

Executive Summary

Global Humanitarian Forum
2009 Forum: The Human Impact of Climate Change
Geneva, Switzerland
23 – 24 June 2009

Tuesday, 23 June
16:00 - 17:30
international law

International Law and Climate-Displaced People

- Andrew Clapham, Director, Academy of International Law and Human Rights
- Vincent Chetail, Research Director, Academy of International Law and Human Rights
- Jean-François Durieux, Focal Point for Climate Change, UNHCR
- Walter Kälin, Professor of Constitutional and International Law, University of Bern
- Kate Halff, Head, Internal Displacement Monitoring Center, Norwegian Refugee Council
- Jean Ziegler, Member, Human Rights Council Advisory Committee

The Global Humanitarian Forum defines climate-displaced people as those people who are forced to move or who are displaced, either permanently or temporarily, because of climate change. In its recent report, *The Anatomy of A Silent Crisis*, the Forum estimates that there are currently about 26 million climate-displaced people (CDP) and that this number could triple in the next 20 years.

A commonly agreed-on definition of CDP does not yet exist and the status of this vulnerable group under international law is unclear. The participants explored gaps in international law regarding CDP, as well as various potential ways of addressing those gaps through legal and policy initiatives. Moderator Andrew Clapman noted that CDP may have some legal protection, but there remains a serious question about how adequate that protection actually is.

Walter Kälin provided an overview of the legal status of CDP under several different scenarios. In some situations, the legal duty of states to protect CDP is relatively clear, he said. However, in others – disappearing territories (vanishing islands), cross-border migrations, and governmentally forced, environmentally driven relocations -- the legal rights of CDP are unclear and existing gaps must be filled. Cross-border CDP “should not be sent back to their native countries if they would be exposed to life-threatening situations,” he argued. A way forward is through the Copenhagen negotiating process, which currently proposes to recognize displacement as an adaptation issue.

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Jean-François Durieux noted that UNHCR is particularly concerned with cross-border displacements due to disasters and with persons living on vanishing islands; these situations involve issues of refugees and stateless persons that are recognized under existing international law. He suggested, however, that these legal categories are imperfect when applied to CDP.

There is difficulty distinguishing between forced and voluntarily migrations. "The relevant issue should be whether the person can get national protection or whether he/she needs international protection," he argued, adding, "We should not assume that the bonds between the state and its citizens will be severed. But there may come a point where the state's capacity to protect its citizens becomes so eroded that the international community must take over."

Vincent Chetail said that while the attempt to give international law definitions to environmental migrants and refugees is new, the phenomena of environmentally driven migration is very old. Trying to apply the Geneva Convention concept of "refugee" in the environmental context is problematic. In terms of victims of climate change, Chetail asked, "Who is the persecutor? The state or the polluter?"

Andrew Clapham questioned whether it would be better to use concepts of migration law rather than refugee law because the latter, with its requirement of persecution, is politically more sensitive. The workshop participants fleshed out this concern, noting that applying the notion that CDP are victims of persecution could lead to reparation litigation and perhaps even criminal prosecution. Several participants suggested that such possibilities might make trying to use the refugee model politically infeasible.

From a nonlegal perspective, Kate Halff of the Norwegian Refugee Council discussed her organization's efforts to estimate and monitor numbers of refugees. She said that new methodologies have been developed but that studies must be repeated over several years to understand the scope and duration of environmental displacement.

Jean Ziegler concluded the workshop with an impassioned plea for a human rights-based approach to protecting CDP. An appropriate legal analogy, he argued, might be found in the UN's recognition of a right to food and a corresponding right to migrate to escape hunger.