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WHO IS RESPONSIBLE TO PROTECT ENVIRONMENTAL REFUGEES UNDER UNITED NATIONS TREATIES' POLICY?

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The total aim of the following study is to reveal the already conducted surveys by using the method of investigation case law not only under International law, but also under domestic level in order to mediate the rights of human ones, who were displaced because of environmental or/ and natural disaster. The first and foremost step should be taken by any country on municipal law rather than on international level alongside with their collaboration by making certain amendments in their regional documents regarding the legal status of environmental refugees. In all of the recent case law and provided data in this work, even when we deliberate appropriate strategy, it will reshape the understanding of international system of human rights and environmental law. We applaud the efforts of those seeking to widen the scope of studies, however, first and foremost should be taken on municipal law.

Keywords: *ecological refugees, United Nations Organization, right to life, inhumane or degrading treatment, 'non-refoulement'.*

ЧЬЯ ОТВЕТСТВЕННОСТЬ ЗАЩИЩАТЬ «ЭКОЛОГИЧЕСКИХ БЕЖЕНЦЕВ» В СООТВЕТСТВИИ С ПОЛИТИКОЙ ООН?

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В данной аналитическо-правовой работе рассматривается насущный вопрос «экологических беженцев» в рамках системы прав человека, а также гуманитарного права со своими назначениями, консолидациями и обоснованностями мер, принимаемых жертвами и виновниками, правительственными и неправительственными организациями и т.д. Принимая во внимание тематическое исследование по вопросам изменения климата с его последствиями, и тот факт, что в настоящее время отсутствуют какие-либо юридические ратифицированные документы, которые обеспечили бы законной статус «экологических беженцев», в данной статье приводится определение «экологических беженцев», далее приводится тематическое исследование вместе с судебной практикой, наглядно иллюстрирующей возможные правонарушения, в частности, право на жизнь и жесткое обращение по отношению к ним, и возможное решение вышеназванной проблемы.

Ключевые слова: *«экологические беженцы», ООН, право на жизнь, жестокое обращение, международный принцип «non-refoulment».*

In the following legal draft paper is analysed an urgent issue of 'environmental refugees' within the system of International Human Rights law as well as Humanitarian Law with their prescriptions, consolidations and validity of actions taken by victims and authors, government and non-governmental organizations, etc. Taking into account case study on climate change with its consequences and the fact that currently there are no legal ratified documents that would provide any legitimate status for 'environmental refugees'- with emphasis on the needs I decided to highlight the hot points of this controversial issue.

INTRODUCTION

The majority of human rights documents emerged as soon as the Second World War ended. We may observe evolution in the conception of International Law by human rights application demonstrated in two elements: states' legal practice and *opinio juris*- by Human Rights Committee (hereinafter, 'HRC'), International Court of Justice (hereinafter, 'ICJ') and others' decisions, thereof. Indeed, human rights may be protected in the scope of the international legal system only if states pursue their obligations towards fundamental human rights under domestic law first of all, as it is clearly illustrated in the case of Anchugov and Gladkov v. Russia [7], where there was violation of applicants' right to vote by the Russian Federation, however, after the Constitutional Court ignored the decision of European Court on Human Rights (hereinafter, 'ECHR') claiming that making amendments on this point contradicts their domestic law. It is only one of great examples of non-fulfilment of human rights.

Nonetheless, at the end of the twentieth century, undoubtedly the bloodiest century in human history, the supreme efforts have been implemented towards the promotion of a compound structure of human rights, which is illustrated with numerous significant treaties, in particularly, United Nations (hereinafter, 'UN') conventions and resolutions, profound case law and reference to highly respected doctrines.

Nonetheless, the compilation of abovementioned will provide a reader with a perspective for complete, at the same time, brief overview of 'climate change refugees' status framework. The following study of a paradigmatic shift in the understanding of 'environmental refugees' culminates the main tendencies in the evolution of their definition, including justifiable flaws, possible violations by the state of origin, which will be further described, as well as a state where they 'arrived'; questions on subject matter jurisdiction for hearing the merits at domestic level, and eventually potential solution to this reasonable controversial problem. This article is also significant due to the clarification of such legal status as an environmental refugee. Despite existence of Geneva Conventions, yet there has not been adopted any

legally binding document. By dealing with definition, in this work there will be shown the most vulnerable territories to environmental disasters as well as natural disasters. By making a statement on natural disaster we should take into account a natural disaster is a major adverse event resulting from natural processes of the Earth [26]; examples include floods, volcanic eruptions, earthquakes, tsunamis, and other geologic processes, which can cause loss of life or property damage, and typically leaves some economic damage in its wake, the severity of which depends on the affected population's resilience, or ability to recover [20]. All in all, the total aim of the following study is to reveal the already conducted surveys by investigating case law not only under International law, but also under domestic level in order to mediate the rights of human ones, who were displaced because of environmental or/ and natural disaster.

Anyone undertaking to write about this perennial problem should mention about dominant concern on whether the state, where this category of people has arrived, is responsible for their protection or may deport them back. In figuring out this question, it's significant to explain the status of 'environmental refugees', first, by turning to their status under International Law.

I. Definition of 'environmental refugee'

Numerous legal drafts have been dedicated to 'climate change migrants' [20]. As there is no criterion for identifying key elements of 'an environmental migrant' unlike refugee, it is impossible to expend the Refugee Convention, thus, apply Art. 30 of Vienna Convention on Law Treaties of 1969, therefore, there is no any potential uniform approach, which may stem from one of that great amount of scholars. Before highlighting my position towards the term itself, it is ultimate, first of all, to make a reference to the world organizations' as well as doctrines' comprehension.

The definition of refugee adopted under International law is contained in the Convention of 1951 and Protocol of 1967 relating to the Refugee status. and . Under Art.1 (A) of Refugee Convention 1951 [2] in order to be considered as a refugee the following 4 elements have to be fulfilled: persecution- race, religion, nationality, membership of a particular social group or political opinion, may be considered as refugees unless otherwise provided by legislation.

For instance, according to Norman Myers, a British environmentalist, whose domain is biodiversity and environmental refugees, environmental migrants may flee to or migrate to another country or they may migrate internally within their own country [24].

In the view of the International Organization for Migration environmental migrants are persons and/or groups of ones who, for outdrawing reasons of evolutionary alternations in the environment that inauspiciously influence on their lives or accommodation conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad [17].

While another researcher, Bogumil Terminski, stresses environmental migrants as people who are forced to migrate from or flee their home region due to sudden or long-term changes to their local environment which compromise their well-being or secure livelihood, such changes are held to include increased droughts, desertification, sea level rise, and disruption of seasonal weather patterns such as monsoons [25].

Essentially, to my point of view, environmental refugees may be defined as people who are forced to leave their original habitat because of some sort of environmental difficulty. By various conducted surveys, the thing which unites different views is that that are 50 million environmental refugees worldwide. In addition to this, by 2050 there will be 200 million environmental refugees. Yet stressing out that the word 'refugee' has a specific legal meaning in the context of the Refugee Convention, it is clear that the lack of head of power over the 'climate change refugees' as well as the environment itself has not prevented those mostly vulnerable governments to desertification from the issues that the we do have, nonetheless, there is a prospective of legislation for the purpose of implementation international obligations thereof. Such deficiency in legal head over the integration of environment protection regime and refugee regime has already inhibited in the integration of these two branches for their future consensus commonwealth.

II. Case study

To pursue my interlinkage between the term and vulnerability level of certain countries to climate change, I would like to maintain the dissemination process which includes identifying gap within next identifying implementation policy. The choice of the case studies emphasizes historical examples that have been comparatively underreseached from the perspective of human rights law; another significant criterion used for case selection is the presence given society of narratives that glorify violent might and insurrection as demonstrated by the map in the Annex 1.

If we take into account precautionary approach, inter alia, by way of synopsis the possible mitigation may be maintained. Mostly middle-area of Africa is exposed to desertification and drought while territory of the Pacific Islands is exposed to hurricanes. In addition to this, there are coastlines particularly under threat by extreme weather and greater surf, also those that are mostly vulnerable to ice and permafrost melting.

The territory near Nil, Mekong, Ganges and Brahmaputra, Yangtze will disappear due to great deltas; Madagascar, Pacific Islands will not exist anymore because of hurricanes. These people are not running from war or authoritative government, they are seeking asylum from climate change. Environmental migrants will mainly come from 'high level welfare countries', where the affect of climate changes comes on top poverty and war, hereof. There is a resounding call for every human being to wake up and "be for green", because climate change is not a collision course right now, it is like civilization a collapse appears from environment. It is about what the law provides and what the world needs. That is why it's an obvious indication. Challenge is no longer to save the planet, but to save the civilization.

For these reasons, first and foremost, I would like to present the great examples of such terrible scenario.

The first and mainly ultimate example is Bangladesh, the area with population density, poverty, illiteracy, shortage of institutional setup, etc. Due to water salinity, one of the major impacts of Aila, inhabitants cannot cultivate fish, nor can grow any vegetable or plant trees. In Aila, the death toll was lesser, but it completely devastated the agriculture, e.g. paddy, vegetable, fish. The inherited land has already been engulfed by the river. The devastation which takes place with any kind of human rights and migration process negotiates with several level, one of which is the maintenance of life

but just the litigation to address coming soon issues; another key aspect is social devastation when the victims become devastated from their families. If only the embankment was higher water could not enter, water level riches up to the embankment in a 2/3 signal number [19]; due to the lack of implementation and proper planning, the contractors did not fulfil improvement of the embankment, but rather the political and local authorities had stolen mush of the funds issued for that deal. Although lawyers are generally viewed as those who would be skilled in the relevant law, but a legal background is not a pre-requisitive when there is no support for the community itself in a domestic level.

The second example is the Maldives, one of the lowest countries on Earth with a population of about 300,000 distributed thought the 200 inhabited islands, they have been victims of environmental challenges for a long time. When you look at the development of the knowledge it is very much based on the ecosystem. The 2010 study shows that 89% of GDP depends on biodiversity. The temperature there is supposed to increase at 1.3 degrees Celsius by 2020 [15]. Then there will increase in rainfall, the erosion gets severe day by day. Within abovementioned facts, land is no longer habitable for these indigenous people, therefore, they need to move, because it comes with an extremely huge cost – one that country cannot afford despite decision on ratifying the Paris agreement on climate change [6].

The last, but not the least, is Haiti. The UN humanitarian Coordinator in Haiti has revealed it to be one of the horrible spots on the planet, where the attempts to resurrect the area might be even useless. With a GDP of only $1,200, Haiti economically ranks 205 out of 229 countries worldwide [16]. Moreover, after the earthquake of 2011, looking from a pragmatic view, victims went to the nearest country Brazil to put up a tent for temporarily [14] with the future negative consequences for both actors- victims and the government where they stay for a short period of time, which will be described more precisely in the next paragraph.

III. Possible violations. Case law

As soon as the situation of climate emergence has begun, 'environmental refugees' move to the nearest countries, as was shown on the example of the Haitians, who are currently living together with the Dominicans and the Senegalese. However, on their way to normal life under rule of law a number of challenges stand in the face of attempts to institutionalize a legal status for themselves.

In compliance with Art.1 (a) of Refugee Convention 1951, they do not pursue one of the elements of persecution, and by arrival to the nearest country, 'environmental refugees' are illegal immigrants until the moment when they get concession to be legal migrants, which is based on temporary visa with apparently ensuing benefits as working legally, facilitation to be involved into smth, etc. Why a state complies adversarial procedure? The government fears to breach Arts. 6 and 7 of the International Covenant on Civil and Political Rights [1] on right to life and inhuman or degrading treatment, accordingly. Nonetheless, after the right to stay under certain jurisdiction comes to the end, they do have to move further, therefore, there is a necessity to handle with such domestic and international campaigns. How rapidly can results be expected if no caution is undertaken on legislative and practical input?

A. Possible violation: right to life

In the first case Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment [11], which has received media attention throughout the world, have been involved an application for a refugee status based on the effects of climate change in the Pacific Island nation of Kiribati. The proceedings in the case came to a close in July 2015, when the Supreme Court of New Zealand, the highest court in the country, dismissed an application for leave to appeal the Court of Appeal's decision in which it ruled against the applicant, because the author did not face "serious harm" and further that "there is no evidence that the Government of Kiribati is failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it can." So that, Teitiota`s appeal was finally declined. Two questions arise:1) won't such action a violation of right to life and 2) what is criterion of 'serious harm'?

According to UN Human Rights Committee General Comment №31 and №6 and the right to life constitutes an 'erga omnes' obligation. The erga omnes obligation obliges each and every State to refrain from serious violations of basic human rights. Under Art.4 (2) of the ICCPR, no derogation from the Art.6 (1) is permitted. Right to life and environmentally displaced people are chief among the range of human rights which could be enlivened by a situation of environmental displacement. The connection between the right to life and the environment has received authoritative, albeit minority, judicial endorsement in the International Court of Justice. Judge Weeramantry of that Court Weeramantry J, in a Separate Opinion, stated his quite string position that 'the protection of the environment is [...] a vital part of [...] the right to health and the right to life itself.' [10] Numerous judicial decisions there 'have expanded the right to life to include the right to a healthy and clean environment.' Thus, it could be said that the right to life in human rights provides a legal basis on which states can be said to owe protection to the environmentally displaced.

In addition, UNGA resolution 46/182 (1991) (Guiding Principles on Humanitarian Assistance) confirms that "[e]ach State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory", therefore, if some environmentally displaced people move from country A to country B, the last one will take care fist turn for their own nation, but not illegal immigrants, which was presented on the aforementioned example.

Or another ultimate example is the case of Australia| Kiribati, where even though the fact the applicant fears rising sea levels will see the further diminution of fresh water for drinking, washing and survival of food production crops, that the country could be completely no longer habitable, under sea water, Refugee Review Tribunal have not found persuasive applicant' fears of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion as required by the Refugees Convention" [12].

The answer is that, where an affected population is in urgent need of assistance to avoid starvation, severe malnutrition, or disease that might threaten their lives and the State is unable to respond effectively to those needs, arguably a refusal by that State to allow humanitarian access and accept humanitarian assistance could constitute a violation of the right to life [4]. Despite the aforementioned concurrent applicability of human rights law in the violation of right to life, which is unavoidable desire to prevent unnecessary deaths, a

victim may claim another violation -inhumane or degrading treatment, because if practice settles disputes on violations and it is not just a theory, i.e. cases with New Zealand and Australia, the necessary adoption of the human rights justice approach should be taken.

B. Possible violation: inhumane or degrading treatment

By claiming inhuman treatment it is necessary to understand serious harm, which is equal to minimum level of severity. The European Court on Human Rights (hereinafter, 'ECHR') noted in Ireland v. United Kingdom (1978) [8] that ill-treatment must attain a minimum level of severity. The assessment of this minimum is, in the nature of things, relative; In the Tyrer case, the ECHR argued "that the suffering occasioned must attain a particular level before punishment can be classified as 'inhuman' within the meaning of Art. 3" [9]. That particular and necessary to achieve for a victim minimum level of severity must cover "severe suffering, mental or physical, which, in a certain situation, is unjustifiable" [13].

On the other hand, in its general comment on The Nature of the General Legal Obligation on State Parties to the Covenant in 2004, the Committee stated:

"Moreover, the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed" [3].

In contrast to the abovementioned competing expectations, New Zealand broadened Immigration Act in by introduction of complementary protection in 2009. Already amended to create procedural rights provided in Sections 130 and 131 that a person must be recognized as a protected one in New Zealand if there are substantial grounds for believing that a person would be in danger of being subjected to torture or arbitrary deprivation of life or cruel treatment. In comparison with Australia, New Zealand directly refers to the Convention against torture and ICCPR, therefore, enhancing rights regime.

For instance, in the case of New Zealand | Tuvalu [12], New Zealand didn't deportee applicants claimed themselves to be victims on humanitarian grounds, but provided "environmental refugees" with complementary protection instead of 'environmental refugee' or 'environmentally displaced migrants' status by avoiding potential aforementioned violations, i.e. rights to life and inhuman or degrading treatment.

With a reference to the aforementioned cases, in order to avoid inhumane or degrading treatment, therefore, the responsibility for the invalidity towards 'environmental migrants', the human rights regime may be enhanced by other jurisdictions, i.e. applying already existing approach in New Zealand-complementary protection, which will be described a little bit more in the last, but not the least chapter.

Conclusion

The developed states of West have argued historically that there exists an international minimum standard for the protection of foreign nationals that must be upheld irrespective of how the state treats its own nationals and migrants as was concluded in Roberts claim [22]. However, not every state will take responsibility, which "results in the duty to make reparation if the obligation in the question is not met" [23].

While assuming that human ingenuity alongside the legal basis will probably find an answer to this urgent issue, there is already approach which might be called as 'weak sustainability' passed on the next generation with a combination of human and environmental resources that are in total cannot be comparable to an attempt of preservation of Earth's integrity unless the countries will start to apply complementary protection.

However, in order to apply for complementary protection, the first and foremost step should be taken by any country on municipal law rather than on international level alongside with their collaboration by making certain amendments in their regional documents as New Zealand did in their immigration act. The common rule with the linkage to the statement of domestic law within the international sphere is that a state which has violated international law cannot approve of their justice. Accordingly, settled state practise and decided cases may in future establish case law involving international litigation from solicitation of domestic one. Otherwise with ratifying a certain treaty, it possesses certain obligations on the government, in particularly, the constitutional authority which may not pursue them, as the United Kingdom or the Russian Federation on the case of Anchugov and Gladkov v. Russia [7].

In all of these recent case law and provided data, even when we deliberate appropriate strategy, it will reshape the understanding of international system of human rights and environmental law. We applaud the efforts of those seeking to widen the scope of studies, however, first and foremost should be taken on municipal law.

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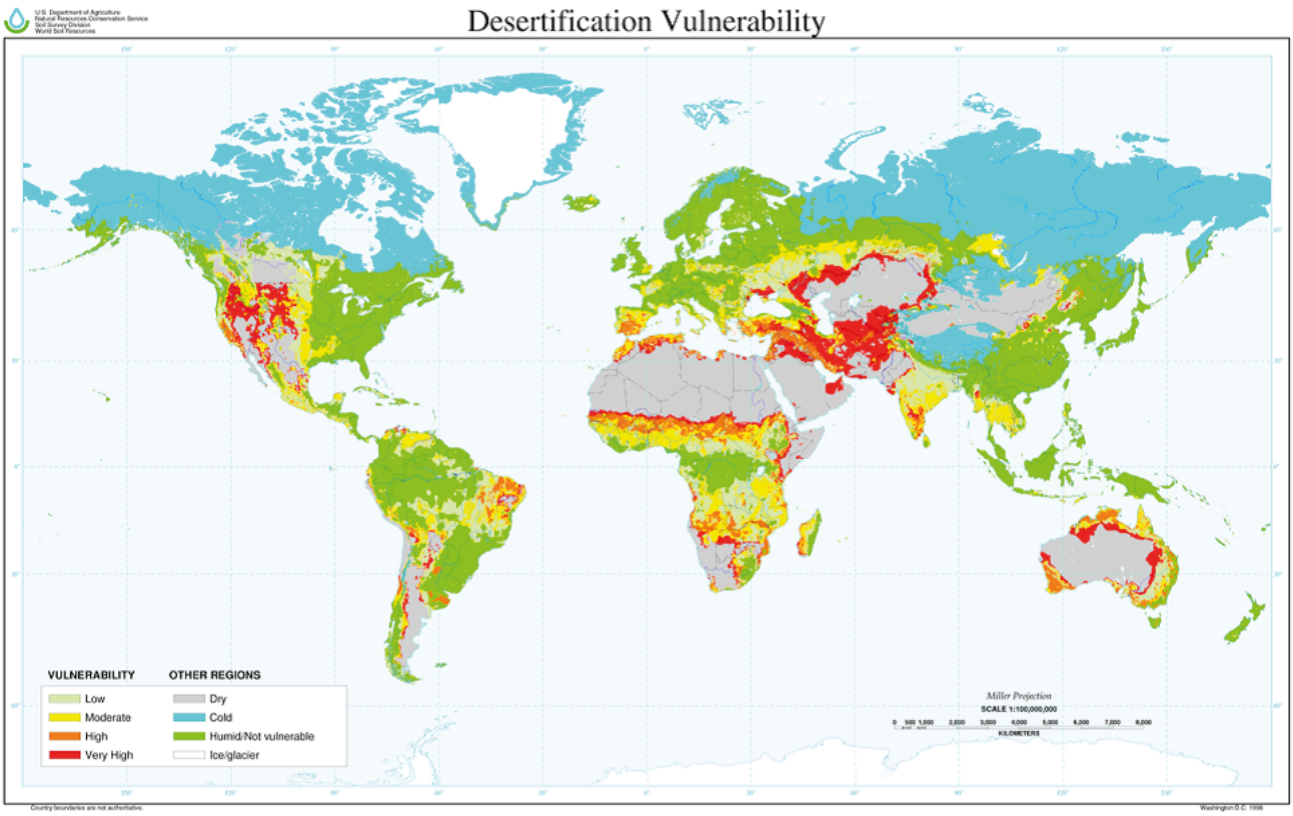

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