Opinion – Updating the 1951 Convention for Refugees

https://www.e-ir.info/2020/05/28/opinion-updating-the-1951-convention-for-refugees/

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Claiming a law to be outdated and ineffective because it was enacted over six decades ago is clichéd; it is one thing to merely allege this and other to justify with a rationale. The attempt here is to try and appreciate the contemporary developments that were not foreseeable when the 1951 Convention relating to the Status of Refugees was adopted. The burning issue now wasn't even in existence when the world community got together in an endeavour to formulate an agreement to tackle the mass refugee crisis that Europe was faced with and neither was this new crisis conceived nor was there any scope or need to have that mechanism in place.

The story of climate change is not new to us, yet several ground-breaking initiatives at the international forum too could not make us more humane, could not avert the degrading condition of nature, specifically climate, and could not protect nature. Satellite images of glaciers, forests, rivers and others point at the disaster that we are inviting with each passing day. However, many of us fail to realise this and fail to internalise it due to the human tendency of not being affected until we are faced with the reality. The upsurge of climate refugees seen in recent times is unprecedented; yet, they are not legally protected under the international refugee law regime. The 1951 Convention and the customary principles of international law – primarily *non-refoulement* (that happens to be the core of the regime) – are not applicable to them because the definition itself is ill-suited for them. The definition in Article 1 is not applicable to them. They are not the traditional refugees after all.

The question that strikes us then, is what, or who, they are? Whether there lies any obligation for the States to protect them or take care of them or the least, to treat them humanely? Is it an obligation for the parties to the treaty or even the non-parties pertaining to the *non-refoulement* principle? These questions have remained unanswered or majorly avoided.

But, it is of utmost significance that even though the Convention failed to incorporate the newly emerged crisis because of the limited and restricted scope of the definition, UN High Commissioner for Refugees (UNHCR), the regulatory body, has relentlessly worked towards ensuring that their mandate of protection of the refugees as such (especially after the 1967 Protocol amended the 1951 Convention on geographical and temporal restrictions) be fulfilled. Thus, after the UN Environmental Program published in 1985, the first ever report denoting environmental refugees that slowly developed the jurisprudence of this branch of international law, the UNHCR took cognizance of their plight and devised their mechanism to facilitate their humanitarian protection.

This abhorrence of the condition of this significant class of refugees that is plaguing the world now- the environmental or ecological refugees or more specifically climate refugees- has found expression in several reports. The GRID Report 2018 laid down a startling figure of 18.8 million out of the total 30.6 million persons displaced (internally) as a result of environmental causes. Thus, more than 50% of the refugees in the world today are environmental refugees, but the existing refugee regime fails to address this. The UNHCR took up the mandate of protecting every displaced person across the globe irrespective of the cause of such displacement accurately to protect their human rights and has a separate compartmentalisation dedicated to Environment, Disasters and Climate Change.

So, the evolution of the new concept through the pathbreaking Report of 1985 gives an insight to who these refugees are and guides us to realize their existence. Environmental refugees were defined (that was quoted in the Report extensively) by Essam El-Hinnawi as 'those people who have been forced to leave their traditional habitat temporarily

or permanently, because of a marked environmental disruption (natural or triggered by people) that jeopardizes their existence and/or seriously affected the quality of their life.' This includes both convention refugees and environmental refugees. This has the scope of the new concept of "climate refugees", and hence broke the shackles of rigidity.

Now, this becomes crucial in the present-day context because, as noted earlier, we are bound to pay for the harm caused to nature, primarily through development, and thus the responsibility must be borne by the world community at large. Doesn't this echo the same debacle of the Global North and South during the Paris Agreement or UNFCCC or the Kyoto Protocol? Isn't it ironical that somehow it is always the developing or underdeveloped nations that face the vice of nature due to over-exploitation by the developed nations? Nevertheless, crisis management has to be done irrespective of who the perpetrator is or who is the ultimate victim. But, does this responsibility fall once again on the ones who are victimized?

Well, the case of Kiribati happens to be an example of such a situation. Global warming has had an excessive impact on the livelihood of the people of this island nation. Accounts of their existence for the last couple of years expresses concerns of what as fellow human beings we are doing. One such case was of Mr. Ioane Teitiota who was compelled to move to one of the environmentally conscious nations, New Zealand, to seek refuge. After years of patiently waiting upon having filed the asylum application, the same was rejected on the ground that environmental causes are not grounds for grant of refugee status under the Refugee Convention as it causes no serious harm envisaged under the Convention. However, on appeal, the Supreme Court did recognise such a possibility in the future without altering the decision of the authorities on Mr. Teitiota's application. But it is cynical to believe that New Zealand, which happens to be the pioneer of rights of nature, human rights and protection of nature, did not pay heed to the undeniable cries of the family merely on a restrictive meaning of "fear of persecution" or "serious harm". Doesn't human rights advocate for the 'golden rule of interpretation' and a liberal approach? If the definition of quality of life of Essam El-Hinnawi is implemented here, then will there be some respite, especially on this ground of "quality of life"?

At this juncture, this is exactly what was urged in an exceptional step taken boldly by Mr. Teitiota before the UN Human Rights Committee. The family approached the ICCPR treaty body on the ground of rejection of the application on frivolous grounds and not having taken the procedure established by law by the authorities in New Zealand. For the first time ever, there was an opportunity before a UN body to adjudicate on this and the opportunity was truly utilized by HRC. In January 2020, it pronounced the judgement affirming that age-old quest for legal recognition of the climate or environmental refugees. Even though, on the issues at hand on the legality of the procedure followed by the authorities in New Zealand in rejecting the application, the case was dismissed, the observations are incredible. Since the authorities followed the procedure for vetting the asylum application, the case was not made out.

But it acknowledged the fact that climate refugees do exist, they form a considerable portion of the millions of people who have been displaced and accepted the reality that time has come we recognize them and that the international refugee regime incorporates them within its fold. So, the proposal is to have a refugee protection mechanism for climate refugees and most importantly that they be considered as refugees. This will require transforming the approach towards refugees and most importantly modifying the definition as such.

Amidst the glaring optimism, the fear that still lurks is whether this will be considerably binding on other nations owing to the fact that international law is most often than not is argued to be "law not properly so called". There is generally persuasive value of such opinions, more so because this ruling is not the operational part of the judgement but the opinions expressed therein.

Taking these facts and circumstances into account, the 1951 Refugee Convention is required to be amended (not delving into the procedural nuances since that is outside the scope of the present discussion) and it is quintessential that "climate refugees" are given a place within the gamut of the refugee law regime, so that parties to the treaty are not absolved of their responsibilities. This is the only ray of hope that can ensure this class of helpless human beings be looked at with a renewed vigor, especially when the COVID-19 pandemic has taught us to introspect and really think about whether environmental justice is truly being done or not.

With utmost faith in the world community, I rest my case: the case of millions of people who without their fault of their own lie stateless sans any helping hand of humanism reached out by the so-called civilized nations of the world and the civilized humans of that world; let us not be Nero's guests, let's stand by them and walk together with them.

About the author:

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