



The Environmental Refugee and International Law

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Received: 20/01/2025

Accepted: 17/03/2025

Published: 20/03/2025

Abstract:

Environmental immigration is one of the most widespread phenomena of recent times, posing a significant challenge for countries that receive environmental refugees. This challenge stems from the lack of specific legal regulations for environmental immigration. Notably, the 1951 International Convention for the Protection of Refugees, which identifies five categories of refugees entitled to protection based on persecution due to race, nationality, religion, membership of a particular social group or political opinion, has never included environmental refugees. Therefore, this study aims to examine all aspects of the environmental refugee, including their legal status and international efforts to address this phenomenon.

Keywords: Asylum, environmental, environmental refugee, protection.

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Introduction:

The phenomenon of environmental immigration is an undeniable reality. Throughout history, environmental events and disasters have compelled individuals and groups to seek safety by moving from one place to another. This issue has gained considerable media attention, both nationally and internationally. Countries most prone to natural disasters, and thus more likely to experience the displacement of environmental refugees, have been particularly vocal in calling for this matter to be addressed on the international agenda.¹

While asylum has attracted international interest in general, the recognition of environmental refugees poses a legal problem. The 1951 Geneva Convention² considered asylum on subjective grounds, tying it to the personal circumstances that may affect the refugee. However, the lack of a precise and agreed-upon definition for environmental refugees has resulted in the absence of legal texts or international conventions offering their protection. This legal problem has created environmental, economic, social, and security challenges for the countries hosting these individuals.

The increasing number of environmental refugees and its impact on the security of host countries has sparked concern and raised various political and security issues. As a result, international management of this problem and attention to the subject of immigration or environmental asylum are needed. We have therefore decided to emphasize and study this phenomenon in order to regulate it effectively.

One of the aims of this article is to identify the obstacles that hinder the definition and recognition of environmental refugees, and therefore impede their access to legal protection.

What do we mean by environmental refugees and how are they treated under international law? To address this question, we have employed a descriptive and analytical approach in our study. To enhance comprehension of the subject, we have structured it into two sections:

¹AbdelhadiAbdelkarim, Legal Protection of the Environmental Refugee under the Rules of International Law, doctoral thesis in public law, Faculty of Law and Political Science, Colonel Ahmed Draya University, Adrar, 2020-2021, p. 2.

²This convention, concerning the status of refugees, was concluded on July 28, 1951, and entered into force on April 22, 1954. Algeria acceded to it under Decree No. 274-63, which outlines the application of the 1951 Geneva Convention on Refugees. Official Gazette N° 105 of 1963.



Section I: The concept of environmental asylum and the evolution of its idea at the international level.

Section II: The Stance of International Law on Environmental Refugees.

Section I: The concept of environmental asylum and the evolution of this idea at an international scale

Environmental migration is an undeniable reality that demands our immediate attention. The alarming rise in the number of people being displaced from their homes due to the escalating effects of climate change cannot be ignored any longer. Consequently, it is crucial that we prioritize and address the plight of these individuals. The United Nations has forecasted that their numbers will surge to a staggering 200 million by 2050, underscoring the urgency to act.³

In order to gain a better understanding of this phenomenon, it is essential to address the concept of environmental refugees in the first subsection. This involves defining and distinguishing them from other types of refugees. The second subsection will focus on the evolution of the idea of environmental refugees in international law.

First sub-section: The concept of environmental asylum

Environmental change is widely recognized as one of the leading causes of human migration and displacement due to the inherent threat of severe humanitarian crises. However, the lack of an official definition for an environmental refugee has inevitably complicated the issue of environmentally induced migration. Moreover, there is no consensus on the most appropriate term to describe this phenomenon. Various terms, such as "environmental refugee," "climate refugee," "environmental migrant," "environmentally displaced person," "climate change migration," "environmentally forced migrant," and others, all encompass the concept of exile, migration, and displacement resulting from environmental degradation.⁴

³Hamdaoui Mohammed, The Environmental Refugee from Physical Existence to the Hope of International Legal Protection, Journal of Legal Studies, Faculty of Law and Political Science, Saida, issue 4 December 2015, p. 110.

⁴AbdelhadiAbdelkarim, op cit, p 15.



How are environmental refugees defined (first category) and how are they distinguished from other similar cases (second category)?

First category: the definition of an environmental refugee

The term "environmental refugee" refers to individuals and groups who are compelled to leave their original habitat or place of residence, either temporarily or permanently, due to environmental pressures. An environmental refugee is someone who cannot live safely and peacefully in their place of residence due to natural phenomena such as earthquakes, floods, drought, soil erosion, desertification, deforestation, and other environmental issues.⁵

The concept of environmental refugees has gradually developed over the past sixty years. In 1948, the ecologist William Vogt mentioned people who were displaced due to environmental degradation. In 1976, Lester Russell Brown, the founder of the Worldwatch organization in 1974, was the first to establish a link between the increase in internal or international migration and environmental degradation processes, such as deforestation, desertification, and the frequency of earthquakes and hurricanes, among others⁶. This link was established when the organization conducted environmental research under the auspices of the United Nations Development Programme.

Nearly twenty years after Brown's definition, in the early 1990s, the United Nations Programme published a study in 1985 entitled "Environmental Refugees," written by the Egyptian expert Essam El-Hinnawi. In this study, El-Hinnawi established a connection between environmental degradation and the inability to live in safety, leading to forced displacement due to imminent danger to life. El-Hinnawi's study included cases of displacement caused by drought in Africa, the victims of the Bhopal disaster, and those displaced by the earthquake in Mexico. He defined environmental refugees as "people who are forced, voluntarily or involuntarily, to leave their regions and homes because of natural or man-made disasters linked to the environment, which threaten their existence or compromise their standard of living."⁷

⁵Samar Brahim Mohammed, The Environmental Refugee from a Human Security Perspective, Scientific Journal of the Faculty of Economic Studies and Political Science, Alexandria University, Volume 7, Issue 13, January 2022, p. 144.

⁶Hamoud Sabrina, Khalfa Nadia, The Legal Status of Environmental Refugees, Journal of Legal Studies and Research, Mohamed Boudiaf University, Faculty of Law and Political Sciences, M'sila, Volume 6, Issue 2, 2021, p. 232

⁷Naam Hamza Abdelredha Habib, The Legal Status of the Environmental Refugee in Public International Law, Master's Thesis in Public Law, Faculty of Law, Middle East University, Jordan, January 2012, p. 55.



It should be noted that the definition proposed by Essam El-Hinnawi includes people displaced from their usual place of residence due to environmental disruption resulting from various types of disaster, whether natural or man-made. However, some believe that this definition applies only to internally displaced persons and that it removes the condition of persecution in the context of asylum, which means that there is no international protection for people displaced by environmental changes.⁸

On the other hand, the International Organization for Migration (IOM), an international organization that primarily addresses humanitarian issues, does not use the term "environmental refugee" at all. Instead, they refer to individuals as "environmental migrants." This choice is based on the fact that the 1951 Geneva Convention, which outlines the criteria for granting asylum, does not include climate or environmental factors as valid grounds for seeking refuge. The convention specifically limits refugee status to cases involving political and religious persecution.

However, the International Organisation for Migration explicitly recognizes that climate change can cause migration. In fact, IOM member states agreed in 2007 to define the term "environmental migrants" as individuals or groups who are compelled to leave their usual environment, either temporarily or permanently, due to a sudden or gradual change in the climate. This change negatively affects their lives or living conditions, whether they relocate within or outside their country".⁹

This concept emerged prior to the Copenhagen Climate Conference, when the International Organisation for Migration became aware of the connection between environmental conditions and migratory movements. As the deterioration of these conditions due to climate change became increasingly evident, the organization acknowledged in its 2011 report that while the 1951 Geneva Convention on Refugees does not specifically recognize climate as a reason for seeking asylum, they use the term "environmental migrant" in their report without using the term "environmental refugee." Nonetheless, the organization clearly acknowledges that climate change can be a factor in migration.¹⁰

The United Nations Environment Programme (UNEP) defines "environmental refugees" as people temporarily displaced by sudden industrial accidents or natural

⁸ZakiaBahloul, Climate Refugee from the Perspective of Human Rights and Legal Security, PhD thesis in Law, Faculty of Law and Political Science, University of Batna01, 2018-2019, p. 55.

⁹Hamdaoui Mohamed, op cit. p 115.

¹⁰BousmahaCheikh, Environmental Migration Driven by Climate Change, Al-Mizan Magazine, Institute of Law and Political Science, Salehi Ahmed University Center, Al-Naama, Issue 3, October 2018, p. 58



threats, or completely displaced by economic development projects, or forced to migrate due to the depletion of natural resources.¹¹

The second clause of the draft treaty on environmental refugees defines them as "individuals, families and populations confronted with a progressive or sudden environmental disaster which unavoidably affects their living conditions, resulting in their forced displacement from their habitual places of residence"¹².

In addition, the 1994¹³ Arab Convention Governing the Situation of Refugees in the Arab Countries defined a refugee in a way that suggests an expansion of its scope to include the environmental refugee, describing him or her as "any person who is compelled to seek refuge in a country that is not their country of origin or habitual residence due to aggression, occupation, or foreign control over that country, or as a result of natural disasters or significant events that disrupt public order, either in the entire country or in certain areas."¹⁴

By including natural disasters as one of the conditions for defining a refugee, the drafters of the Arab treaty aimed to highlight the various ways in which persecution can occur. Persecution does not only impact individuals in isolation, but also entire groups of people. It can be evident and explicit, such as in cases of aggression, foreign occupation, or foreign control, or it can be more implicit, as in the case of natural disasters.¹⁵

The International Organisation for Migration currently defines the term "environmental refugee." However, many countries hesitate to fully acknowledge and address this issue due to various reasons, including political, economic, and concerns over the sovereignty of affected states hosting a large number of people displaced by natural disasters.

Finally, environmental refugees are defined as individuals who are compelled to leave their homes or feel compelled to do so due to various factors related to environmental change. These factors directly impact their lives and means of subsistence, regardless of whether they stay within their own country or cross

¹¹Samar Brahim Mohammed, op cit. p144.

¹²Naam Hamza Abdelredha, op cit. p 56.

¹³ This agreement has not yet entered into force.

¹⁴MekikaMeriem, Environmental Asylum within the Framework of International Law, Proceedings of the Virtual International Scientific Conference, Complex Global Crises and Disasters Witnessed in 2023, Foresight Studies, March 25-26, 2023, Arab Democratic Center Berlin - Germany, May 2023, p. 89.

¹⁵Hamoud Sabrina, Khelfa Nadia, op cit. p 235.



international borders, and whether their displacement is temporary or long-term. This particular definition was selected for the following reasons:

1. Environmental refugees are individuals who are compelled to leave their homes either due to sudden environmental disasters or as a result of climate change and drought.

2. Unlike other forms of asylum, environmental refugees have no intention of permanently settling in the region where they seek refuge. The concept of environmental refugee differs from other forms of asylum where individuals are forced to seek refuge for reasons unrelated to the environment. How can we differentiate environmental asylum from similar concepts?

The second category: Distinguishing environmental refugees from other types of refugees

When discussing environmental refugees, it is important to differentiate them from other forms of asylum or migration, such as humanitarian asylum, environmental displacement, and migrant workers. An environmental refugee is someone who is forced to leave their home due to a disaster or environmental degradation that directly affects their life. However, it is worth noting that the international legal system does not currently recognize them as refugees.

In this context, environmental refuge can be categorized into three types:

1. Temporary environmental refuge: This occurs as a result of sudden natural disasters (such as earthquakes, hurricanes, floods, etc.) that cause damage to the person's presumed place of residence or its environment. As a result, the individual is compelled to migrate temporarily until the damage is repaired or the danger has subsided.¹⁶ It can also be described as temporary migration for temporary environmental reasons.

2. Permanent environmental refuge resulting from a permanent environmental change occurring in their usual areas of residence, forcing them to leave them, as in the case of the construction of a development project affecting the environment, such as the building of dams and artificial lakes. These people generally turn to

¹⁶Zoulikha Ben Souwayh, Environmental Asylum in International Law, African Journal of Advanced Studies in the Humanities and Social Sciences, Volume 1, Issue 3, August 2022, p. 242.



locations within their country's borders. This category includes people forced to migrate permanently, necessitating their resettlement in a new region¹⁷.

These environmental changes are generally caused by man, having a considerable impact on his original environment. An example of this is the effects of nuclear accidents such as Chernobyl, where it becomes impossible to remain in this environment due to the lack of viable living conditions. This form of refuge is called permanent migration because of the permanent environmental change.¹⁸

3. Permanent environmental refuge is also caused by a progressive environmental disaster that affects people's lives, their means of subsistence and the living conditions to which they are accustomed, or by the failure of their natural environments to meet their basic needs. These people then leave their usual places of residence in search of better living conditions. The reasons for this refuge are:

- The flooding of coastal islands can cause them to disappear, either due to rising sea levels or melting ice. For instance, in 2005, a coral island in Papua New Guinea was progressively submerged, leading to the evacuation of a thousand people.

- Continuous volcanic eruptions can significantly affect life in a particular region.

- Another factor that poses a threat is nuclear explosions, including related tests, and substantial leaks of hazardous nuclear radioactivity.¹⁹

A refugee under the 1951 Geneva Convention, commonly referred to as a traditional refugee, is someone who has been forced to leave their country of nationality due to persecution based on race, language, religion, political opinion, and other similar reasons. These individuals are granted protection under the 1951 Geneva Convention relating to the Status of Refugees, which outlines their rights and responsibilities. In order to qualify for this protection, four key conditions must be met:

- The person must have crossed the borders of their country of origin.

¹⁷Lamouchi Hamza, Towards establishing the right to environmental asylum under the provisions of international human rights law, p. 875.

¹⁸Idem.

¹⁹Zoulikha Ben Souwayh, op cit. p 242.



-His or her State must be unable to protect him or her.

-The State's inability to provide protection must be the inevitable cause of the person's migration.

-The person must be a victim of persecution on the grounds of race, nationality, membership of a particular social group or political opinion.

It is evident that there are shared characteristics between refugees under the definition of the 1951 Geneva Convention and environmental refugees, even though climate change or challenging environmental conditions are not recognized as grounds for persecution.

On the other hand, the term environmental refugee is akin to that of an environmental displaced person, as they both have the same motive for leaving and lack an international legal framework to ensure their protection. However, environmental displaced persons have a more favorable situation as they are governed by the national laws of the State they have not departed from.

Finally, the fact that the displaced person remains within the borders of his or her State, i.e. without crossing recognised international borders to another State, is the fundamental difference that distinguishes the displaced person from the environmental refugee.²⁰

Article 2 of the 1990²¹ Global Compact on the Protection of the Rights of All Migrant Workers and Members of Their Families defines a migrant worker as "a person who is going to engage, is engaging or has engaged in a remunerated activity in a State of which he or she is not a national".

According to this definition, a migrant worker is different from an environmental refugee because the former goes to a different country than their own to work for pay. Environmental refugees, on the other hand, leave their homes due to difficult environmental conditions.

Some international lawyers believe that the provisions of the Global Covenant on Migrant Workers can apply to an environmental refugee if they are also a migrant worker. So, while an environmental refugee may have some international

²⁰Kamila Aarab, Legal Protection of the Environmental Refugee, Critical Journal of Law and Political Science, Faculty of Law and Political Science, University of TiziOuzou, Volume 17, Issue 2, 2022, p. 579.

²¹This Convention was adopted by General Assembly Resolution No. 45 of December 18, 1990. It entered into force on July 1, 2003.



legal protection, it is only granted as a migrant worker and not specifically as an environmental refugee.

There is also the concept of an environmental migrant, who is someone who consciously and logically chooses to leave their country. In contrast, an environmental refugee is compelled to leave their country in order to escape or due to the sudden danger posed by the environment.²²

Having distinguished between the environmental refugee, the environmentally displaced person, the traditional refugee, the migrant worker and the environmental migrant, it can be said that this category of refugee is different and does not fall into any of the legally recognised categories. However, international doctrine has not ignored this problem and, since the mid-1980s, has endeavoured to find an appropriate definition and to put in place appropriate mechanisms to limit this phenomenon.

Second category: The emergence of the concept of environmental refugees in international law

The United Nations has recognized that the issue of refugees, in general, is of great importance. In fact, during its first session in 1946, the United Nations General Assembly affirmed a crucial principle on the issue of asylum: "Refugees or displaced persons cannot be forced to return to their home country if they have clearly and firmly objected to such return."

In addition, Article 14 of the 1948²³ Universal Declaration of Human Rights states that: "Everyone has the right to seek and to enjoy in other countries asylum from persecution".

After World War II, the United Nations took the first step to address this problem by creating a specialized agency called the International Refugee Organization. This organization operated from 1946 to 1952, providing protection, assistance, and solutions for refugees. However, it became entangled in Cold War politics and was expensive to maintain. As a result, a decision was made to replace

²²Chaimaa Farouk Salama Abdallah, The impact of climate change on the issue of environmental asylum, Journal of Political Science and Law, published by the Arab Democratic Center for Strategic, Political and Economic Studies, Germany Berlin, Volume 7, Issue 33, September 2022, p. 102.

²³This Declaration was adopted on December 10, 1948.



it with a temporary agency, initially non-executive, and to also revise treaty provisions regarding the status of refugees.

In 1951, the Geneva Convention on Refugees was adopted in response to the devastating impact of the two world wars on Europe. This Convention, which became effective on April 22, 1954, is now crucial as the foundation of refugee protection.

It should be noted that the 1951 Convention relating to the Status of Refugees defined what a refugee is, as well as the protection, rights and assistance they should receive. Originally, this Convention was limited to refugees in Europe, but this changed in 1967 with the adoption of the "Protocol relating to the Status of Refugees". This protocol broadened the scope of the Convention both temporally and geographically. It also forms the central legal basis for the work of the Office of the United Nations High Commissioner for Refugees (UNHCR). The UNHCR thus acts as the "guardian" of the 1951 Convention and its 1967 Protocol.

Reality shows us that there are new reasons for migration and the displacement of human groups, in addition to those outlined in the 1951 Convention relating to the Status of Refugees. Environmental causes, in particular, play a significant role in driving this movement. While there are no precise figures available, it is undeniable that certain parts of the world are experiencing reduced population due to various factors, including climate change, water pollution, desertification, agricultural land degradation, and the increasing frequency of natural disasters. In 2008 alone, over 20 million people were forced to move due to sudden-onset climate-related natural disasters. Furthermore, certain studies predict that the number of environmentally displaced individuals will surpass the number of those covered under the 1951 Geneva Convention.²⁴

In this respect, many recent studies carried out by specialised United Nations organisations have referred to the term "environmental refugee" or "environmental migration" and have shown the extent to which this phenomenon is linked to the environmental risks and climate change affecting the environment in many regions.

Numerous United Nations reports have recommended the need to study this phenomenon. In 2009, the UN Commission on Human Rights presented a report to the Human Rights Council on the relationship between human rights and climate change. The report addressed the impact of climate change on migration, but did not propose a legal framework for environmental migration.

²⁴MekikaMeriem, op cit. p 83.



On 6 October 2017, the Human Rights Council called for an intersessional panel discussion titled "Human rights, climate change and migrants and displaced persons across international borders." As part of this event, the Office of the High Commissioner for Human Rights, in collaboration with the Platform on Disaster-Related Displacement, organized an expert meeting to address the adverse and progressive effects of climate change and the protection of the human rights of cross-border migrants. The resulting report from this meeting highlighted the gaps in human rights protection for individuals crossing international borders due to the negative impacts of climate change. The report also included a series of recommendations that emphasized the need for compliance with human rights obligations in the context of cross-border migration related to climate change.

According to the World Bank's 2021 "Groundswell" report, climate change - an increasingly powerful driver of migration by the day - could force 216 million people in six regions of the world to move within their own country's borders by 2050.

Hotspots of internal migration caused by climate change are very likely to appear by 2030 and to continue to spread and worsen by 2050. The report concludes that immediate and coordinated action to reduce global greenhouse gas emissions and support green and inclusive development could reduce the scale of climate change-induced migration by up to 80%.²⁵

Thus, the concept of the environmental refugee has become commonplace at international level, but the question that arises is whether international law protects environmental refugees or not.

Section II: The position of international law on environmental refugees

Environmental refugees make up a large proportion of the victims of natural disasters. Although they do not benefit from any protection as such under international legal rules, in the absence of any specific international regulations on environmental refugees (first section), this does not mean that they do not benefit from any form of protection. Indeed, universal declarations and international conventions on human rights apply to all persons, including environmental refugees as human beings enjoying the protection of international human rights conventions (second section).

²⁵ Idem, p 84.



Subsection I: Lack of international legal regulation for environmental refugees and the reasons for it

As mentioned above, environmental refugees have no international legal status and, consequently, no protection as environmental refugees. We will therefore discuss the absence of international legal regulation for environmental refugees in the first sub-section, while we will devote the second sub-section to the reasons for this absence.

Subdivision 1: Lack of international legal regulation for environmental refugees

The concept of asylum is governed by the 1951 Geneva Convention, which defines a refugee in Article 1 as "any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, by reason of such fear, is unwilling to return to it".

According to the definition given in Article 1 of the Convention, refugee status applies to anyone persecuted for reasons of race, religion, gender or membership of a particular social or political group. Consequently, this Convention denies refugee status on the grounds of environmental degradation.²⁶

Some scholars argue that the concept of refugee, as defined in Article 1 of the 1951 Convention, could also be applicable to environmental refugees. They support their viewpoint by suggesting that environmental refugees could be considered victims of persecution if their government fails to prevent or address environmental degradation and its harmful consequences. In such situations, people living in a particular region may face immediate danger, compelling them to migrate to other countries in search of safety and protection. This parallels the events following the Chernobyl accident, where the Soviet government's inadequate response worsened the environmental impact, thereby exacerbating the issue of environmental refugees.

Thus, the refusal to return to one's country of origin and flight from it are reasons shared by all displaced persons or asylum seekers, and the determining

²⁶Samar Brahim Mohammed, *op cit.* p 147.



criterion lies in the objective motives that prompt emigration. However, this approach has not been accepted in international law.²⁷

Some jurists have suggested the expansion of the 1951 Geneva Convention to encompass environmental refugees, or the creation of a new convention dedicated to this specific category. They disagree with the notion that environmental circumstances should be considered a form of persecution, which is why they argue that the current convention cannot include environmental refugees. However, they do make an exception for situations where a state utilizes environmental means to exert control over its citizens, as seen in the case of southern Iraq where the government drained marshes to suppress opposition and rebellion.

However, these attempts have been unsuccessful due to the unwillingness or inability of host states to absorb large numbers of environmental refugees, for fear that this would undermine their sovereignty. Despite the absence of a specific convention protecting their rights as environmental refugees, general international human rights conventions guarantee their multiple rights, not as environmental refugees, but as human beings benefiting from the protection of international human rights instruments.²⁸

The legal problem that we observe concerning environmental asylum is the lack of rules from the international community to deal with the legal status of the environmental refugee in public international law. The United Nations High Commissioner for Refugees does not recognise the status of environmental refugee, and the 1951 Geneva Convention relating to the Protection of Refugees does not define the term environmental refugee. In addition, it has limited the types of asylum exclusively, which prevents the inclusion of a new category of refugee without it being mentioned in the text of the convention. This situation is explained by the novelty of the phenomenon of environmental asylum compared with other forms of asylum, such as political asylum, for example.

There are several reasons why environmental refugee status is not recognised, including:

1. Most migration linked to natural disasters is internal displacement, as the definition of environmental migration refers to "the various direct and indirect environmental causes that lead to the permanent departure of populations from their areas of origin", and the term "environmental refugee" refers to a person

²⁷ Mekika Meriem, op cit. p 88.

²⁸ Samar Brahim Mohamed, op cit. p 146.



facing a crisis for environmental reasons and who crosses the borders of his or her country.

2. International recognition of a legal status for environmental refugees would impose numerous obligations on States, such as the provision of an appropriate environment, food, healthcare, education and numerous human rights, which would entail a considerable economic and social burden for countries.

3. Most asylum cases resulting from environmental disasters are dealt with through international aid, even if this is not sufficient. There are several obstacles to humanitarian aid, including :

- Acceptance of humanitarian aid by disaster-stricken states, which is one of the main conditions for other states and governmental and non-governmental organisations to provide humanitarian aid.

- Lack of coordination between aid donors and recipient countries.

- Delays in the delivery of humanitarian aid. ²⁹

The second subdivision: the reasons for the lack of legal recognition of environmental refugees

There are several reasons for this, both political and economic. However, the silence surrounding this issue and the absence of any initiative to find international legal solutions could lead to even greater problems. Indeed, the unregulated migration of victims of natural disasters may disrupt international security and peace because of potential conflicts over natural resources.

Firstly : political reasons

The fundamental principle underlying the notion of refugee is persecution. For a person to become a refugee, they must flee or fear persecution. The lack of use of the term "environmental refugee" somehow reflects the fear that the recognition of climate change as a form of persecution could be interpreted as a form of persecution against the most vulnerable. Moreover, climate-induced migration is often seen primarily as a political rather than an environmental issue.

²⁹HibaDahabMaou, Legal Mechanisms Approved to Help Environmental Refugees "A Comparative Study," Maysan Journal of Comparative Legal Studies, Faculty of Law, University of Maysan, Iraq, Volume 1, Issue 1, June 30, 2020. pp. 122, 123.



The issue of determining the legal status of environmental refugees raises a number of concerns, particularly from the point of view of security. Worsening environmental degradation will inevitably lead to more refugees, often from the poorest populations, who are likely to cause problems or provide fertile ground for many illegal activities. This hampers the political will of developed countries to find a legal solution to this phenomenon.³⁰

Moreover, major powers are reluctant to include environmental refugees as a distinct category in international law because it would require them to take on extra responsibilities. Additionally, dismissing the issue of environmental refuge as baseless is akin to treating it as a mere internal migration matter, and it is important to keep domestic and international affairs separate.

Secondly :economic reasons

These are mainly linked to the lack of willingness on the part of industrialised and developed countries to cooperate collectively to tackle the phenomenon of climate change. Former US President Donald Trump's withdrawal from the Paris Climate Agreement is a striking example of this, as is the need to implement the Kyoto Protocol aimed at reducing greenhouse gas emissions that accelerate global warming. These developed countries are relatively the least affected by the effects of climate change, which means that they have little incentive to tackle the phenomenon. They are not yet sufficiently affected to act in favour of the environmental refuge imposed by the climate change they have caused. What's more, they are not prepared to reduce their levels of economic production. Indeed, they often relocate polluting industries to regions in developing countries and the Third World, claiming that they are investing economically in these regions, when in reality they are only seeking to benefit from the environmental advantages, as most developing countries are not concerned about this aspect, while also benefiting from cheap labour.

Industrialized countries are worried that granting legal status to environmental refugees would result in an expansion of their rights, which could adversely affect their economies. This would especially burden European countries, such as France and Germany, who have been slow in acknowledging this growing phenomenon. These countries are hesitant in finding a solution to this problem and are satisfied

³⁰Ouchene Leila, Challenges of international protection for environmental refugees under the rules of international law, Journal of Legal and Social Sciences, ZianAshour University in Djelfa, Volume Eight, Issue One, March 2023, p. 1251.



with simply advocating for the delivery of humanitarian aid to the affected regions.³¹

In addition, there are challenges that countries face in terms of asylum in general, due to the social problems that affect the make-up of their populations. The number of refugees has increased in recent years due to the conflicts in the Middle East, which has led to serious problems within the European Union. Consequently, it is not possible to broaden the concept in such a way as to impose more burdens on the countries of the European Union without the others.³²

Due to the lack of international recognition of the category of environmental refugees, these individuals are currently deprived of international regulation and legal protection specified in a treaty. However, it is important to note that despite this lack of recognition, environmental refugees are still entitled to legal protection under various international human rights covenants and conventions.

Subsection II: Aspects of Protection for Environmental Refugees under International Law Provisions

Aspects of protection for the environmental refugee can be found in a series of legal texts, both general treaties (subdivision I) and specific treaties (subdivision II).

Subdivision I: Protection of the environmental refugee in general international treaties

The rules of international law lack specific provisions to protect environmental refugees, but the environmental refugee benefits from another type of protection, namely general protection. Universal declarations, international conventions and international covenants on human rights apply to all persons, including environmental refugees.

It is worth mentioning that there are two human rights conventions that contain direct provisions to protect the category covered by the convention in the event of a disaster. These conventions are:

Firstly, the 1990 African Charter on the Rights and Welfare of the Child

³¹Idem, p 1252.

³²Chaimaa Farouk Salama Abdallah, op cit. p 103.



It states that "States shall ensure that children who have become refugees or internally displaced as a result of natural disasters shall receive humanitarian protection and appropriate assistance in the enjoyment of the rights set forth in the present Charter and other human rights and human rights instruments to which States are parties".³³

Secondly, Article 11 of the 2006 International Convention on the Rights of Persons with Disabilities

It states that "States Parties shall, in accordance with their obligations under international law, including international humanitarian law and human rights law, take all feasible measures to ensure the protection and safety of persons with disabilities at risk, including in situations of armed conflict, humanitarian emergencies and natural disasters".

There are also a number of international treaties that can be applied to environmental refugees. These include the 1966 International Covenant on Civil and Political Rights and its optional protocols, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1979 Convention on the Elimination of All Forms of Discrimination against Women and its optional protocols, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its optional protocols, the 1989 Convention on the Rights of the Child and its optional protocols, and the 1990 Global Compact for the Protection of Migrant Workers and Members of Their Families.

Indeed, the international treaties and conventions mentioned above provide protection for individuals who exhibit certain characteristics, but not specifically as environmental refugees. In other words, the protection granted by these agreements is broad and not specific to environmental refugees. Therefore, it is important to expand the scope of the 1951 Geneva Convention to encompass environmental refugees.³⁴

Subdivision II: Specialised international treaties

Some international treaties take several approaches to the legal protection of refugees.

³³Article 23 of the African Charter on the Rights and Welfare of the Child 1990.

³⁴Issam Al-Hinnawi, *Environmental Issues in One Hundred Questions and Answers*, Al-Shorouk Publishing House, 2nd edition, Beirut, 2008, p. 51.



Firstly:2005 ASEAN Convention on Disaster Management and Emergency Response addresses the risk aspects of natural disasters in terms of prevention and impact reduction, as well as preparedness, emergency response and rehabilitation.

Secondly: Convention for the Protection and Assistance of Internally Displaced Persons in Africa :³⁵

In 2009, the African Union adopted its own convention on the protection of internally displaced persons, known as the Kampala Convention. It is based on the Guiding Principles on Internal Displacement, reflecting international human rights standards and the principles of international humanitarian law relating to the Guiding Principles on Internal Displacement. It is based on the fundamental responsibility of States to manage internal displacement.³⁶

This convention is the sole official document that specifically addresses the consequences of climate change-induced disasters. It obligates Member States to implement the required actions to safeguard individuals affected by both natural and human-made disasters, including those stemming from climate change. Additionally, it mandates Member States to provide assistance during emergencies and natural disasters, prepare for such scenarios, and manage the resulting population displacements.

Furthermore, there exist various other documents, while not legally binding on their own, possess political significance and can contribute to the establishment of customary legal norms. These non-binding legal instruments encompass the 1998 Guiding Principles on Internal Displacement.

It should be noted that these and similar international documents do not provide specific legal protection for environmental refugees because of their specific characteristics, but rather as human beings deserving such protection. This underlines the importance of international recognition of environmental refugee status.

The first attempts to develop an international treaty on refugees were made through the draft Convention on Environmental Refugees. This draft was prepared

³⁵The African Union Convention for the Assistance and Protection of Internally Displaced Persons in Africa was signed on October 23, 2009 and entered into force on December 6, 2012.

³⁶OuridaDjendelli, Kampala Convention for the Protection of Internally Displaced Persons in Africa, between commitment to implementation and obstacles to success, *African Journal of Legal and Political Studies*, Ahmed Deraya University, Adrar, Volume 5, Issue 2, December 2021, p. 78.



by 19 experts in law and economics and was first published in October 2008. It was later revised in May 2010 and again in May 2013.

The draft convention was proposed for several reasons. Firstly, there was a legal void, as the 1951 Geneva Convention did not cover the category of environmental refugees. Secondly, it aimed to contribute to peace and security by reconciling international conventions related to human rights.

The draft convention consists of 35 articles divided into 8 chapters. Its provisions aim to define the category of environmental refugees and establish a set of principles, including solidarity, non-discrimination, common responsibility, and effective protection. This project establishes a legal framework that guarantees adequate international legal protection for environmental refugees.³⁷

Conclusion

Environmental refugees are individuals who are forced to move from one region to another due to environmental problems. This movement impacts the principle of state sovereignty and can create tensions with the host country. Addressing the needs of these refugees requires international commitment and assistance, in accordance with human rights conventions that recognize the right to life.

While there is no consensus on the terminology of environmental refugees, it is undeniable that there is a concrete problem that needs to be resolved. Currently, international law has not provided a clear answer to this issue, whether from the perspective of human rights law, refugee law, or environmental law.

The lack of international attention to environmental refugees can be attributed to the difficulty in recognizing them on a large scale, due to the flexible nature of the term. As a result, international laws lack specific provisions governing the phenomenon of environmental refuge, which poses a threat to international peace and security. Existing legal regulations mostly indirectly address this issue and do not adequately serve the interests of environmental refugees who are victims of natural disasters.

In conclusion, the following can be drawn from our study:

³⁷HibaDahabMaou, op cit. pp 122, 124.



- Reports from various international organizations emphasize the danger of the increasing number of environmental refugees due to natural disasters.

- There is a complete absence of legal texts providing international protection for environmental refugees, particularly in the 1951 Geneva Convention on Refugees, and no efforts have been made to correct this shortcoming in the accompanying 1969 Protocol.

- The confusion between the terms environmental refuge, environmental displacement, and environmental migration leads to differences in legal status, as each is governed by different laws.

- The lack of international interest in environmental refugees, despite the growing migration flows to other countries, will have a negative impact on international peace and security.

Based on the above, the following recommendations can be made:

- The international community should include a section on climate change and its impact on the right to life in environmental agreements, especially in areas where the damage is irreparable or threatens lives.

- A uniform and comprehensive definition of environmental refugees should be established to create an international legal framework for the protection of this category.

- Decisive action should be taken to recognize and legally protect environmental refugees, by addressing the issue at the international law level, such as by developing an international treaty.

- The 1951 Geneva Convention on Refugees should be updated to include provisions for environmental refugees, or a new legal framework should be adopted, such as a supplementary protocol.

- The underlying causes of environmental refuge, such as global warming, should be addressed.

- The 1994 Arab Refugee Convention should be promoted as a precursor to the recognition of environmental refugees, and the development of other relevant regional agreements should be encouraged.