcities and Violent Conflict: Evidence from Cases, Int'l Security, Summer 1994, at 5.
- Guy-Goodwin-Gil, The Refugee in International law 19-20 (2nd ed.1996)

- Astri Suhrke & A. Vestin, The Environmental Refugee: A New Approach, ECODECISION 73-74 (1991)
- Symposium, Environmentally-Induced Population Displacements and Environmental Impacts Resulting from Mass Migrations, Int'l Organization for Migration and Refugee Policy Center (1996)
- UNGA Res 217A, UNGAOR, 3rd Session, Articles 2, 18, 19, UN Doc. A/810 (1948)
- International Convention on Civil and Political Rights, 1966, 999 UNTS 171
- International Convention on Economic, Social and Cultural Rights, 993 UNTS 3
- OAU- Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969;; Cartagena Declaration on Refugees, Inter Am.CHR, OAS/Ser.L/V/II.66, doc.10, rev 190-193, 1984
- JoAnn McGregor, Refugees and the Environment, in Geography and Refugees: Patterns and Processes of Change 159 (Richard Black & Vaughan Robinson eds., 1993)
- UNHCR Basic Facts, available at <http://www.unhcr.org>
- J.Sorenson, An Overview: Refugees and Development, in African Refugees: Development Aid and Repatriation 175,181 (H.Adelman and J.Sorenson eds. 1994)
- Elizabeth G.Ferris, Beyond Borders: refugees, Migrants and Human Rights in the Post Cold War Era (1993)

- UNHCR, Some Environmental concerns in Refugee Camps and Settlements, Rapprt 10: 1-4 at 1 (1996)

Journal:

- Indian Law Journal, vol-4, Issue-II, April-June, 2011
- Edgar S. Cahn & John Camper Cahn, Power to the People or to the Profession?- The Interest of the Public in Public Interest Law, 79 Yale Law Journal 1005 (1970).
- Norman Myers, Climate Institute of Washington D.C., Environmental Refugees 154-60 (1995).