

# Bargaining for Protection – the Case of Climate Refugees

Written by Zuza Nazaruk

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## Bargaining for Protection – the Case of Climate Refugees

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ZUZA NAZARUK, MAY 18 2021

### Introduction

The existing conceptualisations of refugees, both legal and academic, fall short of grasping the reality of climate refugees. Chakrabarty (2012, 7) reveals the existential conundrum of climate refugees: “Modernity created this new <savage> condition of many human beings, the condition of being declared stateless if they could not be identified with a nation-state, forcing them to fall back on the politics of survival.” Climate refugees identify with a nation-state but their state itself becomes uninhabitable due to climate change. In extreme cases, such as the small Pacific island states (SPIS), whole countries are predicted to disappear in the next decade (International Labour Organisation, 2014, 15). In other cases, the economies of climatically vulnerable countries, such as Somalia, will collapse under the increasingly frequent and powerful natural disasters, such as droughts (Robinson & Zimmerman, 2014, 3).

The suffering that climatically endangered countries face happens as a result of actions taken by other nation-states in a peaceful, outside-war context. For example, the burning of fossil fuels is the primary driver for both economic growth and climate change. Such a state of affairs perpetuates what Nixon (2010, 5) conceptualized as “slow violence”, the indirect burden inflicted on the poor by the economic activity of the rich. In the context of climate migration, slow violence is visible in the lack of a legally binding international definition of a climate refugee. Such a definition imposes obligations on potential host countries, facilitating the immigration process for potential climate refugees (European Commission, 2011, 11).

The reality of diffused responsibility, definition vacuum, and power imbalance creates an unprecedented landscape for international bargaining over the protection of climate refugees. Therefore, this research paper aims to answer the question: What role in the international protection of climate refugees does the bargaining power of their home countries play? The analysis will be conducted by comparing the situation of Pacific migrants in New Zealand and Somali refugees in Kenya. In both cases, the response of host countries will be analysed based on the bargaining powers of climate refugees’ home countries.

This essay adds to the debate on global responsibility for climate change-related threats led by green IR, as well as to the closely intertwined discussions on climate refugees and climate justice (Eckersley in Dunne et al., 2010, 267). Understanding the lack of an international definition through the lens of bargaining power of nation-states reveals the realpolitik of IR and simultaneously makes a strong case for the creation of such definition, highlighting that the “effects of climate change are mediated by the global inequities we already have” (Chakrabarty, 2012, 9).

### Who are Climate Refugees?

Currently, there is no scholarly agreement as to who a climate refugee is or whether such nomenclature is even appropriate. Since Jacobson (1988) introduced the notion of “environmental refugees” into the academic debate, scholars have produced a plethora of definitions that represent three main approaches: maximalist, minimalist, and “threat multiplier” (Suhrke, 1994, 474; Biermann in Berhman & Kent, 2018, 268).

## **Bargaining for Protection – the Case of Climate Refugees**

Written by Zuza Nazaruk

Maximalists believe climate change to be closely intertwined with social turmoil and predict “large numbers of environmental refugees” as the “most significant of all upheavals entrained by global warming” (Myers, 1993, 752). The approach has been criticised for its “fear-mongering”, “alarmist” tone and for overusing the term “refugee”, which could potentially undermine the status of political refugees (Rebert, 2006, 28; Suhrke, 1994, 495).

Minimalists emerged in response to maximalists. This approach puts climate refugees in a wider context of migration, highlighting how difficult it is to isolate climate change as a primary push factor (Kritz, 1990, 53). Minimalists have been criticized for overlooking the adaptive possibilities of vulnerable populations by dismissing climate as a driver for migration (Biermann in Berhman & Kent, 2018, 267).

The “threat multiplier” approach rejects the focus on establishing a causal link between climate change and migration (Atapattu in Berhman & Kent, 2018, 36). Instead, the scholars representing this approach accept that climate change exacerbates existing socio-economic conditions and move towards addressing “rising global inequalities, imbalances in power, and threatening <climate suffering> among the poor” (Anastasiou in Berhman & Kent, 2018, 173).

The lack of a scholarly consensus over the very existence of the phenomenon of climate migration obscures the chances of reaching an international protective agreement in the near future. Without such an agreement, it is expected that the political leverage of climate refugees’ home countries will be significantly diminished.

### **Bargaining Power of Climate Refugees**

Bargaining in IR refers to the situation where two or more actors agree on the need for coordination but disagree over the terms of such coordination (Fearon, 1998, 269). In order to reach a commitment, actors need to coordinate expectations (Fearon, 1998, 269). Bargaining power is the degree to which one actor can impact the expectation of a counterpart to the actor’s own benefit (Slantchev, 2005, 3).

Two aspects of negotiating an international agreement in an anarchic environment stand out in relevance for the international protection of climate refugees: “ripeness” and strategic moves (Zartman, 2001, 8; Jonsson, 2018, 11). Analysing the possibility of reaching an international agreement on climate refugees through both “ripeness” and strategic moves reveals a weak bargaining power of climate refugees’ home countries.

“Ripeness” of international agreements indicates a moment when negotiations are likely to bring valuable results (Zartman, 2001, 8). A “ripe” moment needs to include two components: a “mutually hurting stalemate” for both parties and a possibility to get out of such stalemate by means of negotiation (Zartman, 2001, 8). Due to responsibility for climate change being diluted, the perception of a mutually hurting stalemate is minimal (Byravan & Rajan, 2005, 1). As a result, neighbouring countries have little incentive to offer protection for climate refugees.

Strategic moves refer to a state’s ability to “outwit the other” through threats, promises, or any other activity that may constrain the other side’s behaviour (Jonsson, 2018, 11). Bargaining power is relative and does not only depend on financial or military power; per Schelling (1981, 57), it is the credibility of threats and promises that influences the bargaining power the most. As a result, restricting one’s bargaining options can be beneficial, for example, to force the other side to make concessions (Schelling, 1981, 57). At the same time, the dynamic commitment problem – when the interests of a country change with time, shifting against fulfilling its commitment – is a risk that weaker sides have to account for (Slantchev, 2005, 7). The home countries of climate refugees are expected to see their bargaining options restricted, which can act both to their benefit or, if a dynamic commitment problem occurs, to their disadvantage. Subsequently, the theoretical expectation of climate refugees’ home countries’ strategic power is inconclusive.

While those countries possess little material capabilities, such as financial or military power, their relative weakness may improve their position to persuade the other side agree to concessions on a humanitarian basis (ILO, 2014, 11). In cases of significant power imbalance at the negotiating table, an appeal to the other party’s humanitarian values may improve the bargaining position of the weaker state (Goldstein & Pevehouse, 2011, 11). Such an appeal

# **Bargaining for Protection – the Case of Climate Refugees**

Written by Zuza Nazaruk

can be backed by common cultural values, geographical proximity, or international pressure (ibid). In practice, however, a host country would rarely put humanitarian values before its economic concerns, especially without an international protective agreement in place (Goldstein & Pevehouse, 2011, 17).

Due to the lack of a perceived mutually-hurting stalemate, the bargaining power of climate refugees' home countries is expected to be inadequate. The strategic moves of such countries are limited as well, although this may at times prove beneficial for the other bargaining side to make concessions. The negative and inconclusive expectations, combined with a lack of an international protection agreement, create an expectation of low bargaining power of the climate refugees' home countries relative to the host countries counterparts.

## **International Agreements**

International agreements impose “the rules of the game” on the bargaining process (Caparros, 2016, 2). Such rules enforce obligations on bargaining sides, reducing uncertainty and, consequently, are meant to improve the power imbalance between negotiating countries (Caparros, 2016, 2).

To date, no internationally binding agreement on the protection of climate refugees exists. Therefore, people seeking protection based on climate change need to rely on the existing international schemes for refugees, which usually include only political asylum. Developed countries rely on the Geneva Convention on Refugees (McConnachie, 2017, 192). This convention contains a crucial clause for the international protection of refugees: the principle of non-refoulement (UNCHR, 2011, 4). This principle states that countries that received asylum requests cannot return the asylum seekers to their home countries if such a return would mean “torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm” to the asylum seekers (UNCHR, 2011, 4).

Yet, the Geneva Convention provides a narrow definition of refugees, including only people fleeing persecution on political grounds (UNCHR, 2011, 4). As a result, potential climate refugees trying to reach countries that adopt the Geneva Convention need to take conventional migration routes. Migrating outside a protective agreement often means that the right to entry depends on the migrant's income or specific skills. As a result, potential climate refugees find their chances of successful immigration significantly reduced (McConnachie, 2017, 192).

People seeking protection based on changing climate in their home countries only have a chance of falling under the category of a refugee in Latin America and Africa, where the definition of a refugee includes a person fleeing “any event that seriously disturbs public order” (UNCHR, 2011, 5). While more inclusive, the definition is region-bound.

## **Methodology**

This research will be conducted using congruence analysis. Theoretical expectations on the bargaining process will be empirically contrasted with two case studies – of Somali refugees in Kenya and Pacific migrants in New Zealand. The choice of congruence analysis was motivated by the method allowing for in-depth reflection on the relationship between abstract theories and empirical observations. Congruence analysis requires multiple observations within diverse cases, resulting in a nuanced analysis that can lay the ground for the emergence of new theories (Blatter & Haverland, 2012, 145). This is especially relevant in the case of climate refugees, which remain an understudied social and academic phenomenon.

This research uses a focused comparison. Due to the relative lack of exploration of the topic, the case selection was motivated by the existing literature on cases of climate migration (ILO, 2014; Robinson & Zimmerman, 2014). Both Somalia and SPIS face environmental problems that are similar in their gravity, and in both countries, climate change exacerbates the existing economic problems (ILO, 2014, 3). This paper focuses on the bargaining process between neighbouring nation-states. This choice was motivated by the fact that an estimated 84% of refugees flee to neighbouring countries, so such countries are the most relevant actors in the search for international refugee protection (Miller, 2018, 1). The cases differ in the legal agreements present in host countries: Kenya uses the more inclusive African Union definition while New Zealand complies with the Geneva Convention. Therefore, Somalis are treated as climate refugees while inhabitants of SPIS are treated as migrants. Such difference allows for an analysis

# **Bargaining for Protection – the Case of Climate Refugees**

Written by Zuza Nazaruk

of the bargaining powers of climate refugees' home countries in light of an existing form of international protection and without it.

The leading theory in this case analysis will be green IR. The main goals of the green theory are the reduction of transnational ecological hazards and the prevention of "their unfair externalization and displacement, through space and time, onto innocent third parties" (Eckersley in Dunne et al., 2010, 271). The latter is especially relevant to this paper. Green IR occupies itself within environmental justice, advocating for a fair distribution of environmental risks and appropriate compensation to those affected (Eckersley in Dunne et al., 2010, 271). The theory is concerned with risk mitigation and protection of vulnerable populations, which makes it the most suitable fit for analysing the international protection of climate refugees.

## **Somalis in Kenya**

The enduring conflict, fuelled by the climatic vulnerability that leaves the region prone to droughts, left Somalia a country with an unstable political regime and recurring food insecurities (Robinson & Zimmerman, 2014, 4). Over the past half-century, the frequency and intensity of droughts in the Horn of Africa have been steadily increasing (Robinson & Zimmerman, 2014, 4).

An intertwined combination of violence, lack of governmental institutions, and drought led to mass displacement of Somalis in the years 2010-2012 (USAid, n.d., 1). While most remained internally displaced, large numbers sought refuge in neighbouring Kenya (Robinson & Zimmerman, 2014, 6). Initially, based on the African Union definition of refugees, Kenya recognized the arriving Somalis as refugees and granted them a prima facie refugee status, based just on their nationality (Nyamori, 2020, 1). As of 2012, 512,000 Somalis lived in Kenya, most of them in the Dadaab refugee camp, which at the time was the largest such settlement worldwide (Human Rights Watch, 2017, 1).

Located close to the Southern border with Somalia, the Dadaab complex is prone to the same climatic conditions as the ones the Somalis were fleeing from (Robinson & Zimmerman, 2014, 6). The same drought that drove Somalis to Dadaab contributed to the malnourishment of 3.8 million Kenyans (Robinson & Zimmerman, 2014, 6). The increasing vulnerability of the local population, intertwined with the growing tensions with the refugees, and the continuous influx of new refugees, quickly overwhelmed the Kenyan authorities (HRW, 2017, 1). With the arrivals reaching 100,000 only between May and October 2011, registration of new arrivals to the camp got suspended (Robinson & Zimmerman, 2014, 7; HRW, 2017, 1). This decision resulted in an influx of undocumented migrants (HRW, 2017, 1). Chronic underfunding and very limited international support, or even knowledge of the situation, led to a humanitarian crisis (HRW, 2017, 1).

Although the Kenyan authorities initially granted Somalis the prima facie refugee status, they never allowed for the integration of Somalis into the Kenyan society (European Commission, 2011, 26). As the situation became direr, the authorities took away the prima facie status and attempted to close the Dadaab camp several times (Nyamori, 2020, 1). In 2013, the Kenyan government signed an agreement on voluntary repatriation of the Somalis with the UNCHR and the Somali government (Schlein, 2015, 4). When the agreement failed to bring about the desired result in May 2016, Kenyan officials started forcing Somalis in Dadaab to move back to Somalia (Schlein, 2015, 4). With this move, Kenya violated the principle of non-refoulement, a key principle of the Geneva Convention that the country is a signatory to.

Somalis in Kenya illustrate the weak bargaining power of the refugees' home country. While Kenya initially responded to the crisis in Somalia with support, it did so not because Somalia had any bargaining power but because of the international protection treaties that Kenya was a signatory to. The situation ripened for Kenya when the strain on its resources became too great, resulting in a mutually hurting stalemate in the form of Kenya not being able to accommodate the Somalis (Zartman, 2001, 8). Then, Kenya used its strategic moves to drive Somalis out of its territory to the benefit of the Kenyan population. Kenya's behaviour is an exemplary illustration of the dynamic commitment problem (Slantchev, 2005, 7). Yet, in this case, Kenya did not need to "outwit" Somalia through any activity that will constrain Somalia's behaviour (Jonsson, 2018, 11). The social, institutional, economic, and environmental chaos in Somalia constrained its bargaining power enough so that Kenya could take action

# **Bargaining for Protection – the Case of Climate Refugees**

Written by Zuza Nazaruk

that broke international law without consequences.

## **SPIS Inhabitants in New Zealand**

With some of them lying as low as three metres above sea level, SPIS are one of the most environmental degradation-prone regions (ILO, 2014, 3). Tuvalu and Kiribati are predicted to go underwater by 2030 (Oppenheimer et al., 2019, 3). Besides, in line with the “threat multiplier” academic approach, climate change exacerbates the existing vulnerabilities, such as economic backwardness and over-reliance on sea resources for livelihood, as well as weaken the islands’ natural resources such as arable land or fresh water supply (ILO, 2014, 4).

The inhabitants of SPIS seek refuge mostly in New Zealand (Lyons, 2020, 1). The country does not formally recognize the existence of “climate refugees” and is a signatory to the Geneva Convention, which requires an element of political persecution to be present for the newly arrived to be considered refugees (UNCHR, 2011, 3). As a result, potential climate refugees need to take the conventional migration route.

The Pacific Category Access Resident Visa (PCARV) is the only existing migration scheme for Pacific Island residents (New Zealand Immigration, n.d., 1). PCARV allows citizens from Kiribati, Tuvalu, Tonga, and Fiji to live and work in New Zealand indefinitely. Citizens between 18 and 45 years old can apply and are also allowed to bring in their families. The conditions for application include knowledge of English and securing a living wage. The yearly quotas allow for: 75 Kiribati, 75 Tuvaluan, 250 Tongan, and 250 Fijian citizens to enter New Zealand (New Zealand Immigration, n.d., 1). This migration scheme does not respond to the urgency of the climate threat: it would take 1360 years to repatriate the Kiribati nation of 102,000 people, while the island is predicted to go underwater in the next decade (Worland, 2015, 1; Oppenheimer et al., 2019, 6).

Citizens from SPIS apply for citizenships in New Zealand, claiming to be climate refugees. Their cases are mostly rejected (Lyons, 2020, 1). A recent New Zealand court ruling rejected a Kiribati citizen’s asylum, arguing that the resources on his home island are sufficient (UNHROHC, n.d., 1). Such argumentation allows the states to avoid being accused of breaking the principle of non-refoulement (UNCHR, 2011, 4). Yet a committee member disagreed with the verdict, pointing out, among other issues, that “potable water” is not equal to “safe drinking water”, especially for children (UNHROHC, n.d., 27).

The lack of widespread awareness on climate refugees in New Zealand, resulting in lack of a “ripe” moment for negotiations, together with very limited ability for strategic moves on the side of SPIS means that no humanitarian assistance for potential climate refugees currently exists. As a result, the only agreement concerns the very limited regular migration route. The asylum claims based on climate change are likely to fail, and so for various reasons. Firstly, each claim is considered separately, without any means of leverage from the potential refugees’ home countries. Secondly, without an international definition, the potential refugees are locked in a legal vacuum that does not foresee protection based on environmental claims. These two occurrences are enhanced by the low bargaining power of potential refugees’ home countries. As such, countries have no other point of leverage than appealing to New Zealand’s humanitarian feelings. As the case of Somalis in Kenya has shown, such an appeal, if at all succeeding, is likely to be volatile due to the dynamic commitment problem (Slantchev, 2005, 7).

## **Conclusion**

The analyses of the cases of Somali refugees in Kenya and SPIS migrants to New Zealand have proven the existing theories on bargaining power. Due to the low bargaining power of potential refugees’ home countries, the international protection of their citizens remains limited. This happens despite some international protection mechanisms in place. Somalia and SPIS lack basic negotiating leverage, such as financial or military powers, that could push the opposing side to concessions. Combined with a lack of a mutually hurting stalemate, this lack of leverage leaves potential refugees’ home countries only with appealing to humanitarian values. The opposite side’s consideration of such an appeal is arbitrary, so it can either result in no concessions, as in the case of New Zealand, or the dynamic commitment problem, as it happened in Kenya. This research shows that the bargaining power of potential refugees’ home countries is currently low.

# Bargaining for Protection – the Case of Climate Refugees

Written by Zuza Nazaruk

With climate refugees being an understudied phenomenon, the selection of cases had to be limited to those that already figure in literature as climate migration. The small sample is the evident limitation of this study. Furthermore, using green IR as a leading theory leaves little room to analyse founding concepts of IR, such as power or anarchic systems, as green IR focuses on outcomes rather than on processes. Therefore, it was beyond the scope of this paper to analyse how climate change impacts those concepts, which could prove influential in analysing the bargaining powers of nation-states on the status of climate refugees.

Due to the focus of this study being on inter-state relations between neighbouring countries, several crucial aspects of international bargaining had to be left out. Further research areas could, therefore, include the role of the “shadow of the future” as weighted against the ticking climate change, or the bargaining power of potential climate refugees’ home countries on international summits. Increasing the sample size by researching more migration cases as climate-induced would also be of great contribution to the scholarly debate on climate refugees.

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# Bargaining for Protection – the Case of Climate Refugees

Written by Zuza Nazaruk

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Written by Zuza Nazaruk

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