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The Definition and the Issue of Climate Refugees in the Light of International Law

Abstract: As the problem of global warming and subsequent climate change becomes more and more pronounced, causing a lot of difficulties for the communities all over the world, and for the whole humankind as well, the need to focus on some of the aspects of such state of affairs arises among researchers and in the political discourse. Some of the problems that sprung out of the changes in our environment create the need for a new legal solutions, or the need to at least redefine the ones that are already set in place. One of such problems is the phenomenon of „climate refugees”. Droughts, food insecurity, degradation of drinking water, rising sea levels, storm surges and infectious diseases, all of which could be linked (directly or indirectly) to the changes brought about by the global warming and all of those can be reasons that could force people out of their habitual homes in search of better living conditions, and even due to the need to save their health and life. Having that in mind, this article raises the issue of so called climate refugees, people displaced due to the negative changes taking place in the environment, which, based on scientific reports, may be related to the negative impact of a human activity, both of sudden and long-term occurrence. The text presents proposals for defining the discussed phenomenon and addresses the issue of the lack of an appropriate legal framework regulating the discussed topic in the UN and on the EU level.

Key words: climate refugee, environmental refugee, climate migrant, environmental migrant

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Introduction

The topic of global warming and climate change cause a lot of controversy, also in the political discourse. Despite advanced and in-depth research showing the connection of human activity with changes taking place in the environment, many still do not want to acknowledge this „simple” truth. Even though the approach to climate change is treated seriously within the European Union, it is still those actors of the international scene who are most responsible for the progressive degradation of the natural environment, that are reluctant or even outright hostile to the idea of admitting the truth about the detrimental impact they have on the global state of affairs when it comes to the climate issue. It is no wonder as admitting to these consequently leads to facing the specter of responsibility for the damage that has been caused – and the damage is wide ranging.

It is worth mentioning at the very beginning that „climate change” and “global warming” are often used as synonyms but in fact have distinct meanings. As we read in the Overview: Weather, Global Warming and Climate Change prepared by NASA, „global warming is the long-term heating of Earth’s climate system observed since the pre-industrial period (between 1850 and 1900) due to human activities, primarily fossil fuel burning, which increases heat-trapping greenhouse gas levels in Earth’s atmosphere (...), climate change refers to both human- and naturally produced warming and the effects it has on our planet” (NASA, n.d.). In this text, definitely not aspiring to be a natural science article, while still being aware of the differences, I will mostly be using the term „climate change” or using both before-mentioned terms interchangeably.

Climate change, more and more severe in its nature as we can observe on the basis of many environmental occurrences all over the world, is about to bring many difficulties to for the whole humanity in the very near future. Worth mentioning are droughts, food insecurity, degradation of drinking water, rising sea levels (especially dangerous for coastal, low-lying land masses and islands), storm surges and infectious diseases (Merone & Tait, 2018, p. 508), all of which could be linked (directly or indirectly) to the changes brought about by the global warming. All of the above can be reasons that could force people out of their habitual homes in search of better living conditions, and even to save health and life, due to the threats arising from drastic changes in the ecosystem. It is worth mentioning that yes, there are many various reasons forcing people into the internal or international displacement, yet most of the research conducted in order to investigate this phenomenon clearly indicates that natural disasters are in fact the most common cause (Apap, 2019, p. 2). Annually, as stated in the statistics issued by the Internal Displacement Monitoring Centre, there is an average of 26,4 million people forcibly displaced by natural disasters occurring all around the world (Apap, 2019, p. 1). Most of those people

remain within the borders of their own countries, yet some are forced to cross the borders looking for safety.

The World Bank estimated that by 2050s Latin America, sub-Saharan Africa and Southeast Asia will generate approximately 143 million climate migrants. Additionally it is worth mentioning that in 2017 over 68 million people were forcibly displaced – more than at any point in human history (Podesta, 2018). Having that in mind, this article raises the issue of so called „climate refugees”, people displaced due to the negative changes taking place in the environment, which, based on scientific reports, may be related to the negative impact of a human activity, both of sudden and long-term occurrence.

1. Divergence in definition

As it has probably already been noticed, in the text I use a few terms in relation to people who have been forced or have made a decision about resettlement because of changes in the environment (either sudden or long-lasting), such as „climate refugees” or „climate migrants”. The reason for that is that there is no uniform legal definition describing this phenomenon. Most of the terms are constructed for the purposes of specific research, acts or organisations. Due to the wide range of subjects who have recently dealt with this politically inconvenient topic, we are dealing with a variety of different, more or less complex terms. Because of the fact that it is difficult to indicate one, most correct term (as the “correctness” of the definition in this case depends on the intended purposes for which it is to be used), I will try to present a few of the terms that can be found in the literature on the subject. At the same time, I would like to point out, that further in this text, the most often used term is „climate refugee”.

In the early phase of discussion about the matter at hand the term „environmental refugee” seemed to be the most popular one. It was used mainly in literature and discourse and its main duty was to raise awareness to the topic of forced displacement caused by the forces of nature. The term was firstly introduced and popularized in the academia by Lester Brown of Worldwatch Institute in the 1970s, but it is thanks to the El-Hinnawi and publication of the United Nations Environmental Programme that it gained wide publicity (Deshwal & Shrivastava, 2019, p. 33). Essam El-Hinnawi, the UN Environment Programme expert, coined the phrase „environmental refugees” to bring life to a definition of „those people who have been forced to leave their traditional habitat, temporarily or permanently, because of marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life” (Apap, 2019, p. 3).

Nevertheless, using the term „environmental refugee” seems to wrongly suggest that there already is a legal framework meant to protect people who left their country

due to the disruptive environmental transformations (Osóbka, 2018, p. 167). It is caused by the actual use of the term “refugee”, which happens to be specifically described by the Refugee Convention.

The Refugee Convention of 1951 introduces an uniform definition of the term “refugee”. Definition contained in the article 1 puts the emphasis on the protection of persons from political or other forms of persecution. As it is stated in the Introductory Note by the Office of the United Nations High Commissioner for Refugees (UNHCR), a refugee, according to the Convention, „is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion” (UNHCR, 2010) and are unable or unwilling, due to the fear of persecution, to seek the protection their home countries. Joanna Apap notes that „this definition is not applicable to people displaced for reasons related to the environment, as it would be difficult to consider environmental degradation as „persecution” in the sense in which it is used in the Refugee Convention” (Apap, 2019, p. 2).

Moreover, the term „environmental refugees” never gained the support of the UNHCR, which usually address those, who are forced to escape due to the environmental disruption as „persons displaced in the context of disasters and climate change” (UNHCR, n.d.).

The term seems to be quite a mouthful, and yet it doesn’t strike as much as the term „refugee’. It is also worth mentioning that there is a similar term – *internally displaced persons* (IDPs), and its definition reads as follows: „person or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, and who have not crossed an internationally recognized state border” (Apap, 2019, p. 4). Here we met the problem in the form of, indirect but still meaningful indication, that the displacement is rather to take place within the country of origin of the person being displaced. Building such definition, or evoking a connotation with the *internally* displaced persons could „rob” those displaced due to the environmental problems beyond the borders of their homeland of any kind of protection that could be connected which falling under the proposed terminology.

Due to the mentioned concerns, the term „environmentally/climate displaced person” seems to be increasingly used phrase recently. The term seems to be more adequately descriptive and in a way is a compromise in terms of naming.

International Organisation for Migration proposes yet another term to describe the discussed topic, namely: „forced climate migrant” (Brown, 2018, p. 24–27, 32–41). The concept of „environmental migrant” may also be found in the literature on the subject and only used in the works of the International Organization for Migration. The term covers the fact, that unlike political refugees under the Refugee Convention, who are intertwined with the notion of return to their country of origin when the possibility of persecution is no longer likely to occur, climate refugees are

often unable to come back to their habitats, due to the fact that those are either no longer habitable or even does not longer exist (for example submerged islands in the pacific Ocean) (Deshwal & Shrivastava, 2019, p. 33).

International Organisation for Migration proposes the following definition to describe the topic of environmental migrants: „persons or groups of persons who, for compelling reason of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad” (Ziemann, 2014, p. 110).

Nevertheless, as some researchers accurately point out, the term „migrant” (just like before the term refugee”) may not be the best fitting one due to the fact that it suggest that there was a degree of volition in the occurred displacement (Apap, 2019, p. 3).

It is important to remember that migrant is defined as „someone who has voluntarily left their country of origin and can return at any time”; those who left their habitual homed due to the climate or environmental disruption return may not be possible (Merone & Tait, 2018, p. 508).

Jean Lambert, a Green MEP from the UK, strongly opposes the definition proposed by the International Organisation for Migration, pointing to the need to use the term „refugees” as only it possess the desirable impact that can ensure certain rights and responsibilities that are due to refugees (Ziemann, 2014, p. 112).

The phrase „climatic refugee” causes many problems of a legal nature when we delve into the meaning and power that are attributed to the term „refugee”. Joanna Apap indicates that the most impeding issue is the „effectiveness of rights and the legal certainty” (Apap, 2019, p. 3). She points to the fact that if there is no legal provision for an individual right due to the fact that there is no legal act that would grant those rights to the climate refugees, and as such, the matter is not covered by law, then „the individual cannot be guaranteed international protection as a matter of law” (Apap, 2019, p. 3).

One of the main opponents to using the term „climate refugee” is the UNHCR (Guterres, 2009, p. 8). Using the term „refugee” to describe such people may lead to undermining the protection due to the refugees within the meaning of the Refugee Convention (Tedenljung, 2020, p. 21–22). On the other hand it is thought that such use of the term”refugee” may be a catalyst to redefining the definition included in the Refugee Convention, which in succession could potentially bring harm to the protection framework meant for „traditional” refugees (Guterres, 2009, p. 8).

As of today, having in mind the above-mentioned examples and related problems, it seems that the term of „environmental refugee”, originally proposed by Lester Brown and Essam El-Hinnawi in the early stages of describing this new phenomenon in the „migratory” tendencies, was once again brought to light and was proposed in order to replace the sensitive phrase of „climate refugee”, yet in the end

was deemed not direct enough in its meaning. This leaves us with a certain definition void which each person fills as sees fit in order to describe the phenomenon.

Bonnie Docherty and Tyler Giannini proposed that the desired definition should be composed of the following elements, which would make it inclusive and true to the circumstances that those whom it describes face:

- forced migration,
- temporary or permanent relocation,
- movement across national borders,
- disruption consistent with climate change,
- sudden or gradual environmental disruption,
- a “more likely than not” standard for human contribution to the disruption (Docherty & Giannini, 2009, p. 372).

Therefore, there is nothing else but to wait for a compromise or agreement as to the use of specific terminology.

2. International legal framework

As I mentioned before, climate refugees (or any other term describing those in described position) is not a proper legal term in any of international legal acts, and it is due to the fact that there is no legal act regulating any of the issues related to their situation. Climate refugees, as it was also mentioned before, are not covered by the 1951 Convention Relating to the Status of Refugees. Neither they are granted legal protection by any other act explicitly or at least in a subsidiary way.

Therefore, even if the phenomenon of climate displacement is being noticed and it gets more and more attention internationally and regionally as the problem gets more pronounced, there still is no specific, legally binding solutions that can be enforced. This is in part due to the general attitude towards migration and refugees, especially in the European Union and in the USA, which is mainly due to the refugee crisis that began in 2015 in Europe after mass influx of refugees and migrants. Such a turn of events and the turbulent situation it caused, both political and social, does not encourage a return to talks about similar issues, which still evoke extreme emotions.

Nevertheless, this topic is being taken up – sometimes directly, but more often than not indirectly, in order to address and give the problem any framework. Sometimes there are positions that completely reject the need to address the issue of climate refugees, sometimes the main argument is that there is no need to create new legal acts, and only that those that are already in force should be adapted to the current needs. Regardless of the presented point of view, at least a few initiatives should be mentioned.

One of the pioneers in addressing the issue is the United Nations. In 2018 the UN General Assembly declared the Global Compact on Refugees that states that „while not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with drivers of refugee movements” (UN, 2018, para. 8, sec. D, chap. I). Further in the document we can read that the „external forced displacement may result from sudden onset natural disasters and environmental degradation” (UN, 2018, para. 12, chap. III).

In the Climate change and disaster displacement in the Global Compact on Refugees, a document produced by the United Nations High Commissioner for Refugees we read that: „UNHCR considers that the Global Compact on Refugees (GCR) adopted by the UN General Assembly on 17 December 2018 effectively acknowledges and addresses the reality of increasing displacement in the context of disasters, environmental degradation and climate change, and provides a basis for measures to tackle the many challenges arising in this area” (UNHCR, 2019).

In the Key Messages and commitments on Climate change and disaster displacement worked out during the 2019 United Nations Climate Change Conference, also known as COP25, we read: „where the effects of climate change and disaster interact with conflict and violence, affected people who are forcibly displaced across international borders may be refugees under the 1951 Refugee Convention or regional refugee frameworks (...). However most people displaced across an international border solely by the effects of disaster or climate change will not fall within the definition of a refugee under international law” (COP25, 2019, p. 2).

It is worth mentioning here that in case of displacement of people occurring within the borders of the country of origin of those being displaced due to the climate or environmental changes the matter belongs to the internal affairs of the nation as the state stays responsible for its citizens (Lear-Arcas, 2012, p. 91).

As can be seen, there is no mechanism at the global level that could enforce certain regulations on the participants of the international scene of influence. Therefore, an attempt should be made to find such solutions at the regional level. In this article I focus at the achievements of the European Union.

As of today the European Union has still not formally recognized climate refugees, resorting only to an expression of concern toward the gradually worsening trend of climate-driven displacement of persons (Apap, 2019, p. 1–2). Nevertheless, worth mentioning is the Temporary Protection Directive (Council Directive 2001/55/EC). Its aim is to provide immediate but temporary protection to displaced third country nationals who are unable to return to their country of origin due to the threat of war or other causes. Introduced in 2001 as a response to the 1990s conflicts in the former Yugoslavia and in Kosovo, based on solidarity between EU States, have not yet been triggered. Its main goal is to harmonise the proceedings among the Member States in face of the mass influx of displaced people and also to determine the rights

and treatment of those who benefit from the protection. It could potentially be used, after introducing some changes, to create legal framework that can be at least an introduction to the problem of climate displacement within the legal sphere of the EU.

Lisa Zeimann, a researcher in the field of politics and human rights, states that there is a need to adjust the Temporary Protection Directive for it to become actually applicable, and not only in cases of mass influx, but also to small displaced groups or individuals (Ziemann, 2014, p. 117). Alternatively, she points out that if the European Union will not be willing to propose any unified policy towards climate refugees, the member states should at least try to work out a bottom-up initiative to address the needs of those who had been displaced.

At the moment, European Parliament of the European Union, when it comes to the ideas for mastering the problem, offers five options that could be considered, not only within the EU, but on a global level. First proposition is to extend and adjust appropriate excerpts of the Refugee Convention. This idea, mentioned in this text before, was however declared to be inadequate due to the fear of risking current protection of „normal” refugees, which the act provides.

Second option is to extend the Guiding Principles on International Displacement; proposition is faulty because of the lack of any legal forces that could guarantee the instalment of the contained guidelines.

Third proposal is to create a completely new legal framework meant to guarantee protection for climate refugees. This idea is unlikely as it would demand strong political support that is impossible to obtain at the present time.

Fourth plan is to include the appropriate mechanism into the United Nations Framework Convention on Climate Change.

The last proposal is to „amend and use already existing forms of temporary protection” (Ziemann, 2014, p. 115).

Thinking about all of the above and speaking of the climate refugees, there is one more solution that comes to mind and it is the „mechanism” that is called the non-refoulement principle. This principle means that a country cannot expel or turn back a person, if such decision would send the person back to face specified dangers, such as cruel or inhuman treatment or the threat of losing one’s health or life, and some could argue, that the problems that the climate refugees face may fulfil the demands of this definition. Yet, other researchers, as Rafael Leal-Arcas from Queen Mary University of London state that „climate change is not likely to pose harms dangerous enough for people to make use of the principle, and even if climate migrants were able to make successful non-refoulement claims, the principle only protects them from expulsion, but it does not grant them the right of permanent residency in a country” (Lear-Arcas, 2012, p. 94).

Therefore, to summarize, as of today, there is no binding global act that could provide legal framework for climate refugees and countries that become a side of

the problem. Nevertheless, it is worth mentioning that there is one regional, binding act that provides protection and assistance for people displaced due to the natural or man-made disasters and it is Kampala Convention, that is an instrument of African Union (Apap, 2019, p. 6).

Conclusions

While referring to the issue of people who move due to climate change, Jean Lambert clearly states that „the existence of environmental refugees has to be officially recognised in order for the affected people to receive recognition” (Ziemann, 2014, p. 112). One cannot disagree with her. Having all of the above mentioned in mind, looking at the the disordered political and legal circumstances that surround the topic of climate refugees, it must be said with confidence that the international law is not aligned with the needs of rapidly changing environmental situation, and as such is unable to offer legal framework that could protect the rights of climate migrants. As it is stated by Rafael Leal-Arcas: „people wishing to settle in a different country because of climate change most likely do not have the right to do so, according to international law as it currently stands” (Lear-Arcas, 2012, p. 93). There simply are no legally binding agreements that can enforce and oblige the countries to support climate refugees (Podesta, 2018, p. 3).

Due to this fact more and more of the following comments can be heard in the discourse: for example John Podesta, Founder and director of the Center for American Progress states that „the international community may be forced to either redefine „refugees” to include climate migrants or create a new legal category and accompanying institutional framework to protect those displaced due to the environmental changes” (Podesta, 2018, p.).

On the other hand, as of late a frequently raised argument that gets increasingly more popular is a statement that the regional systems may be more adequate to deal with the notion of providing the legal coverage to those displaced due to the climate change, than the approach that would assume creating a top-down legal system (Apap, 2019, p. 5). Development of the new legal framework covering the issue of displacement of people due to the climate change is at the moment considered to be at least unlikely if not impossible. This is supported by the political and social mood, which since 2015 has been even more reluctant to the vision of refugees and migration and which sometimes remains sceptical about the concepts of global warming and climate change. Researchers also often point out that „the absence of policies regarding environmental refugees is largely due to the highly varied discourses and debates involving countless actors and agencies and the subsequent inability to come to an agreement” (Ziemann, 2014, p. 113).

Moreover, Przemysław Osóbka from Kujawy and Pomorze University in Bydgoszcz, points out that „there is a serious risk that the international community will gradually lose (...) sensitivity to the needs of people who have to face a real threat of losing their or their loved ones’ lives, as well as their properties and sources of income” (Osóbka, 2018, p. 167). „People who have to face a real threat” being those who keep struggling with the realities of being displaced due to the environmental threats.

Irrespective of personal opinions or the rhetoric of the specific political groups climate change is real and may as well be a prelude to the largest and most severe refugee crisis in the history of humankind. Without concrete actions and solutions of the international community, facing this challenge will be impossible.

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