

TOWARDS A CONVENTION FOR PERSONS DISPLACED BY CLIMATE CHANGE

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INTRODUCTION

The Intergovernmental Panel on Climate Change (IPCC), the World Bank and many others warn that the effects of climate change – including rising sea levels, heavier floods, more frequent and severe storms, and drought – will cause large-scale human displacement. Although precise figures cannot be known, Myers estimates that, by 2050, as many as 200 million people, or one in every forty-five, could be overtaken by such events. The World Bank reported last year that

the overall magnitudes for the developing world are sobering: Within this century, hundreds of millions of people are likely to be displaced by SLR [sea level rise]; accompanying economic and ecological damage will be severe for many. The world has not previously faced a crisis on this scale, and planning for adaptation should begin immediately.

Further, Lord Stern has said that

South and East Asia will be the most vulnerable because of their large coastal populations in low-lying areas ... Millions will also be at risk around the coastline of Africa ... Small island states in the Caribbean, and in the Indian and Pacific Oceans ... are acutely threatened, because of their high concentrations of development along the coast ...

Since the middle of last year we have been meeting to discuss problems associated with climate change displacement. These discussions and a range of other meetings and seminars have led to our proposal for a convention for climate change displaced persons – or CCDPs – the subject of today's seminar. Next week we go to Copenhagen and Vancouver to discuss the convention, and then again in Copenhagen at the end of the year. We're grateful for this opportunity today.

We plan here to discuss why a Convention is needed, to outline the main provisions of the Convention, and then to raise some key problems and issues. The Convention would establish an international regime for the status and treatment of climate change displaced persons – or refugees (although there are problems with using 'refugee' here, which we will come to).

¹ Footnotes omitted. Please contact David Hodgkinson for references.

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Calls for action are common across the debate on the human impact of climate change. However, few detailed and substantive proposals have been made in relation to CCDPs. Our study seeks to focus debate by proposing mechanisms through which an international approach to persons displaced by climate change might be coordinated.

SO – WHY A CONVENTION?

- 1. The scale of the problem** (we mentioned this just a moment ago)
- 2. No existing practical mechanism exists at international law to provide protection to CCDPs**

The status of people displaced by climate change is unclear in the current international framework for protection of refugees and displaced people.

'Traditional' refugees

- The 1951 UN Refugee Convention sets criteria for determination of refugee status: There must be a 'well-founded fear of persecution' in the country of origin arising from an individual's race, religion, nationality, political opinion or membership in a social group and they must be outside country of origin. *Climate change refugees don't fit.*
- Also – there are various objections to, and concerns with, expanding current definition to include environmental refugees, largely involving devaluation of current protection.
- UNHCR policy is that there are significant and fundamental differences between traditional refugees accorded status under the Convention, and environmental refugees. For example, environmental refugees may be able to avail themselves of protection in their country of origin.
- The UNHCR has said that 'lumping both groups together under the same heading would further cloud the issues and could undermine efforts to help and protect either group and to address the root causes of either type of displacement.'

Internally displaced people

- There are UN Guiding Principles on Internal Displacement which define internally-displaced persons as people forced to leave their homes as a result of, or in order to avoid, (a) the effects of armed conflict; (b) situations of generalised violence; (c) violations of human rights; or (d) natural or human-made disasters, and who have not crossed a state border. The Principles 'identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.'
- The Principles cover environmental refugees, then, only within their country of origin.
- They are not legally binding – they don't constitute a binding instrument – but they reflect - and are consistent with - international law. They are intended to serve as an international standard to guide governments, international organizations and all other relevant actors in providing assistance and protection to IDPs.

A Convention for CCDPs would provide consistency and certainty for a discrete problem; existing international law is fragmented and does not currently provide for CCDPs.

- Refugee law does not provide a framework, and the UNFCCC does not provide an appropriate mechanism. Its objective – and that of Kyoto - is ‘to achieve ... stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’ (Article 2).
- Kyoto sets binding limits on developed parties’ anthropogenic emissions of GHGs for the period 2008-2012. It’s not concerned with the movement of people.
- One of the benefits of our proposed convention is that it doesn’t ‘muddy the waters’ by trying to make an international instrument or instruments match a problem with which they’re not designed to deal.

3. A Convention would provide a mechanism for governments acting together (given the nature of the problem) to address it

- There has been no co-ordinated response by governments to address human displacement caused by climate change, whether it be domestic or international, temporary or permanent.
- Given the nature and magnitude of the problem, ad hoc measures are likely to lead to inconsistency, confusion and conflict. The International community has an obvious interest in resolving displacement in a co-ordinated fashion. There are obvious international security issues at stake - dispossessed populations fighting for ever-scarcer resources is a nightmare vision.
- And we’re not short of nightmare scenarios here: Gwynne Dyer’s book, *Climate Wars*, amongst many others, describes a nightmare world in 2050 of hundreds of millions of climate change ‘refugees;’ vast migrations prompting fortress defences by countries; global wars driven by climate change; and the collapse of populations following droughts and crop failures.

OUTLINE OF THE CONVENTION

The main features of the Convention are as follows:

1. Convention organisation

- The Convention would establish an organisation, initially to draft and design a uniform, standardised research programme and then to administer, deal with and be responsible for climate change displacement matters the subject of the Convention.
- It would be a decision-making, co-ordinated organisation funded by Convention parties.

2. Research programme

As a first step, Convention parties agree to participate in a research programme to establish the information and knowledge necessary to effectively plan for and respond to the human impacts of climate change. A focus would be on these impacts and the resources available for states to adapt and not on assessing – or predicting – the extent to which a population is

likely to migrate. The study would build on the existing work on adaptation that has taken place by, for example, the IPCC.

The research programme would be carried out by Convention parties themselves and subject to review/critique in international fora and fora established by the Convention, and in other arenas.

3. In terms of **resettlement ...**

- Provision would be made for both long-term and short-term resettlement, either in anticipation of forced resettlement as a result of slow-onset climate change events (that is, prior to actual displacement) or following sudden events.
- The Convention would provide for long-term resettlement either (a) internally within affected countries (as a priority); or (b) internationally. However, and in common with most migration experts, we believe that most climate change displacement will occur internally, within the borders of a state, rather than externally. There is general agreement that the people most vulnerable to climate change are not the ones who will always be most likely to migrate across state borders.
- If resettlement internally within affected countries is not possible, external resettlement should involve, to the extent possible, CCDPs being received by parties in the same geographic area of, or with particular connections (religious, cultural, political, historic) to, affected countries.
- We propose the inclusion of a limited range of human rights protections within the Convention, including – as applicable – those found in the UN Guiding Principles on Internal Displacement, those dealing with the movement of populations. For instance, the Convention could include the obligation not to return populations to areas where it is likely they would face a high risk of a climate change event. Existing human rights principles which are part of existing international law would, of course, continue to apply.

4. ‘Common but differentiated responsibilities’

In common with principles set out in the UNFCCC, Convention parties would provide for resettlement and CCDP assistance

on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities ... developed country parties [of the Convention] should take the lead in combating climate change and the adverse effects thereof (Art 3.1).

5. CCDP Fund

In accordance with the principle which we just mentioned, developed countries would contribute to a fund which is used to (a) assist internal resettlement; (b) enable responses to specific climate change events; and (c) assist adaptation and mitigation by affected parties.

6. Basis for assistance by developed Convention parties: GHG emissions

- In order to provide a formula for developed countries to assist CCDPs, we propose that parties' obligations to accommodate or assist CCDPs or fund internal resettlement be based on their GHG emissions.
- We would apportion 'responsibility' for CCDP obligations under the Convention according to GHG emissions (either by volume, or per capita, either historic or present day). On a present 'GHG emissions by volume' basis, China would be most 'liable' (and there's a problem – it will have significant CCDPs of its own to assist, and it's a developing country ...). On a historic GHG emissions basis – the US would have the greatest obligation.

7. Finally – adaptation and mitigation

- The Convention would contain an acknowledgement, or recognition, that parties with populations at risk of climate change displacement continue to take climate change adaptation and mitigation actions.
- As part of such actions the Convention could provide for financial mechanisms, including the application in affected countries (with incentives) of the Kyoto Protocol's Clean Development Mechanism.
- These provisions would help make our Convention 'mutually reinforcing' with Kyoto.

For us, resettlement of CCDPs is a form of climate change adaptation. And, as the IPCC noted in 2007, with implications for our proposed Convention, 'effective adaptation measures are highly dependent on specific, geographical and climate risk factors as well as institutional, political and financial constraints.'

Some of these risks and constraints are outlined below.

CONVENTION ISSUES

We concentrate here on five key issues we have identified concerning our proposal for a convention for CCDPs:

- The likelihood that states will support a convention for CCDPs.
- The explosiveness of the issue of immigration in the context of climate change.
- Who exactly are climate change displaced people? What is the relationship between climate change and migration?
- The extent to which the Convention would impinge upon state sovereignty and, in particular, the implications of the principle of sovereignty for the incorporation of human rights protections within the Convention.
- The assumptions involved in our proposal for a research programme.

1 The political climate; hostility to immigration; new human rights treaties unlikely

We sometimes think there could not be a more unfortunate coincidence of issues than climate change and immigration. If states are can be intransigent on the issue of climate change, they are often outright hostile to immigration. A recent example may be found in comments by the Malaysian prime minister to the effect that asylum-seekers from Burma should be towed back out to sea. These sorts of sentiments, although not always so overt, are shared by many rich nations for whom border security is an increasing preoccupation.

To make a broad generalisation, it seems to us that it is unlikely that an international response to climate change displacement will be on many nations' priority lists.

The likelihood that a treaty for climate migrants will be achieved is also diminished by the reluctance of states to make further binding commitments in the area of human rights. There is a consensus among human rights lawyers that it simply may not be possible to get a human rights treaty off the ground today. The provisions of an international instrument for climate change displacement would, lawyers argue, be determined by the 'lowest common denominator'.

2 The 'security' discourse in climate change; uncontrollable immigration; displacement versus adaptation

Having described the broad political context, we now want to spend some time discussing its implications for the ways in which we think about migration due to climate change.

The future we often imagine in this age of global warming is frightening. So are the figures of predicted climate 'refugees', most often around the 250 million mark. There are legitimate reasons for presenting the nightmare scenarios that we described earlier. For instance, they provide us with a 'wake up call,' incentives to act now and some suggestion in human terms of the possible consequences of a failure to act.

However, framing the human consequences of climate change in terms of migration can have different implications when viewed from the perspective of refugee advocates. A recent research report published by the UNHCR states that:

[T]he very concept of climate or environmental refugees, because of its connotations of urgency and unavoidability, is to be handled with care. It actually evokes fantasies of uncontrollable waves of migration that run the risk of stoking xenophobic reactions or serving as justification for generalized policies of restriction for people seeking asylum.'

In the context of the explosiveness of the issue of climate change displacement, migration researchers emphasise two things, and we have referred to them previously:

- Migration researchers believe that most displacement due to climate change will occur internally, within the borders of a state, rather than externally, across international borders.
- A number of migration experts also assert that migration should not be understood as a failure of climate change adaptation, but as a form of adaptation.

In putting our proposals together, we have taken migration researchers seriously on both counts. The issue of climate change displacement is more nuanced than it may initially appear. We've tried to respond by reversing the optic - shifting the debate to the most effective means of adapting to climate change, rather than simply reacting to a vision of an uncontrollable mass exodus.

3. Definitions and thresholds: The non-linear relation between climate change and displacement

We now turn to the subjects of our convention, and spend some time trying to answer the question of who, exactly, are climate change displaced people. How is it possible to tell a climate change displaced person apart from a refugee, or an 'economic migrant' from a poor country to a rich one, or even an individual who has recently relocated inside their own nation from a rural area to an urban one?

Much of the discussion around climate change displacement has proceeded from, or focused on, the definition of a 'climate change displaced person' and statistical predictions of just how many people are likely to move due to climate change.

The predictions of climate change displacement that are often cited calculate the likely movements of people on the basis of the estimated populations of areas that are most vulnerable to the effects of climate change. This approach allows us to get a very rough sense of what the scale of the human impacts of climate change may be. However, it is an approach that has been criticised by migration researchers who argue that it is unlikely to be accurate in predicting the actual scale and distribution of climate change migration.

A neat line of causality cannot be drawn between climate change and population movements. The matrix of factors that impact upon a decision to migrate are complex and contingent. They include the social, economic and political capacities of states and communities, the subjective decisions of the persons living in affected areas, the type and impact of the climate change event and attitudes to migration at the individual, household and community levels. In other words, decisions to migrate are multi-factorial, rather than one dimensional.

In addition, identifying climate change displaced people will be difficult because, in the words of Mary Robinson, the impacts of climate change are likely, on the whole, to be 'cumulative and unspectacular.'

Extracting the category of 'climate change displaced person' from 'economic migrant' is not going to be easy. Rural communities that depend on the environment for their sustenance are a case in point. It may not be possible to draw a line between the environmental 'push' factor that causes a person to leave a rural area, from the economic 'pull' of a big city.

As we have mentioned, a number of migration researchers argue that the people most vulnerable to climate change are not the ones who will always be most likely to migrate across state borders. Migration, particularly international migration, is expensive and demands resources for travelling and for getting across international boundaries.

There is, thus, general agreement amongst migration researchers that climate change migration will not simply be a function of geographic location. Population movements will not be determined solely by a community's exposure to climate change impacts, but also by the capacity of that community to adapt and rebuild.

Our understanding of the implications of the discussion that we have just outlined is that migration researchers are *not* saying that climate change will *not* be a cause of major population movements. What they are saying it is that climate change is unlikely to be the *sole* or perhaps even an *obvious* cause of such displacements. Nevertheless, this is a problem

as it makes it difficult to distinguish those people who would be the subject of Convention protections from everyone else in the world.

Numerous proposals for definitions of a 'climate change displaced person' have been made (we won't go into them here in detail). They have included distinguishing between 'acute' and 'chronic' reasons for leaving, designations to do with the nature of the climate change event, categorisations on the basis of permanent or temporary and internal or transborder migration.

The construction of a CCDP Convention around definitional criteria, which often involves the assumption of individual processing of asylum claims, may not be the optimal solution for climate change displacement. This is because:

- As we have already indicated, it may not be possible to attribute population movements solely or perhaps even directly to climate change.
- Movements due to climate change may well be on a mass scale. This makes individual processing of claims highly impracticable and perhaps even, because of the resource intensity of case-by-case determinations, undesirable.

An alternative, or perhaps complementary, strategy would be to shift the focus from the individual satisfaction of a definition of 'climate change displaced person' to an impact assessment at the regional level. Rather than assigning rights and protections on the basis of individual satisfaction of definitional criteria, it may be possible to provide protection through *en masse* regional designations based on a risk assessment. There is some precedent for such designations in international refugee law, for dealing with situations of mass exodus. *En masse* designations of populations at risk of climate change could be determined by the research programme undertaken in accordance with the Convention. A determination that a population was 'at risk', along a sliding scale of vulnerability, would trigger the operation of the Convention machinery.

The requirement of a definition would not, however, be completely obviated. Our Convention would still need to refer to broad definitions or categorisations concerning climate change displaced people. However the focus would be on the large-scale human impacts of climate change rather than the individual or household-level decision to migrate. The issues around identifying and defining climate change displaced people could thus be side-stepped to some extent.

The concept of *en masse* designations provides a mechanism for linking adaptation and displacement. It is an approach that has two advantages.

- It allows us to focus on the best way to meet the needs of the most vulnerable, those people who may not have the capacity to migrate.
- It is a means of recognising the displacement is a function of adaptive capacity as much as geographical vulnerability, such that (in theory) investment in the adaptive capacity of a society would be an intervention that should reduce the ultimate numbers of the climate change displaced.

4 Sovereignty: Human rights and internal displacement

Having described some of the issues at stake in defining the subjects of the Convention, we now discuss an issue that is likely to dominate the concerns of the Convention parties - the principle of state sovereignty.

We have already provided a brief overview of international law as it concerns refugees and internally displaced persons. The distinction between refugees (who have crossed an international border) and internally displaced persons, who remain within their own nation, is attributed by most commentators to the dictates of sovereignty. Refugees, who are outside the boundaries of their own state, are subject to Convention protections, with binding obligations imposed upon members of the international community. The non-binding Guiding Principles for internally displaced persons recognise that such persons remain the primary responsibility of their own state.

The problem we face is that the Convention we propose would necessarily involve – and may even be predominantly concerned with – migration within the borders of a state: internal displacement. The Convention would therefore impinge upon national sovereignty by dictating, to some extent, how a state should deal with its own population within its own borders. As a result, the infringement of the Convention on state sovereignty may well be a major impediment to its success.

We are going to focus on one aspect of the issue of state sovereignty - the inclusion in the Convention of human rights protections for CCDPs who remain within the borders of their own states. In doing so, we want to explain some of our thinking on human rights protections for CCDPs who remain within their own nations.

A neat and comprehensive way to provide for internally displaced climate migrants would be to simply incorporate the Guiding Principles on Internal Displacement into the Convention. As we have mentioned, the Guiding Principles provide a comprehensive restatement of existing human rights and humanitarian protections in the context of internal displacement. However, states could see commitment to the extensive range of human rights protections in the Guiding Principles as a significant imposition on their ability – as sovereign states – to determine the treatment of internally displaced climate change migrants. The reality is that some states may simply be incapable of delivering the full range of protections envisaged by the Guiding Principles.

Further, if the full range of human rights protections provided for in the Guiding Principles were incorporated into the Convention the result would be that the category of climate change displaced persons would be the subject of a higher standard of protection than those internally displaced due to conflict; individuals who are the subject of human rights violations but have not fled; and, indeed, refugees under the 1951 Refugee Convention.

The alternative we're currently considering would be to explicitly include a limited range of human rights protections within the Convention. Human rights protections could be explicitly incorporated to the extent that they concern the movement of populations, in an effort to ensure that the Convention is not used as a justification for discrimination against particular populations. For instance, the Convention could include protections against arbitrary displacement and the obligation not to return populations to areas where it is likely that they would face a high risk of a climate change event.

If this approach were adopted, climate change displaced people would nevertheless retain the protection of human rights principles to the extent that they are part of existing international law. However, by including a limited range of human rights protections in the Convention, the sort of distortions that may result from creating a new category of ‘immigrant’ would be reduced.

5. Research programme: Methodology, duration, assumptions

We want to conclude with a brief discussion of three of the issues posed by our proposal for a coordinated research programme as part of the Convention.

First, conducting a study is likely to add time to the already lengthy process of negotiating, ratifying and implementing an international treaty. For some states, however, the problem of climate change displacement is already urgent. Second, there are likely to be significant methodological issues to be addressed. Third, there is a danger that the research programme we propose may involve an effort to translate a political problem into a scientific one.

In other words, it is possible to fall into the trap of presuming that increased knowledge will *of itself* provide a solution to the issues posed by climate change induced displacement. Such a presumption is appealing because it substitutes ‘information’ for the messy realities of political contestation and negotiation. However, it ignores the political forces, state interests and global inequities that underpin the intransigence of states on issues of climate change and immigration. To that extent, the research programme may well be ineffective – and perhaps even mask the actual operation of state power and interests which will be determinative in such a process.

Viewed from another perspective, states are unlikely to be willing to subject themselves to a research programme on adaptive capacity which could well include a judgement of their governance and human rights records.

It is as a consequence of these considerations that we have proposed a system of self-assessment. The onus of conducting a research programme would be placed upon the state parties themselves. Their reports would then be subjected to critiques in the international arena by academics, UN bodies and NGOs. We hope that such a strategy may make the political contestation that will occur in the process of studying the human impacts of climate change more overt.

The issues outlined are not the only issues raised by our proposal for a Convention to deal with climate change displacement. Hopefully we will be able to touch on some of the other issues in conversation with you at the end of our presentation.

CONCLUSION

Jared Diamond has some interesting observations on sustainability, and in his book *Collapse* his question is how societies choose to fail or succeed. One of his case studies is Easter Island – perhaps the great case of collapse following complete deforestation. He asks, ‘What did the Easter Islander who cut down the last palm tree say while he was doing it?’ Did he shout ‘Jobs, not trees!’ For Diamond, however, no sudden change on Easter Island was

likely. Rather, more likely, was an almost undetectable year by year change in forest cover. Gradually, the trees became fewer, smaller, and less important and, thus, '[n]o one [Diamond says] would have noticed the falling of the last little palm sapling.' Diamond says that perhaps the commonest circumstance under which societies fail to perceive a problem is when it takes the form of a slow trend concealed by wide up-and-down fluctuations.

The prime example in modern times is global warming.

The displacement of millions of people as a result of global warming – which will have wide up-and-down fluctuations – presents real challenges. Finally, as Corlett has noted,

[to take] the lead in international efforts that develop a framework for responding to the possibility that Tuvaluans and many millions of others may be displaced due to climate change ... is not to concede that mitigation and adaptation efforts are beyond us, although the longer we delay, the more real this possibility becomes. Rather, planning for a future of mass displacement due to climate change gives us the opportunity – *before* millions of people are on the move throughout the world because of climate change; *before* we, and other nations, become tempted to erect walls to keep them at bay; *before* we start to say as though as a reflex that “we will decide who comes and the circumstances in which they come” – to develop frameworks and institutions that might not only be politically realistic, but also based on principles that promote human rights and dignity.

London, 6 March 2009