

Climate Change, Disasters and Migration: Current Challenges to International Law

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We must make no mistake. The facts are clear: climate change is real; it is accelerating in a dangerous manner; and it not only exacerbates threats to international peace and security, it is a threat to international peace and security.

Extreme weather events continue to grow more frequent and intense in rich and poor countries alike, not only devastating lives, but also infrastructure, institutions, and budgets – an unholy brew which can create dangerous security vacuums.

Ban Ki Moon, Security Council 6587th Meeting,
New York, 20 July 2011

Abstract

The increasingly frequent occurrence of extreme environmental events and the gradual degradation of essential environmental resources, which seriously compromise the life and safety of individuals, communities and entire populations/nations around the world, can derail the survival of people in their places of origin – leading to new legal situations that need to be regulated by international law. Based on this scenario, two central points guide this study: the first is the emergence of a new category of persons in the international order; the second is the lack of specific legal protection by international instruments. Without intending to isolate the environmental triggers of other related causes, this article proposes a multicausal look into the causes generating such forced displacement. This is done through a brief analysis of the initiatives aimed at the recognition and protection of those affected, especially in situations when environmental and human vulnerability are greater than resilience and responsiveness. In this sense, an integrated legal approach is necessary to deal with migration caused by global environmental changes and the adoption of new commitments founded on global responsibility and international solidarity should be considered.

A. Introductory Notes: Contextualising a New Emergent Issue

The phenomenon of environmental migration is an age-old and unquestionable reality. Extreme events and major environmental disasters have existed throughout history, forcing individuals and groups to move. However, the increasingly frequent changes in the global environment, caused or accelerated by human action, are already at levels considered intolerable and irreversible. These changes have challenged those involved in the various areas of knowledge to develop effective mechanisms to mitigate negative environmental impacts, restore the deteriorated environment as far as possible, and prevent new threats of degradation.

Migration induced by environmental causes shows a clearly increasing trend – with the escalation seeming to occur parallel with the worsening global environmental crisis. Human beings are at the centre of this process and are doubly exposed because of the progressive destruction of ecosystems and biodiversity that they depend on and the disappearance of the territories where they live. Thus, the processes of degradation of the global environment cannot be considered only as an environmental concern, but should be analysed together with the need to protect the rights of affected people and ensuring dignity and respect for the human being who is in a position of special vulnerability.

In this sense, it seems clear that among the numerous dimensions to be considered in a context of extreme changes in the global environment is the human dimension. Environmental degradation, whether caused by natural phenomena or exacerbated by human action, is a known factor contributing to increased forced migration within the territory of the state or beyond its borders. The reverse is also confirmed: the growing number of people affected by extreme events (natural or man-made) can also be considered an important indicator of the extent and degree of global environmental deterioration.¹ In situations of disaster, the people affected need immediate assistance in the form of food, medicine and shelter, as well as the reconstruction of the environment and assurance of return, or resettlement elsewhere. If the disaster can be managed locally, the aid is usually provided by the government and local organisations. If not, international assistance will be required.²

1 Jacobson (1988:7).

2 El-Hinnawi (1985:20).

It is estimated that by 2050 there will be 200 million people who have had to leave their homes owing to degradation processes and environmental disasters, especially as a result of climate change. In 2010, there were already 50 million people in this condition – exceeding the number in the conventional category of refugees.³ The World Disasters Report released in 2012 by the Red Cross reveals that there were approximately 29.9 million persons internally displaced (IDPs) by environmental factors in the year 2011, including those affected by development projects.⁴ Despite the alarming data, this category of people remains without proper recognition or specific protection under international law. The issue of migration driven by environmental factors, which emerges from the debate about climate change, thus reveals novel legal situations not covered by international law, and demanding new institutional strategies, new forms of cooperation and long-term commitments, since the mechanisms and existing international legal instruments were not designed to address this new demand from a global perspective.

This article intends to emphasise the existence of an important gap in international law that must be filled urgently and, therefore, provides tools to assist *stakeholders* and *decision-makers* in the challenge to create a specific system of international legal protection to this new category of people. The point of departure is an integrated approach, suitable to cope with the complexity of the issue: addressing vulnerabilities, establishing and implementing responsibilities.

B. People Affected by Global Environmental Pressures: The Dilemma of a Legal Definition

It is not intended here to detail all possible causes and impacts of environmental change, but only to draw attention not only to their complexity and the need to analyse important aspects that are not currently at the centre of political negotiations, but also their impact on the law and international re-

3 A study of the Institute for Environment and Human Security of the United Nations University (UNU-EHS) mentioned by the Red Cross indicates a greater number of people displaced by environmental disasters due to the conflict, see UNU-EHS (2005).

4 The recently launched World Disasters Report of Red Cross, IFRC (2012), shows an estimated 57.7 million internally displaced persons by environmental factors in 2010, surpassing the figures published in 2005.

lations. The causes generating flows of environmental refugees are fairly broad and have their origin in climate change, natural disasters caused by non-climate factors (with or without human intervention), environmental degradation processes (caused or accelerated by human action) or by the combined action of these factors.

Besides sudden events such as tsunamis, earthquakes, hurricanes, floods, whose magnitude and effects are easy to see, it has been observed that over-exploitation, desertification, pollution and scarcity of environmental resources, whether continuous or progressive (less visible over the short term), may also seriously jeopardize human life and biodiversity in many regions, making them unproductive and uninhabitable in the long term – thus unfit for survival. Likewise, the implementation or inadequate management of projects that have the potential to degrade can also generate negative impacts with irreversible effects to the environment and quality of human life.

On the other hand, it is relevant to highlight that environmental changes will impact differently on regions and locations because of their different geophysical aspects and the varying responsiveness of local structures (social, political and economic) to environmental pressures. While recognising the multiple reasons for human displacement and the difficulty in isolating its causes, environmental migration can be characterised by events (*triggers*) that trigger the migration process. These events may be natural, anthropogenic or mixed, and of such magnitude that they could seriously jeopardize the life and safety of individuals and groups of any particular locality or region. It is also important to note that environmental factors interact with other factors that go beyond the environmental issue. Consider, for example, that the crises that afflict the world economy today are environmental in their origin and involve climate change, pollution, water shortages, loss of biodiversity, decline in arable land, depletion of ocean fishing areas, depletion of oil, pockets of poverty, the threat of pandemics and inequality in the appropriation of resources. It is a mistake to address these issues separately: in order to address them properly, there needs to be an adequate understanding that the issues are connected through a relationship of cause and effect.⁵

Moreover, there are cases where environmental degradation is a consequence rather than a cause of migration. In cases of violent conflicts and wars, for example, the destruction of the environment is hardly a ‘natural’ consequence and is often adopted as a strategy by the parties in conflict. In

5 Sachs (2008:XII).

this case, therefore, the trigger is the conflict itself, without which the population would not have been compelled to migrate, and not environmental degradation *per se*. Therefore, the trigger to the displacement or refugee process in this case is not the environment, and thus cannot be called an environmental refugee situation. It is important to note also that the conflict may be a consequence of both the struggle for control of the exploitation of certain natural resources and the environmental degradation processes that led to such a dispute. In this case, the environment will also serve as a trigger for the environmental conflict.

It is true that the enormous complexity and new dimensions of global migration call into question the established categories, migration policies and existing international norms on the subject. In the context of current changes in the global environment, adverse environmental effects of climate change are becoming more visible with the increasing frequency of disasters. Less explored aspects of this process of transformation of the natural and human environment should be examined, such as the protection of human beings in cases of extreme environmental events.

However, the complexity of the interaction between causes that generate migration and questions about the real existence of a direct causal link between environmental change and migration should not represent obstacles to finding solutions. In this context, one enters the debate about the need for recognition by international law of individuals and groups that move because they are driven by environmental degradation, and are understood as a new category of persons worthy of protection and assistance: the so-called environmental refugees. It is important to note that the global environmental changes can affect individuals and groups within states where they occur, as well as neighbouring states or non-affected states (transboundary impacts). In addition to the environmental impacts, it is important to consider the impacts that arise from displacement of people, especially in the case of external displacement, which can affect several states in the migration routes. Thus, there is not always a relationship of cause and effect between the places where the environmental changes occur and locations of origin and destination of forced migration flows induced by environmental causes. The *global* effects of climate change, for example, confirm this thesis.

In this sense, the relevance of the definition of environmental refugees proposed by Essam El-Hinnawi in 1985 lies precisely in analysing the complexity of the phenomenon:⁶

In a broad sense, all displaced people can be described as environmental refugees, having been forced to leave their original habitat (or having left voluntarily) to protect themselves from harm and/or to seek a better quality of life. However, for the purpose of this book, environmental refugees are defined as those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life. By “environmental disruption” in this definition is meant any physical, chemical and/or biological changes in the ecosystem (or the resource base) that render it, temporarily or permanently, unsuitable to support human life. According with this definition, people displaced for political reasons or by civil strife and migrants seeking better jobs purely on economics ground are not considered environmental refugees. There are three broad categories of environmental refugees. First, there are those who have been temporarily displaced because of an environmental stress.... The second category of environmental refugees comprises those who have to be permanently displaced and resettled in a new area.... The third category of environmental refugees consists of individuals or groups of people who migrate from their original habitat, temporarily or permanently, to a new one within own national boundaries, or abroad, in search of a better quality of life.

This definition establishes a relationship between the growing number of natural disasters (droughts, floods, cyclones and earthquakes) with the number of people affected because of these and other disturbances or environmental stresses (poverty, hunger, the negative impacts of development, industrial accidents) in developing and underdeveloped countries.

Related to characterising the phenomenon of forced displacement induced by environmental factors and defining its legal name, it seems that the alternatives presented to the use of the term environmental refugees – a name which faces strong resistance when the discussion arises in the framework of International Refugee Law – have also failed to find acceptance. To date, none of these descriptions – *environmentally displaced persons, climate refugees, environmentally forced migrants, eco migrants, eco evacuated, eco victims* – were able to demonstrate the complexity and breadth of this phenomenon.

Admittedly, the terminology and definition are important elements to assess the feasibility of adaptation and application of existing instruments and

6 El-Hinnawi (1985:4–5).

mechanisms in international law or for the construction of a special protection system. When bringing the debate on the nomenclature and the usefulness of the term environmental refugees to the field of law, the conclusion will depend on the approach that each author intends to adopt.⁷ If the conventional use of the term *refugee* is taken as basis, in fact, it will be more difficult to assimilate extended criteria for the granting of refugee status for environmental refugees by international refugee law and the mechanisms already established by the Convention Relating to the Status of Refugees (1951) and its Protocol (1967), especially with regard to the element of “well-founded fear of persecution” and its determinant reasons. However, this argument does not hold when one goes beyond this perspective. It is also noted that this discussion seems to have more sense in theory than in practice. Supposedly, the adoption of the term environmental refugee, either by extending the original concept, or as a new category, is not legally impossible, although it was initially conceived without an immediate concern with the possible legal implications or policies regarding the use of the expression.

At the regional level (Latin America), this debate was prompted in 1989, under the Cartagena Declaration on Refugees (1984), specifically on the topic of implementation of the expanded concept of *refugee* adopted in this Declaration for people affected by environmental disasters.⁸ The conclusion was to the effect that natural disasters, unlike climate change, would not be man-made, and this was the reason why one could not consider such events as “other circumstances which have seriously disturbed public order”. Until now, the forced displacement induced by environmental pressures was not formally recognised by this declaration.

On one hand, such an approach would create an impermissible discriminatory treatment of individuals and groups in a similar situation as a single category (climate or natural disaster refugees, for example). If such an approach had been adopted at the time, the victims of natural disasters, who also need protection either in domestic law or under international law, would

7 Wijnberg (2007:3) identified multiple views or perceptions about the construction of the term environmental refugees and concluded that only the legal view, being more traditional, does not accept another construction of the term refugee than the conventional.

8 The debate is contained in the document on *Principles and Criteria for the Protection and Assistance of Central Americans Refugees, Returnees and Displaced Persons in Latin America* presented by a committee of legal experts at the International Conference on Central American Refugees held in Guatemala on 29–31 May 1989. See Trindade (1993:133–134).

have remained unprotected. Leaving aside the approach of traditional instruments, and taking into account that categorisations and institutions must follow the dynamics of global transformations and not remain bound to traditional approaches, the use of the term environmental refugee (external mobility) and environmentally displaced (internal mobility) would be acceptable as a definition for new legal categories. In essence, they have the same origin and are still waiting for an effective system of protection at the global level. The need for caution with the legal definition has to be registered, however, in order to avoid the possible consequence that a very comprehensive name may generate an undesired trivialisation of the phenomenon, further hindering the construction of a protection system that effectively fulfils the needs of affected individuals and communities, and thus contributing negatively to maintaining the existing legal gap.

Underlying this debate is the political-normative question of how far the international community and its institutions are willing to commit themselves permanently to the protection of one more category of people and expand their 'mandates'. In this sense, the acceptance or rejection of the terminology influences the decisions made by members of the international community, especially when it comes to multilateral negotiations that require long-term actions to address emerging issues, such as migration flows driven by impacts and environmental pressures that often transcend national borders.

To define the rights of internally displaced persons within their states or of those that had to move abroad owing to drastic changes in the environment, it is therefore necessary to consider the causes and possible scale effects of the displacements in order to identify the needs of affected populations. Thus it would be possible properly to assign responsibilities and formulate strategies for action at the international level, which should also be internalised by states.

Given this, a shift in focus on the theme is essential, detaching it from a classic approach on the topic of refugees and the anthropogenic factors as the only ones capable of generating migration flows in order to overcome the impasse that dealt with in the previous section, especially the terminological barrier. It might also be useful to create a typology or categorisation for the environmental refugees by cause: climate refugees/IDPs, disaster refugees/IDPs, development refugees/IDPs, conservation refugees/IDPs, etc. It is necessary to acknowledge that the different definitions and classifications proposed, although not infallible, are important tools to guide decision-makers and, as such, require flexibility to adapt to the dynamic

changes of the global environment which are not restricted to climate change. Thus, the following aspects are essential for an adequate characterisation of environmental refugees: nomenclature; definition; detailed description of the natural and anthropogenic phenomena determinant for the generation of migration and possible interactions with economic, political and social factors; and mapping of environmental and human vulnerability (identification of priority risk areas or already affected) and identifying the needs of affected individuals and groups. It can be concluded that human mobility with environmental motivation, in most cases, is forced, irregular, collective and, depending on the severity and extent of environmental pressures, may be temporary or permanent, internal or external. Environmental migration, in most cases, is a species of reactive migration, manifesting itself in response to environmental perturbations that threaten human life and safety (sudden onset), but can also be of a proactive nature when the processes of environmental deterioration are gradual (slow onset). The nomenclature or terminology to be used, according to the identified tendencies, depends on the option for the protection regime to be adopted. A new scheme could be developed jointly establishing a nomenclature and definition, without standing as an obstacle to progress in the search for solutions. However, the utmost care must be taken not to adopt an overly broad or restrictive term and definition, which may affect access to a special protection system.

The fact is that the recognition of a new category, regardless of the name that is adopted, has motivated numerous controversies inside and outside the international refugee regime. However, we must emphasise, beyond any controversy, the greater urgency to overcome this issue.

Official recognition of environmental refugees or environmentally displaced persons in international instruments certainly would provide a deeper understanding of the main causes of environmental deterioration and better tools to deal with them. It would therefore be a major step towards finding a lasting solution to the problem, through preventive policies and actions to combat the structural causes of environmental migration at the global, regional and local levels. The legal and environmental dimensions of the issue should be complementary and not mutually exclusive.

C. The Rule of Law: Are Existing Regimes in International Law Sufficient to Provide Protection?

The recent experience of major environmental disasters worldwide has raised numerous concerns about the situation of human rights protection at the domestic and international level. The main concern of this article are the conditions of individuals, groups and communities in the event of environmental disasters and the need to enforce the protection of their rights in those exceptional situations; where the instability generated as a result of these phenomena causes fundamental rights of affected victims (potential and actual) to be entirely or seriously violated by the environmental deterioration. What is observed is that the treatment of environmental disasters internationally, as a rule, has been dealt with via an operational approach predominantly through the coordination of efforts to obtain financial resources to provide assistance to victims.

It is here that a deeper reflection on the theme of integrating human rights protection with prevention and response strategies to different types of disasters or environmental disturbances is necessary. Once an extensive list of rights not only during but after the occurrence of a disaster has been identified, one should also strengthen the preventive dimension of protection.⁹ The absence of regulation and international standards of protection can lead to situations of injustice and discrimination towards people who are in the same circumstances in different states. That is, the protection conferred by the instruments of human rights needs to be amended or new instruments must be created specifically to address this issue and to do so in a uniform manner, so as not to further aggravate the situation of insecurity and human rights violations of the victims affected, especially when the displacement is forced beyond state borders.

Therefore it is possible to contend that the overall protection provided by general instruments – focusing on the fundamental principle of the dignity of the human being – should be the foundation and final rationale for the protection of environmental refugees. In general, it is considered that environmental refugees are already covered by existing universal instruments, but without specific instrumentation, the normative gap subsists. There is no doubt that we are facing flagrant violation of human rights – which must be fought.

⁹ Prieur (2010).

Thus, a comprehensive legal treatment, which is fair and equitable for that category, should be established with due urgency to provide care, without discrimination, for the special and pressing needs of this category, and to establish a global commitment based on shared responsibility between states and solidarity between states and non-state actors with respect to all people forced to leave their roots in order to save their lives and provide protection outside their places of residence (inside or outside their own country) when such persons are severely compromised by degradation of the environment.

An integrated and sensitive approach to this new global challenge proves to be essential so that we can properly deal with the specificities and multiple facets of the problem. The difficulty regarding the categorisation of forced migration, demonstrated in the previous section, only reinforces the need for a sufficiently broad legal definition to ensure minimum standards of protection at international level. In the case of environmental refugees, an adequate protection depends on the formal recognition of the legal status of individuals and groups severely affected by environmental events whose survival and safety require urgent international assistance, even when they remain within the borders of their own state. Accordingly, although the Guiding Principles on Internal Displacement constitutes an important tool for the development of protective policies at the national level and for the contribution to the development and expansion of a broader scheme itself for the environmental refugees theme, they are not sufficient in themselves for guaranteeing effective protection, since they lack breadth (they apply only in situations of internal displacement) and the necessary binding force. From the point of view of external displacement, the International Refugee Law seems also inadequate to ensure a comprehensive and lasting solution to the issues of environmental refugees, because the system was designed with a more restrictive view and has remained so until the present time.

It is clear, therefore, that environmental refugees, resembling in part classical refugees and in part IDPs, remain doubly exposed, either because they are not legally recognised as refugees or as any other conventional category of people leaving the country, or because there is no specific and binding international instrument that guarantees effective international assistance if the state of origin does not have the capacity to protect its nationals.

This justifies the use of the term environmental refugees to describe a new category, which requires a special legal regime, broader than the conventional regime of refugee protection and the current treatment given to IDPs, which are not binding. A new regime has to be broader than that granted to the conventional refugee, in order to reach individuals and groups in need

of international protection because of forced displacement by serious environmental pressures, even when it occurs internally. That said, environmental refugees may be considered, including from a legal point of view, as special kinds of migrants, with classical refugees' features (forced uprooting and need of international protection) as well as distinctive features of their own. A new legal category in the global international order is, therefore, a challenge to be faced. One must remember, however, that the international regime of refugee protection is the product of its time. The social dynamics inaugurated with the process of globalisation indicates that the problem of environmental refugees tends to be increasingly comprehensive and will require extensive planning. The figures presented in the previous section confirm this trend.

Furthermore, political aspects complicate a solution to the issue, especially regarding the practical implications of a possible change in the system of international protection to refugees. Thus, the difficulties of expanding the category of refugees to include those affected by environmental factors remain, as do the blurring of responsibilities for states, both domestically and internationally. However, it is possible to outline several initiatives targeted at obtaining the legal recognition of environmental refugees from different perspectives. The first was proposed by the government of Maldives in 2006. It sought the adoption of a new protocol to the Convention Relating to the Status of Refugees of 1951, with the aim of reducing and preventing losses from disasters caused by natural, anthropogenic or mixed factors, involving human beings, environmental resources, and biodiversity in its multiple dimensions: environmental, economic, social and cultural.¹⁰ It should be noted that the proposed new protocol was not an isolated action of the government of the Maldives, but involved their ministries, UN delegations, participation of interested states,¹¹ meetings with representatives of inter-

10 Republic of Maldives, Ministry of Environment, Energy and Water (2006). A working draft of this proposal was written by Michael See.

11 Other states (Angola, Argentina, Azerbaijan, Comoros, Ethiopia, Guinea-Bissau, Liberia, Tajikistan, Rwanda, Sri Lanka and Tuvalu) have shown interest in collaborating in the development of the proposal with concrete ideas or simply declaring support for the initiative. Malaysia brought the experience of cooperation assistance for environmental refugees of the 2004 Tsunami. Subsequently joining the initiative were: Bangladesh; Canada; Egypt; Ecuador; Monaco; Asian Development Bank; Environment, Conflict and Cooperation, Germany; European Commission, Environment Directorate General; Foundation for International Environmental Law and Development (FIELD), UK; Friends of the Earth, Australia; Kyoto USA; Tides

national organisations and programmes (IFRC – International Federation of Red Cross and Red Crescent Societies, WHO – World Health Organization, UNICEF – United Nations Children's Fund, UNDP – United Nations Development Programme, the Japanese agencies, JICA – Japan International Cooperation Agency and JOCV – Japan Overseas Cooperation Volunteers, besides the collaboration of NGOs, among which LISER – Living Space for Environmental Refugees), and researchers.¹²

The essence of the Protocol on Environmental Refugees was the review of the key elements of the 1951 convention, expanding the scope of its application from a typology of causes established by the new protocol: "both anthropogenic origins and force majeure so that remedial measures are not disproportionate, but applied in the measures as possible equal to the damage and post-damage scenarios irrespective of origin."

This proposed protocol introduces comprehensive environmental causes as motivation for granting refugee status, ensuring protection even in disaster situations where there is no human interference. The proposal also provides for protection in situations of internal displacement in order to ensure that international aid is always within range of individuals who need it. Despite the pioneering initiative and relevance of the changes suggested in the proposal, it must nevertheless be recognised that the problem of environmental refugees requires more than the recognition of the legal status (which is presently the central occupation of the international protection system), which is the first step towards the formal existence of the category. The current scenario of increasingly restrictive immigration policies hinders any renegotiation or revision of the refugee protection regime. As already demonstrated, climate change has brought the issue of environmental refugees to the international agenda, since global climatic conditions have contributed greatly to increasingly extensive and more frequent forced human mobility. Thus, the proposals under the United Nations Framework Convention on Climate Change (UNFCCC) also deserve mention. In general terms, the international regime on climate change comprises the UNFCCC and the Kyoto Protocol. The convention provides a framework for action and cooperation to the states in regard to climate change. The Kyoto Proto-

Center; KK Chow. Messaging and communications: European Investment Bank, Sweden, Professor Norman Myers.

12 A meeting with the United Nations High Commissioner for Refugees (UNHCR) was planned as part of the agenda of the discussions about the protocol. However, no results have been reported in the document (draft protocol).

col, in turn, imposes quantifiable obligations on member states within their responsibilities and capabilities to reduce their emissions of greenhouse gases.

Until this moment, the main instruments (convention and protocol¹³) and the recent decisions of the Conference of Parties (COP)/Meeting of Parties (MOP) that comprise the current climate change regime do not directly address the issue of legal protection to people in case of forced displacement, while focusing on related issues such as mitigation (COP15), adaptation (COP16), disaster risk reduction (COP17) and loss and damage (COP18). Indeed, the implementation of the climate regime to protect environmental refugees is limited by the structure of the convention itself:

In our opinion, the UNFCCC – despite its focus on adaptation – has structural limitations to deal with the displacement due to climate change. Displacement is not their focus, their concerns are different. Its structure and institutions are not designed to meet the offset and the problems associated with it. Furthermore, as the climate change conference in Copenhagen reveals the UNFCCC cannot be easily changed to accommodate displaced persons to climate change; deal with the existing provisions is already problematic.

These arguments are succinctly put by two lawyers from Harvard University who observe that the UNFCCC has legal limitations to deal with the displacement of climate change. As an environmental law treaty, the UNFCCC, they say, is mainly concerned with the relations between states, but do not discuss the rights that states have to grant to individuals or communities, such as those established for human rights or the right of refugees. It is also preventive in nature and less focused on corrective actions that are necessary in the context of refugees. Finally, although the UNFCCC has an initiative to help states with adaptation to climate change, the program does not specifically address the situation of climate change refugees. As the refugee regime, the UNFCCC was not designed for, and so far have not adequately addressed the problem of climate change refugees.

In theory, therefore, the implementation of this scheme for the category of environmental refugees, understood in its broad dimensions (internal and external), could only be made possible if it were modified to include this issue, which can be done during the conferences and meetings of the convention parties taking place annually. However, nothing concrete has been done in this direction so far.

13 The UNFCCC was adopted by Brazil on 9 May 1992 and promulgated by Decree No. 2652 of 1 July 1998. The Kyoto Protocol was adopted on 11 December 1997 and promulgated by Decree No. 5445 of 12 May 2005.

About the specific issue of persons displaced by climate change, David Hodgkinson, Tess Burton, Heather Anderson and Lucy Young propose the adoption of a Convention for Persons Displaced by Climate Change,¹⁴ which aims to overcome existing gaps in current systems of protection of human rights, refugee and humanitarian law.

Therefore, such a convention would cover internal and external displacement, establish criteria for the designation of a mass status to climate-change-displaced persons, and obligations of protection and assistance shared between states of origin, host states and the international community, based on the principle of common but differentiated responsibilities.

One cannot fail to recognise the importance of the essence of this proposal, which clearly seeks to integrate elements and mechanisms of various international systems in order to address specifically the human dimension of climate change. However, the absence of a convention draft text hinders further analysis in this article. It is also necessary to recognise that there is no coherent multilateral governance framework that adequately protects climate-change-displaced people. There has been no coordinated response by governments to address human displacement as a result of climate change. Given the nature and magnitude of the problem, ad hoc measures based on existing domestic regimes are likely to lead to inconsistency, confusion and conflict.¹⁵ However, in the experience of the author, such a system would be born with already limited application potential, since it would reach individuals and groups affected by environmental changes caused only by climate factors. In this sense, the construction of an international system of protection only for the category of climate refugees does not seem justifiable from the point of view of human rights protection, since the scope would be restricted to the description of people and communities affected by environmental causes arising from climate change, and exclude all those affected by environmental disasters caused by non-climatic factors but requiring identical protection.

The Draft Convention on International Status of Environmentally-Displaced Persons, drafted in 2008,¹⁶ presents a more comprehensive, innovative and independent proposal, which also has contact points with existing international regimes. Through this convention draft document, states, international and regional organisations, NGOs and local stakeholders are ex-

14 Hodgkinson et al. (2009:155–174).

15 CCDP (undated).

16 CRIDEAU et al. (2010).

pressly urged to raise awareness about the plight of environmentally-displaced persons, in order to recognise and proclaim an international status for that category, act preemptively to combat causes of migration flows, respond to emergency situations and build long-term policies. This project sets out specifically to contemplate the many legal situations related to the condition of this category, in addition to providing the institutional and financial mechanisms in order to achieve such protection.

Regarding the subjective scope of the convention, the project also features innovations: rights to potential victims threatened with displacement in order that they should have access to information on environmental threats prior to occurrences and the participation of potential victims in prevention policymaking, in order to increase preparedness for disaster situations.

The creation of a specific agency, the World Agency for Environmental Displacement, in the proposal deserves mention. The participation of non-state actors is expressly foreseen in the composition of the decision-making body (the High Authority). Also foreseen is a specific fund, the Worldwide Fund for Environmentally Displaced Persons, which will include mandatory contributions by states and voluntary contributions by individuals and corporations.

Furthermore, a system of governance was designed based on cooperation between the institutions of the convention with international regional organisations, and the connection of the convention organs with local authorities (through national committees), as well as cooperation with the secretariats of international conventions on the environment and human rights. With this in view, therefore, the human uprooting caused by global environmental changes can be seen in dual perspective. First is the international responsibility: Everyone, regardless of being part of any specific treaties, is obliged to cooperate in the protection and maintenance of environmental balance. Second is the human rights perspective: Everyone is obliged to uphold and protect issues of nationality, family, work, residence, culture and all rights related to a dignified existence.¹⁷ This proposal recognises that protecting the environment is closely linked to the protection of human rights, and reinforces essential aspects of international environmental law, such as the incorporation of the human dimension on environmental issues, concern for

17 Leão (2010).

future generations, and multidisciplinarity – making this protection system unique.¹⁸

The temporal dimension of environmental protection, especially as regards the protection of future generations, has significant relevance to the topic under study, given the irreversible or irreparable damage to the environment can assume global proportions. Hence the importance of prevention, preparedness and response to the effects of such global changes that threaten not only the present generation (actual victims), but the very existence of future generations (potential victims).

Beyond the issue of human displacement lies the need to understand its causes and recognise the need to prevent and respond them. The international environmental law allows a viewing of all these aspects with proper sharpness.

Thus, there remains a clear need for a new global commitment founded on a broader basis, balancing the allocation of responsibilities to the states – based on the principle of common but differentiated responsibilities – and the responsibility of the entire international community – based on the principle of solidarity to give adequate protection without discrimination to environmental refugees. The recognition of this new category emerges unequivocally as a new normative and social demand and in the international sphere.

Another important initiative has been developed by the International Law Commission, based on International Humanitarian Law and its principles: the Draft Convention on the Protection of Persons in the Event of Disasters¹⁹ – proposing to regulate the relationships between affected and non-affected states, especially in terms of cooperation, assistance and its limits: the duty to cooperate, duty of the affected state to seek assistance, consent of the affected state to external assistance, and the duty or right of non-affected actors to offer assistance.

It is worth noting that existing regional initiatives, although extremely important, do not eliminate the need for adopting a comprehensive instrument that sets minimum general standards of protection for people displaced internally and externally, and, if necessary, provides access to international assistance. In this sense, the Kampala Convention, which entered into force in December 2012, deserves attention. The Kampala Convention is the first

18 Soares (2001:37).

19 Available at http://untreaty.un.org/ilc/guide/6_3.htm, last accessed 23 November 2012.

international treaty for the protection and assistance of internally displaced persons, being those displaced within their own countries on the African continent. This convention imposes on states the obligation to protect and assist people displaced by natural disasters and man-made actions, such as armed conflicts, mitigation and elimination of the causes that generate displacement and its consequences from a legal framework based on solidarity, cooperation and mutual support between the states parties.²⁰ This initiative will certainly serve as a model for other continents, but only applies in cases of internal displacement.

Thus, the adoption of a specific international instrument to recognise this emerging category of migrants in a global context is most adequate to ensure an integrated response in the sense of protection of human rights, to provide humanitarian relief and to promote environmental restoration, adaptation and prevention strategies to those forced to leave their places of origin and their livelihoods due to the deterioration of the environment and an incapacity to cope with the adverse effects of environmental change impacts.

These proposals represent an important effort to find a lasting solution to the problem, including preventive policies and actions to combat the structural causes of environmental migration at the global, regional and local levels. As seen, the legal (legal status) and environmental issues are complementary and not mutually exclusive. An integrated approach goes to the root of the problem, namely, the causes which generate the displacements.

D. Final Recommendations: The Need for an Integrated Approach

Even with all the advances made regarding the international protection of human rights and the environment, international law has not responded adequately to ensure sufficient and necessary, comprehensive and adequate protection to individuals and groups forced by the drastic environmental changes to leave their places of origin. This lack of legal recognition has generated unacceptable situations of flagrant violations of human rights – especially the right of all people, without distinction, to social and international order to enable the full realisation of these rights – which is a direct

20 African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) in Africa, Kampala Convention (2009), Article 2.

reflection of the situation of legal vacuum in which these people affected by global environmental changes are.

Whereas many of the extreme environmental events have causes or global effects, the responsibility of the international community concerning the occurrence of such events tends to be increasing, even as the incapacity to deal with problems and conflicts whose causes and effects are not limited to the internal borders of the affected states exposes a growing contingent of individuals and even entire nations to all kind of human rights violations inside and outside its territory. The magnitude and complexity of these violations cannot be underestimated. One must also consider the huge pressure on the environment caused by the rapid growth of the world population, with rates that in general are more significant in localities that are poorest and most vulnerable to degradation and depletion of environmental resources. This is a factor that directly influences the considerable increase in human mobility in those regions where migratory flows tend to be more and more intense. The need for protection of environmental refugees is inserted in this context, which is still in legal vacuum, and reinforces the need for an integrated approach by law. An integrated approach may produce a solution consistent with the multiple peculiarities of the phenomenon in order to prevent its causes and enable an urgent response to its consequences.

This integrated response cannot be limited to humanitarian assistance (material, psychological and legal), but should also include ecological assistance to affected countries, provided by the states, international organisations, civil society and local organisations, regardless of geographic proximity. The ecological assistance must include cooperative efforts in prevention and response – adaptation, resilience, mitigation, and capacity-building of communities and affected populations – to reduce human and environmental vulnerability to disasters and increase safety.

Connect the protection of human beings and the environment is necessary to overcome the fragmented treatment of this issue, limited and inadequate to address the complex dynamics of forced displacement by environmental causes. A broad legal definition of the terms *environmental refugee* or *environmentally displaced persons* could ensure minimum standards and global unified protection for individuals and groups severely affected by environmental events, whose survival and security require also international protection, whether inside or outside the limits of their country of origin or habitual residence. It is important therefore to strengthen the state's role in the institutionalisation of the measures, without which the formal recognition of this new category will not be possible. However, it is necessary to

recognise that the signing of agreements and treaties will not be enough to solve the problem if its causes remain unchanged.

International cooperation and the participation of *new actors* are also essential in this process, especially in relation to states which are more sensitive and vulnerable to global environmental changes – usually those with low capacity to respond to such changes, whether in the preventive aspect or in relation to responding and adapting to environmental events. The economic costs of prevention measures will always be a consideration and will depend on the comprehensiveness of the global effort in this direction, but it is also true that such costs are infinitely smaller than the cost of human, material and environmental losses and damages, as well as the cost of material and legal assistance to the victims and for the reconstruction of the environment. The lack of preparation of most states represents a much greater threat to global security, while the absence of international commitment to face these new challenges remains. The adoption of a specific system of protection aims not only at the formal recognition of a new category of persons, but at the global commitment to protecting people in this condition; thus promoting internalisation of such future commitments under domestic laws in the states and stimulating a coordinated action among the actors involved in the issues of refugees, migration, environment and human rights, including the preventive aspect.

Recognising the link between global environmental degradation, forced migration and security is also important for the development of instruments and policies to prevent conflicts, improve actions to promote international peace and security, and prevent worst scenarios in the near future. Thus, an international instrument to contemplate this emerging challenge must be developed independently, but be connected to these systems, incorporating principles, standards and mechanisms that can be adapted to meet the complexity of this new demand.

The responsibility for protection and assistance should then be shared among the affected states and the entire international community with the adoption of a global agreement – founded on coexistence, cooperation and solidarity – that points to a significant structural change in international law.

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