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Climate change and human displacement: Towards validation of rights.

Mudança climática e deslocamento humano: A caminho da validação de direitos.

Shimul Dutta[1]
Arindam Basu[2]

Abstract: Climate migration presents a series of heterogeneous and awkward problems. There is a sharp disagreement on climate change as a triggering reason for human migration, both internal and cross-border. The trails of these relocations unwrap a vista of provocative accounts. Yet, the central concern is not how they move to a safer zone or expose themselves to additional risks. Rather, we encounter the absence of a normative framework to support the claims of the groups of these ill-fated people who get displaced because of disastrous environmental events. The debate here is partly about the scientific uncertainty of acceding to the branding of 'climate' migrant status and partly about the lack of international legal denomination to isolate such a group as 'migrants' with all its variants. Here, a slice of the global narrative revolves around the disavowal of climate change-induced migration. The 1951 Convention is hardly beneficial for climate migrants, and this deficiency is rooted in the Convention's inability to incentivize states, giving birth to a thin legal framework. Additionally, international climate change regime has been unsuccessful to produce any synergy with international refugee law. In this paper, we argue that this lack of interaction has its origin in the questionable application of state sovereignty doctrine that has blemished international refugee law and climate change negotiation. In the wake of a diminishing window of choice, there is a need to upgrade the climate change negotiation mandate to include a clear state obligation requirement to recognise the rights of climate migrants. This claim is entirely consistent with the dynamic structure of international climate governance and holds the potential to advance a code of 'collective rationality' over narrow state interests.

Keywords: Climate change; Migration; Climate Migration; Displacement and Rights.

INTRODUCTION

At present, the problem of climate migration is at the outer limit of the 'green zone' in contemporary international environmental law (IEL). This is evinced by limited discussions taking place in international law on human migration induced by climate change, in

[1]Institute Affiliation: RGSOIPL, IIT, Kharagpur. E-mail: shimuldutta@gmail.com, Orcid: id-0000-0003-1438-4490.
[2]Institute Affiliation: RGSOIPL, IIT, Kharagpur. E-mail: iit.arindam@gmail.com.

comparison to flurry of law-making on climate change 'proper'. For the most part, the debate is focused on finding a correlation – directly or indirectly – between climate change (or its effects) and the resulting dislocation of the population, migrating from one country to another. Though, arguably, the triggering of the migration phenomenon is largely attributed to climate change, there are dissents citing the lack of credible evidence about cause and effect. What remains concealed under this narrative is the absence of adequate efforts put by the international community to develop a legal framework that can adequately answer the questions pertaining to the status and rights of the displaced people affected by climate change. If taken, such discourse cannot remain exclusively conditional on establishing a relationship between climate change and human migration. Instead, the improved understanding on such correlation can increasingly benefit the succeeding legal framework.

Thus far, the predictions by various researchers and thinktanks have been ominous (Hagon 2020). It is possible that a mass movement of refugees across the borders may escalate cumulative stress on available resources. Further, receiving regions with this additional population can also experience socio-economic and political tensions, getting out of which will require substantial adjustment of government policies. However, notwithstanding the fact that climate change is a global phenomenon, its consequences are widely dispersed (Reuveny 2008). Therefore, the problem of climate migration demands a supranational consciousness and the dynamic involvement of international society (Docherty and Gianini 2009).

There are two distinct facets of these complications. Firstly, the domestic efforts put by a state are required to be planned in accordance with the everchanging geopolitics of time. Here, the choices are classically fenced by its sovereign interests. Secondly, for any nation, the determining criteria for recognition of the rights of a citizen depend either on prior entitlements or territoriality or both. Yet, an argument can be advanced, forcing a normative obligation on states, to recognise the rights of climate migrants who are forced to cross the borders under desperate circumstances, leaving everything behind. Therefore, fixing mechanical or narrow criteria for recognition of their rights may not be appropriate from humanitarian point of view. We build our case at two stages. To begin with, reliance is placed on the well-accepted proposition that international law has failed to address the climate refugee problem legally and decisively. A significant barrier comes from the lack of a proper

definition of displaced people. The difficulty is about choosing appropriate vocabulary. In this regard, the Convention relating to the Status of Refugees, 1951 (Zetter 2011) assumes much significance. The definition of 'refugee' available therein is quite narrow. Nonetheless, a dispute has surfaced about whether the restricted classification, *i.e.* identifying a vulnerable group as 'refugee' based on some pre-determined criteria is justifiable or not. This is definitely a dissuasion for any state to foster a compassionate practice. In addition, any unilateral decision-making may also lead to conflicting interstate relationships. In the second stage, we expand upon this dilemma by examining the state obligations to approve climate migrants' rights in the context of the existing international climate change laws, specifically under the Paris Agreement.

The article is divided into five Parts. After the introduction, the second part explores the disagreements and challenges that exist relating to a suitable definition of a person who is displaced from his place of origin because of adverse climatic events and forced to cross the international border. Part three deals with the inadequacy of responses from international law to address climate migrants' problems. In particular, in this Part, we have tried to explore the normative challenges associated with universal endorsement of human rights approach in cases of climate change-induced displacement. Part four peeks into the Paris Agreement to uncover the nature of climate obligations of the states. The discussion reveals that the exixting state obligation under the Paris framework is essentially conditioned by self-motivation, reinforced by the doctrine of state sovereignty. This acts as a formidable barrier to develop a synergy between Paris Agreement and other relevant international law instruments. Part five concludes the paper.

DEFINITION AND CATEGORIZATION CHALLENGES

This part discusses the conflicts that exist over an acceptable refugee definition in two sections. The first section brings forth the importance of normative requirements to expand the current definition of refugees by including people affected by climate change. The next section deals specifically with the legal discourse of the refugee problem and the gradual acceptance of the existing definition of refugee under international law. In this article, terms like 'refugee,' 'migrants,' and 'displaced' are used synonymously. This is an awkward settlement (Foster 2007). Yet, we have preferred this simplistic selection to avoid the

inevitable overlying of certain meanings. In addition, in general, we have discussed climate-related issues on an individual or a group basis. For that, we have not made any distinction between individual or group rights, though the possibility may be there to do such division from the human rights perspective (Cruft 2019).

NOMENCLATURE PROBLEM: WHAT SHOULD WE CALL THEM?

It feels rather embarrassing for a person who is forced to live without any formal identification in a country. As alarming as it sounds, the fate of those people who are forced to move to another country from their place of origin because of devastating climate events, depends on how the receiving state values their life. From the legal point of view, it brings us face to face with a delicate question – what should we call them? The answer to this question is implicitly linked with the reason and resulting spatial movement of these people.

It must be kept in mind that the human displacement problem is not new. Involuntary and mass migration took place in ancient times as well. Dominant civilizations like Greece and Rome offered protection to those who were forced to cross the borders (Fullerton 2017). But, the classification trend of these vulnerable people took root after two World Wars (Madsen 1966). A common denomination to classify these people is 'refugee' – an expression that generally describes someone who is forced to migrate because of the downright alteration of his habitat. If environmental reason dominates such eviction, then he may be called an 'environmental refugee.' The phrase has come from Lester Brown of the World Watch Institute in 1970. Simply stated, climate refugee means a person or a group of persons who become stateless due to anthropogenic or natural climate change(Roger 2008). But this is a broader classification. It is not easy to isolate various factors that trigger displacement and migration. Climate change, as an independent reason, often blends with several other factors that aggravate the plight of the people. But, among all environmental problems climate change-related events appear to be more disrupting in modern time. So, with slight modification, one who is uprooted from his original position can also be called a 'climate refugee', a subset of 'environmental refugee'. Even for that, there exists a different nomenclature, such as 'climate migrant' (Moerman and Perkiss 2018). The word 'migration' in some instances, receives prominence. Clearly, this is an effect-based approach to describe the affected person or a group. In that sense, recognizable climate-driven events can be

labelled as environmental migration, environmental displacement, climate-induced migration or simply climigration (Bronen 2008).

Regarding the acceptance of the term 'climate refugee' there are two divergent schools of thoughts. Some scholars while rejecting the idea, have considered the expression as a misnomer (McAdam 2007). However, the other group has given it a prominence in spite some inherent difficulties associated therewith. For them, it is hard to ignore the impact of environmental changes on the people, time and again triggering displacement, even though there are scientific and spatial challenges to establish the causal link (Gemenne 2017). This argument, nonetheless, is not the derivative of any logical contraption. Instead, one can see it as a part of a dialectical process, backing up the historical and socio-political theories that bring forth the impact of industrial development on these vulnerable groups. However, it certainly brings around the possibility of expanding the scope of refugee law to recognize climate change as a setting-off condition. But, it is possible that the affected group itself may reject the idea as the name 'climate refugee' markedly portrays a negative image of their condition (Christel 2017). This appears to be a part of general disapproval towards the resource-intense lifestyle of the West and its implicit connection to activate worldwide disruptive environmental conditions. For some, the ecologically damaging production and consumption culture has confirmed the uniformity of the neo-colonial capitalist order, leading to uncontrolled exploitation and inequality in developing countries (Chakravorty Spivak 2010).

Altogether, if we consider, as indicated above, that climate refugees are a subset of environmental refugees, then it is possible to identify three broad categories – (a) temporarily displaced people because of an environmental reason; (b) people who are permanently displaced and re-settled in a new area; and (c) individuals or groups who migrate from their original habitat, temporarily or permanently, to a new region within their own national boundaries, or abroad, in search of a better quality of life.[3] Now, a contiguous term

[3] For the first category, once the environmental disruption gets over and the area is restored to its original state, they return to their original habitat. This is usually the cases with populations displaced by natural hazards such as earthquakes or cyclones or an environmental accident such as, an industrial accident that created temporary environmental disruption, the second category talks about permanent changes, generally man-made, that affect the original habitat, for example, the establishment of huge dams and resultant backwaters. The third category tells us about the perception of people to cope with challenging conditions. For example, share-croppers and small-holders whose lands are being waterlogged and salinized and who cannot afford the capital investment

'environmental refugee' produces some challenges, too. Though, formerly verbalized by the United Nations Environmental Programme (UNEP), Hinnawi (1985) described it in a more resounding manner. For him, environmental refugees are those people who are involuntarily leaving their traditional habitat, temporarily or permanently, because of an evident environmental disruption. The causes can be natural or man-made. The requirement is to see the degree of disruption, physical, chemical, or biological, that alters the ecosystem or resource base so much that the habitat becomes temporarily or permanently unsuitable to sustain life. Even there appears to be contestation as 'environmental refugee' apparently has failed to gain support within the United Nations itself (Dina 2019).

These taxonomical controversies are actually indicative of the complexities involved in identifying the exact cause of migration, let alone an event that is solely attributable to climate change. Even so, the common vocabulary supports a process of identification that undermines the spread of these people across a large swath of territory without having much regard for the national boundary. A conventional belief is that migration and its effect is limited only to two or a few countries. This localization argument draws support from various factors, such as the prohibitive costs for international migration, strict control of the immigration process by a country, and the uncertainty involved in future livelihood in the destination country. A common trend is to prefer larger cities for better prospects (Warner et al 2013).

DEFINITIONAL DISCONTENT: READING THE CAUSE OF CLIMATE CHANGE IN THE 'REFUGEE' DEFINITION

The response from international law to addresses the classification problem has been sporadic, giving birth to a jurisprudence that attempts to solve various climate migration-related issues in a tepid manner. In antiquity, during the rule of the Ottoman Empire oppression and lasting wars affected numerous ethno-religious communities, such as Armenians, Assyrians, Chaldeans, Jacobite Syrians, Turks, and Kurds. In response, showing empathy Greece entered into several arrangements with Bulgaria and Turkey for the exchange of populations. This resulted in the signing of the Treaty of Constantinople in 1913, the

necessary to reclaim them often give up their holdings and migrate to nearby urban centers in search of other jobs.

Turco-Bulgarian Treaty in 1913, the Greek-Turkish Agreement in 1914, the Treaty of Neuilly in 1919, and the Treaty of Lausanne in 1923 (Gilbert 2001).

The Balkan Wars, the wars in the Caucasus, the Greco-Turkish War and ultimately World War I produced massive number of homeless people. It was beyond the capacity of the League of Nations to provide any solution to this problem, even though it established several institutions tasked with protecting Refugees (Gilbert 2001). This was a desperate time, and for the governments willing to come up with a solution concerning the legal status, especially for Russian and Armenian refugees, the major challenge was to find an amicable ground between the framework provided by the League of Nations and the internal control of states where the relocation of the large population appeared to be possible (Gilbert 2001). Afterward, the Convention relating to the International Status of Refugees, 1933 served as an alter on which the framework of the Convention relating to the Status of Refugees, 1951 was developed. The 1951 Convention was amended by the 1967 Protocol. The definition of 'refugee' under Article 1(2) of the Convention was unusually quaint and describes any person as a 'refugee' who "owing to a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

This definition rests heavily on the aspect of forced displacement as driven by 'persecution' by other people. Understandably, the framing or choice of expression in Article 1(2) originates from the prolonged history of oppression and the devastation that followed during the two World Wars. Other than the prominent usage of phrases like 'fear of being persecuted,' the divergence of opinions among nations on the issue of extending relief to refugees is clearly manifested in most parts of the definition. But apart from identifying applicable conditions or criteria for recognizing a refugee, the definition offers little flexibility. The clear preference for the term 'refugee' certainly poses a hold-up problem as, in succeeding years, it felt increasingly difficult to work around the conditions laid down in the definition to include people affected by natural calamities.

Clearly, the international law lacks the proper definition of a 'climate refugee.' There are two options open to bridge the gap. Amendment of the 1951 definition, which largely depends on re-visiting the negotiation pitch. Alternatively, it is open to the states to agree on a separate treaty to address the problem (Mayer and Crepeau 2011). Both processes involve complex bargaining bottlenecks, typical of international treaty negotiation. The choice mechanism preferred by the parties must address the varieties of externality problems spread over a number of unsettled issues. Hence, the amendment or a new agreement both need to solve 'individual' and 'collective' state rationality challenges.

Two specific problems emerge from the organizational hurdles. Firstly, the absence of legal provision puts the displaced people affected by climate change in a helpless position. For the majority of them, any legal impediment is merely an obscure rhetoric, essentially defeated by the need for survival. This may lead to potential breakdown of governance in an area where the migration is taking place. Secondly, the demand for basic rights, in the absence of any international framework, fails to provide sufficient motivation for the receiving country to extend help through a formal process. The *ad hoc* arrangements in the recipient state can further create a feedback loop (Banerjee and Duflo 2019),[4] reducing any future incentive. In general, the 1951 Refugee Convention definition allows us to think about the problem in a speculative manner. The lack of recognition of climate change as a cause for displacement raises the fear of further persecution in the migrated land (Mayer and Crepeau 2011) and (Bierman and Boas 2010). But the voices of concern creep around about how far the inclusion of climate change and, to that end, the term 'climate refugee' or 'environmental refugee' in the existing legal system will lead to the betterment of the conditions of migrated people. There is further disagreement on whether there should be an altogether new agreement or not (Biermann and Boas 2010).

To conclude this Part, it feels imperative to look at the international legal framework that is specific to climate change. The Paris Agreement, the successor of the under-productive Kyoto Protocol, deals with the climate migration issue in a discreet manner. While there is no provision related to climate/environmental refugees or migration, Paris tacitly approves the

[4] When there is an absence of legal framework, the local economy supporting the migrated population is likely to support a condition where traders will have less incentive to treat identity less people with much altruism. It is a matter of debate though, whether such economy in long run affects country's policy choices or not.

act of hesitation on the part of the states to include climate change as a profound cause of migration. Surprisingly, post-Paris discussions among the participants reveal an acceptance of the fact that climate migration puts major pressure on urban resources. The discussions further make it clear that even though affected people are forced to live in poor conditions, the overall migration signature is on the decline (Alaktif and Callens 2020). This is astonishingly puzzling. The silence of the Paris Agreement on climate migration is indicative of the lassitude of the international community to develop an all-inclusive legal structure addressing every significant climate change-related problem. But we see that state parties are yet to reach a consensus about the magnitude of the issue, as well as about the causal link between climate change and migration. At any level, it does not make any sense that the Paris community has accepted the effect of climate migration but simultaneously feels reluctant to include a provision in any of the Conference of Parties' (COP) decisions. In addition, in the wake of the increasing effect of climate change and the grim prediction associated therewith, it is doubtful that climate migration is actually reducing because of the institutional changes around the globe. After all, how should there be a cart before the horses?

DEMAND FOR RIGHTS: REVISITING THE RESPONSES FROM INTERNATIONAL LAW

We have already noted that the 1951 Convention and its succeeding 1967 amendment leave the scope of interpretation regarding the meaning and application of the term 'refugee.' The Convention carries much importance in safeguarding the lives, freedoms, and dignity of forcibly displaced people due to persecution, both in international and domestic laws. The temporal and geographic limitation that was present in the original version of the Convention was addressed in its 1967 Protocol, allowing states to treat the Protocol as an independent instrument. This makes it possible for states to accede to the Protocol separately without getting connected to the 1951 Convention.

The inadequacy observed in the definition of a refugee is a result of the recognition of limited grounds, such as race, religion, nationality, membership of a particular social group, and political opinion.[5] Because of the authorization of itemized causes, it is normal to hold a negative and narrow opinion about the Convention. In particular, it is not clear whether socio-economic and cultural rights become automatically part of the process of refugee status

[5] Article 1(2) of the Convention: owing to well-founded fear of being persecuted.

settlement. These considerations are of particular importance in the context of claiming basic human rights in the country of migration. We feel that the fierce controversy pertaining to the inadequacy, expansion, or application of the definition of 'refugee' to consider incidents related to climate change is undesirable. The United Nations High Commissioner for Refugees (UNHCR), the UN Refugee Agency responsible for looking after refugee-related issues, re-published a Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees in 2011 (UNHCR 2011).

The purpose was to provide guidance to understand and apply the refugee definition in appropriate manner. Handbook has expressly mentioned in the beginning that "[t]he Convention has proven to be a living and dynamic instrument, covering persons fleeing a wide range of socio-political events. It is also sufficiently flexible and allows for age, gender, and diversity sensitive interpretations" (UNHCR 2011). Remaining true to this vision, UNHCR came up with the Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Afghanistan in 2013 (UNHCR 2013). Though, the issuance of the Guidelines was the outcome of appalling human rights conditions in Afghanistan due to prolonged war and consequential persecution, one should not miss the connection of the Guidelines with the broader methodology applied to refugee selection criteria. Eligibility Guidelines itself makes it clear that rules mentioned therein "are legal interpretations of the refugee criteria in respect of specific profiles on the basis of social, economic, security, human rights and humanitarian conditions in the country/territory of origin concerned" (UNHCR 2013). Surely, this is an unequivocal statement that should put to rest any debate about the static application of the 1951 Refugee Convention.

As sufficiently indicated in the Handbook and Guidelines, there is a scope for further legislative and jurisprudential developments to accommodate wider and diverse refugee claims in new areas across the globe. This certainly should permit UNHCR to recognize people as 'displaced entities' (Hathaway 1990; Barnett 2002). Logically, there is no reason to peg such identification within narrow limits. Because climate change is the most pressing issue in international law today, it is imprudent to rely on regressive reading of the existing legal text. This must be kept in mind that developing an entirely new international legal

framework is a lengthy process.[6] The severity of the climate change-related events sends us a clear message that our response window is narrow. This should undoubtedly prioritize the expansion of the scope of the current definition of 'refugee' with all its variations to include climate causes over the process of developing a new legal framework. Two clear benefits may arise from this discourse. Firstly, this will bolster the right-based vocabulary at universal level. Secondly, it will be possible for implementers to move over from the first-level definition contest to focus more on second-level normative assessment, such as identifying and implementing the additional phases that are required to secure human survival conditions.

Migrations in various forms can potentially influence the bilateral relationship between states. in cases of cross-border migrations, the receiving state, to avoid escalation of regional conflicts, often rely on quick and *ad hoc* solutions. In principle, this altruistic state practice represents a model of cooperation that runs deep in all international binding and non-binding instruments. Making a move towards the strengthening this idea further, in 2018, the United Nations finalized the text of the Global Compact on Safe, Orderly, and Regular Migration (GCM). Based on the touchstone of international human rights law, GCM confirms states' obligation to respect, protect, and fulfil all human rights for all migrants. To cover all dimensions of international migration in an all-inclusive manner. The Preamble of the GCM clearly tells us that it rests on Universal Declaration of Human Rights (UDHR), along with its nine key international human rights law instruments. GCM has given a universality to the issue of migration by connecting it with all the major international legal instruments.[7] Moreover, noticeably, in the very beginning, GCM also provides that it 'rests on the purposes and principles of the Charter of the United Nations.'[8]

In quite a few paragraphs, GCM touches upon the matters related to climate change, which is neatly summarized in Objective 2 of its Preamble.[9] Subsequently, member states had

[6]Climate change regime itself has more than thirty years of legacy starting from 1992.
[7]It also rests on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, core international human rights treaties, the United Nations Convention against Transnational Organized Crime including the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, the United Nations Framework Convention on Climate Change, the United Nations Convention to Combat Desertification, the Paris Agreement, the International Labour Organization conventions on promoting decent work and labour mobility, the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda, the Sendai Framework for Disaster Risk Reduction, and the New Urban Agenda.
[8]This Global Compact rests on the purposes and principles espoused in the Charter of the United Nations.
[9] It also rests on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, core international human rights

agreed to set up an International Migration Review Forum (IMRF) to assess the progress made on the 2018 Global Compact. The first IMRF took place in May 2022 in New York, resulting, unsurprisingly, in a report on the Progress Declaration. The emphasis on collaborative model can be seen in Objective 23, designed to 'strengthen international cooperation and global partnerships for safe, orderly and regular migration'. In particular the participants "commit to take joint action, in addressing the challenges faced by each country, to implement this Global Compact, underscoring the specific challenges faced in particular by African countries, least developed countries, landlocked developing countries, small island developing States and middle-income countries."

The rhetorical and often spectacular in the narrative, GCM symbolizes the simplicity of adjusting the growing passion to protect climate migrants against structural oddities. There is nothing binding about GCM, except settling over the need for co-operation without any firmer commitment. But sure enough, GCM epitomizes multilateralism and unlocks the outlying possibility of developing something into legally binding nature. Thus far, its linkage with UN Charter is qualified by the hortative expressions. Nonetheless, we can consider it to be a tacit recognition of something more promising through which a an attentive international instrument may materialize.

REVIEWING THE PARIS AGREEMENT IN THE CONTEXT OF CLIMATE MIGRATION

Since 1980, the legal development on climate change has been constantly in flux, and the long discourse has embraced both constitutional and regulatory features. At present, the focus is on the implementation of the Paris Agreement (Bodansky, 2023). The primary focus is on to "[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.[10] This core obligation is further reinforced in Article 4.1 that for the

treaties, the United Nations Convention against Transnational Organized Crime including the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, the United Nations Framework Convention on Climate Change, the United Nations Convention to Combat Desertification, the Paris Agreement, the International Labour Organization conventions on promoting decent work and labour mobility, the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda, the Sendai Framework for Disaster Risk Reduction, and the New Urban Agenda. Objective 2 of the Preamble to The Global Compact for Safe , Orderly and Regular Migration(A/RES/73/195). *See* Fry (2023).

[10] Article 2.1(a) of the Paris Agreement.

purpose ‘to achieve long-term temperature goal’ casts an obligation on the parties to ‘reach global peaking of greenhouse gas emissions as soon as possible’(Paris Agreement, 2015). These parties are obligated to achieve ‘on the basis of equity, and in the context of sustainable development’(Paris Agreement, 2015). The long, unbroken paragraph spells one of the requisite ideas that has shaped the interpretation of the Paris Agreement over the years. Undoubtedly, this ‘obligation of conduct’ allows parties to make their calls as per domestic requirements. But such decisions should always carry a binder to respect the promises they have already made internationally. For that matter, the controversial phrase ‘as soon as possible’ does not offer absolute freedom to the signatories, and one can consider this a welcome compromise towards fulfilling a long-term goal.

But in spite of the success, i.e., bringing a maximum number of states on one platform and getting them to agree on at least agreeable solutions, the Paris Agreement is somewhat light on the issue of climate migration. In its Preamble, acknowledgement is made towards climate change as a ‘common concern of humankind’, and parties, while taking actions, should ‘respect, promote and consider their respective obligations on human rights’, including those of migrants (Paris Agreement , 2015). The paragraph is curiously drafted, though. At a first glance it appears that human rights, right to health, migrants are all separate matters that parties should respect and promote. But surely, such interpretation is illogical because the bucket of human rights obviously encompass right to health and right of migrants. Hence, it is possible to connect the core obligations of the parties to the human rights-oriented requirement which obviously include respecting, promoting and considering the rights of the migrants. While, a preamble loses its weight when the main text is absolutely clear, the guidance is difficult to miss and it cannot be said that Paris text is entirely definite and unambiguous on parties’ obligations. But past this longwinded interpretation, there appears to be a better reason to cast a duty to respect and recognise the rights of climate migrants on the Paris community and this surprisingly is connected to its own resposnses towards human mobility and climate change.

The first recognition came in COP 16, held at Cancun on 2010 that accepted the fact that climate change could probably set off the movement of people. It invited all parties “to enhance action on adaptation under the Cancun Adaptation Framework […] by undertaking inter alia, the following: […] Measures to enhance understanding, coordination and

cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at national, regional and international levels".[11] Following this the Cancun Adaptation Framework (CAF) established the national adaptation plan (NAP) process, allowing parties to prepare their national adaptation plans as a part of achieving long-term goals. It was obvious that the issue of internal displacement should be addressed by the national governments. Nonetheless, the effort was also made to address cross-boder displacements as the Norwegian and Swiss governments unveiled the Nansen Initiative on Disaster-Induced Cross-Border Displacement on October, 2012. Though, states were reluctant to let go their control over decision-making on climate migration, Nansen Iniitative was a tentative step towards a more flexible narrative to come (McAdam, 2013).

It appears certain that countries and regional organizations are required to develop policies to address human mobility that can be useful to adderss conditions responsible to cause displacement. In that sense, it has to be preemptive and should form a part of a country's adaptation strategy (IOM, 2022). Though, it is yet to be seen how such mitigation measures fit within the framework of Clean Development Mechanism (CDM) which is crucial for developing countries. The process, nonetheless, is very much dependent on on solving funding dilemma that impedes a developing country to embark upon contingency planning. Some respite is provided under the Warsaw International Mechanism (COP 20, 2014). But much depends on the willingness of countries to build and disperse such fund. These efforts clearly indicate that climate migration continues to remain as an outlying issue in the climate negotiations. Signatories are willing to talk about it but somewhat reluctant to agree on a strong commitment mechanism on rights recognition process. Rather the focus is on progressive domestic adaptation which largely relies on international aid. This skullduggery openly modifies Paris's foundational model that looks to cover wide-ranging attributes of climate change.

Noticeably, the flexible language of the Paris Agreement (and its predecessors) promotes the 'obligation of conduct', which is the most forceful manifestation of self-awareness and self-preservation (Paris Agreement, 2015). The adherence to this design is to ensure greater participation, offering enough space to the signatories so that they can put efforts to achieve targets in accordance to their own capabilities. The choice in fact lies in

[11] Article 14(f) of COP 16

understanding the nature of the problem. If a problem is dynamic like climate change, the structure of a treaty should be designed with supple provisions adjustable with time. Conversely, this idea leaves room for us to think about the territorial and stationary nature of a problem for which a treaty configuration can be more circumscribed, offering less leeway for states to argue unilaterally for self-preservation. It can certainly be argued that climate migration is a territorial problem. But its triggering reason is the centuries of state failure to control greenhouse gas emissions. Hence, taking refuge under the flexibility argument to ignore the rights of climate migrants is improper. In other words, while addressing climate change, a state may give consent conditioned by its sovereign interests, subject to commitment towards recognition of rights of the climate migrants. But tackling climate migration demands a stricter regime of state obligations, obedience to which requires decoupling of sovereign interest from the overall commitment framework. For that matter, because, such steps, if taken, should reflect the spirit of collective action, states need not face any normative challenge under the Paris Agreement.

Undeniably, Paris Agreement is an outcome of intense interest negotiation. The text that it has produced is not without misgivings (Bodansky et al 2017). But the passionate debate involved in pre and post Paris era simply establishes the fact that climate change, with all its variables, is an enormously contestable topic where state sovereignty, as displayed through myriad state interests, plays a decisive role. This is in reality silently impacting the application of international human rights principles that otherwise should have drawn backing from country's commitment under Paris framework. To understand this, a reference may be made to the principle of non-refoulment, available under international human rights law. It is important to note that the idea of non-refoulement, applied to all migrants at all times irrespective of migration status, is required to be acknowledged under domestic law and the international response on the subject is rather abrasive. *Ioane Teitiota v. New Zealand* (2020) is an illustrative case at that point. The main issue involved in *Teitiota* was about applying the principle of non-refoulement under human rights laws when Ioane Teitiota, a native of a small island state Kiribati in South-Pacific, requested the New Zealand Government to recognize him as a climate refugee. By that time Kiribati was facing the threat of extinction because of the rise of sea level. New Zealand rejected his application and subsequently Teitiota filed a complaint before the UN Human Rights Committee (HRC), seeking the implementation of

the International Covenant on Civil and Political Rights (Covenant). HRC after acknowledging the severity of climate change, surprisingly ruled in favour of New Zealand.

UNHRC held that "without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under Articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized." Therefore, *Teitiota*, as HRC resolved, did not qualify to satisfy the criteria under Article 6 to receive recognition as a climate refugee. The observation of HRC was sincere yet falls short of adding anything new to the already existing understanding on non-refoulment. Lies beneath the generic approach of HRC in *Teitiota,* a complex issue in international law - state sovereignty - that quietly precast the outcome of the case. In other words, the HRC by adhering to the formalism, obscured the pressing issue like climate change and its impacts on vulnerable groups. There is indeed a complexity to locate an inclusive and satisfactory definition of climate refugees within the framework of human rights laws as well. This may lend some support to HRC's approach. But, by no means it can be said that HRC was constrained to delve into other plausible avenues to find appropriate solution. It clearly transpires that the inadequacy in international law is certainly a limitation against the domestic recognition of non-refoulment principle.

Therefore, to ensure the deliverables of Paris Agreement, states must blend their climate obligations with human rights with improved synchronization and certainty than we experience now. For a just transition, focusing on enabling conditions only serves part of the process. States must find a way to outwit any hold-up in the negotiation platform, necessarily conditioned by robust sence of sovereign interests. To find an acceptable solution to the problem of climate migration, what the world needs is to the meaningful interactions among all relevant international laws and not the discrepancy among them.

CONCLUSION

It appears almost certain that the jurisprudential indolence towards securing the rights of climate migrants will continue to attract fervid controversies for some more time. A parallel may be drawn with the restrained and at times lingering decision-making over urgent issues in international climate change regime. However, both are comparable only in their

languid developmental trend. Besides, international climate change law, with its thirty years of vacillating legacy, at least have settled on some legally binding commitments. But at same time it has shown surprising indifference towards climate migrants. Concurrently, the human rights jurisprudence also has shown its own reservations, if not hostility, towards recognizing the rights of displaced people who are forced to cross an international border. Besides, there is no incontrovertible logic that a strategy similar to refugee protection should work best in case of climate change-induced human displacement. This gap has taken its toll as nations lack the conviction to extend meaningful support to climate migrants. This reluctance exists, even though, they may sometimes inherently believe in universality, indivisibility and interrelationship of all human rights, irrespective of legal status.

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