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ENVIRONMENTAL REFUGEES

ABSTRACT

Although not majorly perceived as a cause for augmenting the refugee problem worldwide, forced migration due to environmental disasters has nonetheless undergone an exponential expansion, thereby assuming considerable importance in the arena of international refugee law. In course of this paper, the author has sought to examine the suitability of said branch of law to deal with the consequences of environmental migration and accord sufficient protection to such migrants. The paper begins with a brief overview of various environmental concerns that can lead to migration and then goes on to check the eligibility of such migrants to non-refoulement protection under the Refugee Convention or other regional instruments. The key role played by the principle of non-refoulement in customary international law has also been discussed, along with the status of the principle of temporary protection in situations of mass influx in customary international law. Among the suggestions explored in the concluding part, possibility of burden-sharing in the present framework and cooperation between the UN agencies for environmental refugee initiatives are a few worth special mention. The researcher has adopted a doctrinal research methodology for the same.

INTRODUCTION

Displacement is a dynamic process. Human displacement has always been a part of the history of humankind. Human beings have been compelled to leave their original places of residence to escape various situations like wars, expeditions, political and economic crisis and environmental disasters. The environmental factor has been a major reason for large-scale cross-border migrations, and its effects are so far-reaching, that the scope of going back to the original places of residence is almost negligible.

The global climate change reports estimates that by 2050, almost 120 million people would be forced to leave their homes due to climate change. Understanding the global warming as one of the main biophysical consequences of climate change, slow-onset effects of it – drought, desertification, salinization of ground water and soil, rising sea level – are becoming more intense connected to human displacement.¹ And these problems mostly result in human displacement, it being the only available solution to them.

As recent as the Copenhagen summit, the states could not reach at a consensus w.r.t their environmental policies. Despite various summits, conventions etc, the states have accepted climate change to be inevitable and estimates show a rise of at least 2 degrees temperature, in the near future. In 1988, Worldwatch estimated that there were ten million environmental refugees in addition to the thirteen million refugees classified under the traditional definition in international law and that the former would soon outstrip the latter.² By 1991, the Office of the United Nations High Commissioner for Refugees (hereinafter “UNHCR”) then counted sixteen million “official” refugees and the World Bank estimated seventeen to twenty million migrants fleeing “collapsed economies and disintegrating environments.”³ The World Conference on Human Rights held in

¹Climate change and human displacement: a sociological contribution to understand transitional societies, pg2.

²Jodi L. Jacobson, ‘Environmental Refugees: A Yardstick of Habitability’, Worldwatch Paper No. 86 (November 1988), at p. 6.

³Ted Field, ‘Wandering Souls & Disappearing Forests’, AM. FORESTS, Volume 98 (1992), at p. 33.

June 1992 resulted in a Vienna Declaration and Programme of Action recognized that “entire ethnic groups” are fleeing “environmental degradation” and other crises outside international refugee law, but “it does not offer any guidance or strategy to deal with the new complexity of the refugee movement. It merely emphasizes that states have a responsibility in this area.”⁴

The first definition of environmental refugees was given by El-Hinnawi, who perceived environmental refugees 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.”⁵ Another closely similar and a later definition states that “environmental refugees”⁶ can be understood as “people who migrate because of serious environmental disruptions that make their habitats unsustainable temporarily or permanently.”

CAUSES OF ENVIRONMENTAL MIGRATION

According to Gregory McCue, there are three main causes of environmental migration, i.e. Long term degradation, accidents and sudden disruptions.⁷

1. Long term degradation: The UNHCR recognizes environmental degradation as a major cause for refugee movements, which if goes unchecked, can lead to aggravated form of environmental degradation. The example of Sahel can be well-cited here. The region has experienced regular droughts, for hundreds of years. The two major droughts from 1968 to 1973 and again from 1982 to 1984 were the genesis for one of the most acute of such problems.⁸
2. Accidents: Unsafe and improper dumping of the industrial and toxic wastes at various place, has rendered them unfit for human settlement, leading to evacuation over the years. Industrial waste caused degradation of the land in the former Soviet Union so great that in December

⁴Frank Newman & David Weissbrodt, *International Human Rights: Law, Policy and Process* 9 (Anderson Publishing Co. 1990) (draft Supp. 1993).

⁵Essam El-Hinnawi, ‘U.N. Environmental Program’, *Environmental Refugees* (1985), at p. 4.

⁶Migration and the Environment, International Organization for Migration, and The Refugee Policy Group, (June 1992), at 22, (available from The Refugee Policy Group, Washington, D.C.).

⁷Gregory McCue, ‘Environmental Refugees: Applying International Environmental Law to Involuntary Migration’, *Geo. Int’l Env’tl. L. Rev.*, Vol. 6 (1993), p. 151, at p. 157.

⁸*Supranote 2* at pg 11.

1987, Pravda declared that the city of Ufa, population one million, had become “unfit for human habitation.”⁹

3. Sudden disruptions: Sudden climatic disruptions, otherwise known as natural disasters include cyclones, earth-quakes, volcanoes, tsunamis, floods etc. the effect of these disasters can be both short-term and long-term. Many a times, people in areas vulnerable to these calamities, are evacuated to safer places, in anticipation of the gravity of the disasters. Recently, the Govt. of Odisha has evacuated as many as eight lakh individuals to safer places, in anticipation of the extremely severe cyclonic storm ‘Fani’. Evacuations, in Odisha, had also taken place in 2018 and 2013, when the state was hit by ‘Cyclone Titli’ and ‘Cyclone Phailin’ respectively. The A.P. government too had taken similar steps during HudHud cyclone in 2014. Similarly, evacuations have been observed to protect people from floods in the states of Bihar and West Bengal.

“An interesting point about natural disasters is that refugee protection under the Cartagena Declaration covers cases where there is a threat to public order, but that provision has been interpreted to exclude natural disasters and includes only man-made conflicts. Armed conflict is also of considerable significance environmental degradation often results in armed conflict that can lead to migration – it is not easy to state that persecution can be satisfied in case of armed conflict.”

PROTECTION UNDER THE TREATY LAW

Protection under the Convention definition is available for asylum-seekers in countries which are Parties to the Convention. For such protection, the three elements need to be satisfied are as follows:

1. There must be persecution or a well-founded fear of it
2. The persecution must be on one of the grounds mentioned in the Convention
3. There must have been migration from the borders

“To qualify as an evacuee under the Refugee Convention, a haven searcher must exhibit a very much established dread of abuse. The center significance of 'oppression' incorporates the

⁹*Ibid* 8 at pg 25.

danger of hardship of life or physical opportunity. The view that a sheltered and sound condition is both a precondition to and inseparably connected with the satisfaction in the privilege to life finds boundless bolster. Thus, occurrences wherein there is natural corruption to humanly unsatisfactory levels, which annihilates the land and ranches whereupon the survival of a network depends legitimizes a surmising of abuse. Those dislodged by virtue of cataclysmic events, or then again on the grounds that their property has turned out to be dreadful or other natural variables must not be avoided from evacuee status under the Convention.”

“The “oppression” necessity as a rule requests “a demonstration of government against people.” Be that as it may, abuse may likewise result from conditions where the experts are reluctant or unfit to offer viable security. In instances of natural corruption, definitive choices with respect to the administration normally underlie natural fiascos, and the displaced people made by such fiascos endure a type of administrative abuse.”

The impact of sudden environmental natural disruptions on a given area, while sometimes capable of independently forcing migration, is exponentially worsened when the area is also experiencing long-term degradation. This results in the occurrence of extremes in natural weather patterns causing damage on an unprecedented scale.¹⁰

STATUS OF NON-REFOULEMENT IN CUSTOMARY INTERNATIONAL LAW

“The status of non-refoulement in standard worldwide law isn't clear. While generally researchers on refugee law contend that non-refoulement has accomplished the status of custom, it tends to be to a great extent in light of the reason that it is a definitive objective of exile law, and it is relied upon to achieve it at some time. Nonetheless, regardless of whether it has achieved that objective right now might be unverifiable.”

Various researchers, for example, Goodwin-Gill, Stenner, Mushkat, Lieber, Weis and Stenberg accept that the standard of non-refoulement is entrenched in standard universal law, and some even hoist it to the status of a jus cogens standard.

¹⁰Jodi L. Jacobson, ‘Environmental Refugees: A Yardstick of Habitability’, Worldwatch Paper No. 86 (1988), at p. 20.

The argument of uniformity is countered by stating that although factually, asylum seekers have been returned on occasions,¹¹ that does not indicate whether non-refoulement is not part of custom on the ground of non-uniformity of practice. This is because it is also important to study how States view this departure in practice from the rule of non-refoulement. “The return of asylum seekers by States, which has been frequent, sometimes directly by States, they have done so by stating that the asylum seekers were not refugees, and have not States have not expressly asserted that acts of refoulement are justified by legal norms,¹² thereby indicating that they have not asserted that non-refoulement as a legal norm is not binding on them. In fact, States have characterized the return as something other than refoulement. This expresses a very strong opinio juris on part of states that non-refoulement is part of custom.”

TEMPORARY PROTECTION IN SITUATIONS OF MASS INFLUX AS PART OF INTERNATIONAL CUSTOM

The standard of non-refoulement should now be comprehended as applying past the tight limits of the Refugee Convention. The standard established in universal utilization is an ideal to be considered for transitory affirmation based on a requirement for security. This more extensive approach is enunciated in different treaties¹³ and General Assembly goals, stressing the requirement for worldwide security with respect to the reason for removal. Those escaping catastrophic events are not ‘exiles’ inside the importance of the Refugee Convention.¹⁴ Several multilateral gatherings and organizations,¹⁵ and lawful scholars¹⁶ have kept away from the utilization of the term natural ‘outcast’ and utilized ecological ‘transient’ rather, in this way

¹¹E.g., in case of Croatia Bosnia-Herzegovina in 1992, in Macedonia-Kosovo in 1998, and in Rwanda, where the UNHCR in a way influenced people return.

¹²Guy S. Goodwin Gill & Jane McAdam, *The Refugee in International Law*, (Oxford University Press 2007) at p. 364, 375.

¹³Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45, 47 art.1(2); Cartagena Declaration on Refugees, Inter-Am. C.H.R., OAS/Ser.L/V/II.66, Doc. 10, Rev. 190-193, art. III (1984).

¹⁴Kay Hailbronner, ‘Non-Refoulement and ‘Humanitarian’ Refugees: Customary International Law or Wishful Legal Thinking?’, *Virg. J. Intl L.* Vol. 26 (1986), at p. 857.

¹⁵International Symposium, UNHCR, IOM & RPB, *Environmentally-Induced Population Displacements and Environmental Impacts Resulting From Mass Migrations*, at 63-64 (1996); United Nations High Commissioner for Refugees, *The State of the World's Refugees*, available at http://www.unhcr.ch/refworld/pub/state/97/box1_2.htm.

¹⁶D. Keane, ‘The Environmental Causes and Consequences of Migration: A Search for the Meaning of ‘Environmental Refugees’’, *Geo. Int’l Envntl. L. Rev.*, Vol. 16 (2004), p. 209.

perceiving that natural grounds are not inside the extent of the definition in the Refugee tradition. While the UNHCR may have stretched out its practical order to manage the cost of assurance to different classifications of ecologically uprooted vagrants, it has made it expressly certain this has been done freely of the extension of the state legitimate commitments.

MODERN INTERNATIONAL COMMITMENTS TOWARDS THE PROTECTION OF ENVIRONMENTAL REFUGEES

The ‘Global Compact for Safe, Orderly and Regular Migration’ which has been adopted on December 10, 2018 in Morocco under the auspices of the U.N. is the first inter-governmental agreement which covers the concept of global migration with all its forms and dimensions. It strives to foster international cooperation among various actors on migration, acknowledging that no individual state can address the issues relating to migration by itself, their obligations of the states under international law, and upholding their sovereignty at the same time. Its main objective is to minimize the factors leading to migration; which revolves around principles of people-centredness, national sovereignty, international cooperation, rule of law and sustainable development.

“The Global Compact recognizes climate change as a major factor for migration. The World Bank estimates the displacement of around 143 million people, especially in developing countries, within their nations by 2050. Since, the Global Compact considers climate change as a factor causing migration; it has also laid out a framework for dealing with the same. It has proposed the building of a Platform on Disaster Displacement” and developing an ‘Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change’ to address the issue.”

OUTCOMES

The United Nations through UNHCR and other agencies has adopted various measures for the protection of the environmental refugees. Various nation-states, through the conventions have also been working towards the same. The modern international agreements should be followed up properly so as to yield the desired results.

SUGGESSTIONS

The UNHCR and the UNEP could team up to begin work went for offering insurance to casualties of natural catastrophes. Obviously, any activism implying that states embrace authoritative commitments towards natural vagrants would be met with opposition, and thus they could work together at a helpful level. Nonetheless, the UNHCR has proceeded with its work towards compassionate objectives notwithstanding all restriction and its exercises have prompted expanded state hone and *opinio juris*, regardless of whether some of it isn't of adequate limit to be called universal custom.