CLIMATE REFUGEES AND THE WEAKNESS OF PUBLIC POLICIES AND INTERNATIONAL LAWS TO SUPPORT THEM

Climate refugees and the inadequacy of public policies and international laws to support them

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Summary: 1. Introduction; 2. The environment and its migratory movements; 3. Climate Refugees and conflicts in their recognition at the international level; 4. Legal protection and the gaps in international law and public policies; 5. Final considerations.

Abstract: In the long run, people from all over the world come struggling to deal with quite a few changes relating to the environment, which directly impacts the lack of food, floods, extremely high or low temperatures, and the like. Despite the whole world suffering from it, the ones who are the most affected are the poorest countries, due to the lack of resources to handle this situation, resulting in the migratory movement of several people, also known as "climate refugees".

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Thus, this is as serious as any other range of refugees, such as those who leave their nation to run away from the war. Reluctantly, it has been taking place over and over, and the main problem is the global warming caused by human beings. Although the environmental problem is extremely harmful on a large scale for all of humanity, that must be strictly analyzed and acted upon by large authorities. Currently, those most affected are homeless due to climate change, as there is a gap regarding "environmental refugees" within the scope of public international law.

Taking all into account, this paper's aim is to explain this phenomenon, which is not so new, but it is little discussed by the authorities and citizens, thereby giving opportunities to public to comprehend it and support ways to assist those persons, that had to move out to another place and kick off a new life is essential, also, drawing the attention of the authorities to this real issue as well.

In addition, this resource will check the actual situation of the countries that already have numerous people who have left their homes, as well as how the countries have welcomed them. Furthermore, it is important to study which countries are most likely to experience an exodus due to climate change and, through this, to study actions to prevent this from happening, mainly through the integration of humanitarian aid. Finally, how international organizations are tackling this problem, which has now become global.

In a nutshell, this is a paramount topic to be told, because we need urgently to discuss this tremendous situation that each year turns more and more common all over the world. Showing the population that it would be solved in no time, is the best way to get the attention of the government that actions must be taken.

Keywords: Environmental refugees; International law; Climate changes; Human rights; Immigration.

1. Introduction

Undoubtedly, society constantly perpetuates itself in the face of various transformations, which take place across social, economic, political, and sociological spheres and even in the context of law.

After all, when observing some historical events, such as globalization, for example, which had a chain reaction in several areas of knowledge and procedures, including demonstrating legal protective gaps, it is clear how humanity needs to adapt constantly and progressively to a new scenario (Weyermüller et al, 2021, p. 156).

In this context, it can be seen that at the time of globalization, the scenario mentioned earlier was covered in discussions of human rights, as well as economic and environmental issues, due to the effects of the Second World War and the emergence of global concern with human dignity, exalted by the tragedies of the Holocaust, and the environment, in view of the increasing intensity of extreme natural events, together with the

perception of an increase in disasters around the world, exacerbated by destructive human activity and the arms industry (Claro, 2020, p. 222).

Thus, from this moment on, not only progress in environmental impacts is demonstrated, but a greater awareness of society regarding the preservation of the environment. It can be seen, therefore, that this has brought a greater need to global discussions, perpetuated by treaties and world conferences, which aim to retract the effects of environmental impacts, as well as guarantee sustainability (Ramos, 2011, p. 17).

However, it should be noted that it is not only the environment that is affected but human dignity itself. After all, it is undoubted that the more alarming the situation in a region or country is due to climatic conditions, the greater the migratory movement, considering that the environmental changes in question have a direct impact on individuals' means of subsistence, causing the deterioration of crops and the depletion of water sources. Such phenomena result in the transformation of previously habitable areas into places unsuitable for survival (Claro, 2020, p. 222).

Therefore, it is in this context that environmental refugees emerge, who find themselves in a situation of extreme vulnerability due to environmental impacts, being forced to leave their properties due to direct reasons, such as earthquakes, and tsunamis, which result in immediate migration or even indirect, due to the scarcity of resources, resulting in economic and social impacts (Scalco, 2015, p. 260).

In this way, it can be observed that in this context of changes, the Law, in its role as a regulator of society, has as its main objective to address and discuss these issues that directly impact human dignity, as well as, finding ways to protect these violations. However, it is necessary to highlight that the Law does not always have the most appropriate answers, especially when analyzing the context, which can be highly complex, as is the present case (Weyermüller et al, 2021, p. 175).

In this sense, the main objective of this article is to discuss environmental refugees, as well as whether there is adequate protection, or what would be the best way to guarantee their rights, given the need to adapt public policies and international law.

Therefore, the approach of this work will be qualitative, through understanding the premises presented, focusing on the dynamics of social relations to be studied below.

Finally, the methodology used in this work will encompass deductive and monographic procedural methods, based on a bibliographic survey of books, research, magazines, scientific works, constitutional texts from different countries, and international treaties regarding climate refugees and protective and political measures public at the international level.

2. The environment and its migratory movements

The phenomenon of migration is not a recent event, especially when observing the historical context, in which humanity needed to move out from one territory to another, aiming for better opportunities, such as food, electricity, safety, home, clean water, and the like.

The main distinction between common migration and forced migration lies in the risk to the migrants own survival. As Jeanne Park of the United States Council on Foreign Relations points out in her work on the European migration crisis, migrants seek to improve their quality of life, while refugees look for any conditions that allow them to continue living.

There is extensive literature that debates whether climate migrants should be classified as refugees. Typically, migration scholars and organizations that provide assistance to refugees tend to be against this classification. In contrast, environmental organizations and experts on environmental issues often support this designation (PAJES, 2020, ebook).

According to Stephen Castles, "the term environmental refugees is simplistic, one-sided, and misleading. It implies monocausality that very rarely exists in practice." Furthermore, according to the author, this term does not fit the definition of refugee adopted by the Geneva Convention of 1951 on the Status of Refugees (and its 1967 New York Protocol – relating to armed conflicts) because it speaks of people persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinions, so the limits of what it protects are very clear.

Despite the criticisms, the phenomenon of forced migration is also multicausal regarding refugees who are outside their country due to persecution related to race, religion, nationality, belonging to a particular social group, or political opinion, as well as due to severe and widespread human rights violations and armed conflicts. Thus, it is absolutely inadequate to use these arguments to not recognize the figure of the environmental refugee (genus), from which the species of climate refugee is derived.

Indeed, it is entirely feasible that climate phenomena alone can result in forced migrations, as seen in the case of Tuvalu, a Pacific Ocean archipelago with about 11,000 inhabitants, which is at risk of being swallowed by the sea and disappearing. In this context, Australia has even entered into an agreement committing to provide refuge to the residents of Tuvalu, threatened by rising sea levels.

For this very reason, in a 1985 publication for what was then the United Nations Environment Programme (UNEP), now known as UN Environment, Essam ElHinnawi defined in a soft law document, for the first time, the term environmental refugees as those "who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or caused by people) that jeopardized their existence and/or seriously affected their quality of life."

In addition, we cannot forget they do not have any other single option, in this case, as human displacements caused by environmental and/or climate issues have been growing constantly. After all, their countries are being gobbled up by climate change, consequently, making the citizens' lives impossible. How could a human being dwell in a place with no water or food? They would be devastated as the country.

As mentioned above, this subject is not new, it kicked off along with the primary environmental threats. Inasmuch as climate change turned, these movements followed it, being a consequence, nevertheless, this issue was silently kept over the decades. Despite many programs to protect the environment, and also international efforts to minimize the effects, a few of them were destined directly for the environmental refugees, who urgently require a solution. In a nutshell, they cannot wait years and years for environmental improvements.

Climate-driven migration will inevitably continue to grow in the coming decades, whether due to rising sea levels or resource-related conflicts. United States leadership and resources in the global humanitarian system will be crucial to managing and responding to growing flows of people, as well as investing in promoting stability and alternative livelihoods for permanently displaced communities (U.S. Global Leadership Coalition, 2021).

In the foreseeable future, climate change is anticipated to significantly propel migration and displacement. Presently, humanity faces an unprecedented surge in individuals compelled to abandon their residences in response to severe weather phenomena. These

displacements vary from brief evacuations, spanning mere hours or days, to prolonged and even protracted dislodgments. (Concern Worldwide. Climate refugees: The world's forgotten displacement crisis, 2022).

Taking all this into account, considering that it is an ancient issue and over the years it is turning worse, it is paramount to talk more about this theme because we are increasingly experiencing a range of environmental concerns. A problem that ought to have been discussed when environmental issues started.

Although we are facing a tough era for this subject, the good news is that should everyone do their part, that means international organizations, governments, and even the world's population, this will improve the situation of these people and diminish the effects of this global crisis.

3. Climate Refugees and conflicts in their recognition at the international level

The internationalization of human rights was fundamental for the definition of climate refugees, as well as in the construction of instruments for applying protection standards to this vulnerable group (Claro, 2020, p. 224). With the advancement of environmental disasters, many people found themselves forced to move, as happened in South Sudan, which faced desertification and scarcity of resources.

Furthermore, the migratory movements are also influenced by the factor of poverty, in addition to population pressures, malnutrition, unemployment, pandemics, and political and ethnic conflicts. That is, there is a difficulty in classifying environmental refugees since they are normally influenced by more than one factor when moving around where they live. (Myers, 2002, p. 610).

However, migratory movements cannot only be protected, as there are several difficulties in its application. After all, there is no specific national or international legislation, despite them being guaranteed as de facto human rights, demonstrating that the picture presented involves a question of international peace and security, given that climate disasters can provoke several international conflicts (Scalco, 2015, p. 261).

Furthermore, it is also noted that climate refugees are not covered by current legislation, considering that both the definitions of refugees and migrants do not address

climate situations, which causes a conflicting situation in doctrine and legislation and international instruments (Scalco, 2015, p. 264-265).

With this in mind, it is important to highlight three aspects of human rights, namely: International Human Rights Law (IHRL), International Humanitarian Law (IHL) and International Refugee Law (IRL), responsible for protecting human rights (Weyermüller et al, 2021, p. 156). Therefore, it is undoubted that the refugee problem, in addition to being complex, has several faces, and possible approaches must be taken into account within the scope of International Law.

International Humanitarian Law plays a fundamental role in the discussion about Environmental and Climate Refugees, considering that its main focus of action is precisely to limit the use of violence during armed conflicts, as stated by Carolina de Abreu Batista Claro (p. 227, 2020):

"International Humanitarian Law, also known as the law of war or the law of armed conflict, is composed of the so-called "Law of the Hague", "Law of Geneva", "Law of New York" and "Law of Rome", according to the origin of its standards. According to Sassòli and Bouvier, "international humanitarian law can be defined as a branch of international law that limits the use of violence during armed conflicts [...]" (2003, p. 83) and is based on (i) in the distinction between civilians and combatants, (ii) in the prohibition of attacking people outside of combat, (iii) in the prohibition of inflicting unnecessary suffering and superfluous harm, (iv) in the principle of necessity and (v) in the principle of proportionality".

Thus, it is clear that despite not containing a prediction about climate refugees, it is expected that all standards of International Humanitarian Law will be applied, through institutions such as the International Committee of the Red Cross (ICRC), the National Federation of Red Cross and Crescent Red (IFRC, its acronym in English), as well as the national societies of the Red Cross and Red Crescent (Claro, 2020, p. 227).

Within the scope of International Human Rights Law (IHRL), it is clear that its bases include treaties, internationally established practices, general principles of law, legal literature and jurisprudence. While the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) recognize the right to migrate, the UN Convention on the Rights of All Migrant Workers and Members of their Families

faces significant adherence and implementation, highlighting the resistance of States to adopting a human rights approach to migration management (Scalco, 2015, p. 267).

Therefore, it is understood that environmental refugees face a gap in specific international legal protection, depending mainly on the general provisions of existing treaties. The resistance of States to addressing forced migration from a human rights perspective, prioritizing sovereignty and national security, makes it even more difficult to implement an adequate response.

4. Legal protection and the gaps in international law and public policies

Addressing climate change in legal protection and public policies is crucial, yet the growth in those fields falls short of these issues' emergency. Despite, these rules have been increasing over the decades, they are still not good enough to solve this issue all over the world even to diminish the damages caused by environmental crises.

Needless to say there are random international public organs and even individuals in general who are struggling to create measures to support the climate refugees. Nonetheless, it may be slow and challenging, mainly to implement and enforce them. Thus, this gap between intention and actions underscores the convoluted, It is also essential to ensure that the nature of the approach to such a multifaceted global challenge.

Taking all these into account, it is paramount to accelerate and enhance legal protection, as well as advance public policies because society craves it, both the immigrants and the host population in their country. Blissfully unaware, many of those who would need to speed up action don't do it. Thus, this means not only setting up new laws and policies but also swiftly implementing, reinforcing, and adjusting them in light of changing climate dynamics.

Climate refugees have been facing a tough obstacle, the absence of their status recognition. Thereby, according to the World Economic Forum (WEF), researchers have long grappled with the challenge of defining a meaningful legal status for individuals forced to flee their homes in the wake of climate-related disasters (WEF, 2023). Over decades of research, they have sought to navigate the complex terrain of floods, droughts, and storms — calamities exacerbated by the specter of climate change — in crafting laws that ensure adequate protection for these vulnerable populations. Yet, amidst the myriad streams of

displaced peoples seeking asylum, the plight of climate migrants often finds itself relegated to the periphery of policy discussions.

As discussed in the paper below, countries facing a growing influx of climate migrants are not only working to secure funding and build shelters but also grappling with a surge in asylum claims. This situation prompts domestic research to determine the necessary legal status for protecting climate migrants. Such efforts could lead to international recognition amid escalating climate change and the refugee crisis (World Economic Forum, 2023):

"As these countries attempt to acquire funding and build shelters to house migrants, they'll also be dealing with a rising number of asylum claims. This will inevitably prompt research within the country to determine the most relevant legal status climate migrants need to guarantee their protection. This could attract international recognition as climate change and the entwined refugee crisis escalate".

By means of these frameworks, it is possible to realize that, inasmuch as these countries attempt to acquire funding and provide housing for immigrants, they will also be dealing with a rapidly growing number of asylum seekers. Consequently, this may attract international recognition as climate change and the refugee crisis escalate.

Henceforth, there is no legal name for these immigrants, it is used as climate or environmental refugees for them, nonetheless, it is not enough, there is no point in it being a custom, it ought to be properly regulated. Notwithstanding, there is a definition of "refugee" that does not fit in this case.

According to the United Nations High Commissioner for Refugees (UNHCR), the Convention and Protocol Relating to the Status of Refugees (1951) provides essential guidelines for the protection and rights of refugees worldwide (UNHCR).:

(...) "Convention endorses a single definition of the term "refugee" in Article 1. The emphasis of this definition is on the protection of persons from political or other forms of persecution. 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" (...)

As per the extract above, the Convention and Protocol Relating to the Status of Refugees (1951) delineates what "refugees" are. Although there is a meaning, this one refers to somebody who may not come back to their nation due to a genuine fear of persecution based on alleged factors such as race, religion, nationality, affiliation with a specific social group, or political beliefs.

This concept, on the whole, accords with political refugees, not climate one, in light of the last ones mentioned moving out from their origin country to another on account of environmental changes, they are being chased by none, the opposite, they are affected by sea-level rise, extreme weather events, droughts, wildfires, melting ice, heatwaves, desertification, loss of biodiversity and the like.

Scholars emphasize the concern regarding the absence of a legal definition for individuals compelled to migrate due to climate-related factors, as they can easily find themselves in a legal limbo owing to the lack of recognition of their status and their need for humanitarian protection (European Parliament, 2021).

How may those people have legal protection without even an official definition for them? They fall in limbo, at the same time they ought to have this support, but they do not even fit in the term. It is so terrifying because leaving a country means kicking off their life again starting from point zero, in other words, the beginning of everything, they require a minimum of assurance to make this tremendous step change.

Unquestionably, the more the climate changes around the world, the more the number of refugees will increase, this is evidence, because this is paramount to have legal protection and public policies on hand urgently. Additionally, the law and official policy gaps are already making these crises gigantic, imagine in the future, this phenomenon will be out of control.

Besides the international rules, it is essential to have national norms, in each country, to receive those people who leave their nation because they do not have other options, not only laws but also public policies. Through this, giving as one example, the countries had better provide pathways to people to do the journey, it means paying for it, yet offering housing, jobs, opportunities, and security for them, in addition to welcoming them.

Derived from the principle of non-refoulement, the core spirit of the Geneva Convention, it should be interpreted and readjusted so that any foreign individual requesting asylum has the subjective public right to enter the territory, allowing for an extensive interpretation of the statutes to include environmental refugees. Indeed, taking as an example the Brazilian Refugee Statute (Law 9.474, from July 22, 1997), considering that item III of article 1 of the said statute authorizes the recognition of refugee status to the individual who "due to a serious and widespread violation of human rights, is forced to leave their country of nationality to seek refuge in another country," nothing would prevent an extensive interpretation of this provision to contemplate the figure of environmental refugees. However, this was not the policy adopted in the case of Haitians in Brazil, who tried to fit the status of environmental refugees due to earthquakes in their home country based on item III of article 1 of Law 9.474, from July 22, 1997, as they had their request denied by CONARE – National Committee for Refugees, a decision confirmed by the Federal Justice.

Regarding the possible lack of a prerequisite for the recognition of refugee status, in respect to the principle of non-refoulement, any doubt should militate in favor of granting asylum (principle of *in dubio pro* refugees).

Therefore, the declaration of their condition as refugees should be enough to trigger the protective chain, even if they carry false documents or have no documents at all. Moreover, the migration policy regarding refugees should be guided by the principle of non-criminalization of migration and humanitarian reception, as foreseen in article 3, items I and III of the Brazilian Migration Law (Law 13.455, from May 24, 2017).

By and large, as mentioned above, climate refugees shall have specific legislation when they reach their new home, mainly providing those individuals with the opportunity to reside and pursue employment in their host country.

5. Final considerations

In a nutshell, after all, we can conclude that climate refugees are not a new phenomenon, since climate change started, those people have been compelled to depart from their native country to another nation due to extreme weather events, melting ice, heatwaves, wildfires, sea-level rise, droughts, desertification, loss of biodiversity and so forth. Thus, our society is late to tackling this problem, it should have been discussed a long time ago, with the first signs of environmental consequences. Nevertheless, the good news is we are still in time to solve or even decrease the human-made disasters.

As we analyzed international law and public policy gaps, there are rules to refugees indeed, nevertheless, those refer to the political one, none, especially to climate refugees. By the way, neither the concept of refugees also applies to those who have been addressed in this paper, it is clear that the main norms are destined for political refugees. Unfortunately, this is an enormous problem, because it causes a lack of official support for the climate refugees, making both the journey and the bureaucracy of settling in a new land more arduous from travel arrangements to work and security, for exchange.

In short, addressing the protection needs of environmental refugees requires a comprehensive and coordinated approach within the framework of International Law. While existing legal instruments provide some basis for protection, efforts must be made to bridge regulatory gaps and prioritize human rights in migration management. The application of principles from International Humanitarian Law and the recognition of the right to migrate under International Human Rights Law offer promising avenues for addressing the challenges faced by climate refugees. Ultimately, ensuring the protection and dignity of climate refugees will require collective action and a commitment to upholding human rights in the face of environmental crises.

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