

International Law and the Victims of Climate Change: Creating a Framework for Managing Impacts and Displaced People

Justin S. Rubin

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In the Indian and Pacific Oceans, rising sea levels caused by global warming are threatening low-lying islands. These increased sea levels are submerging inhabited lands, intensifying flooding, decreasing crop production, and ruining drinking water. The Carteret Islands highlight the impending danger of climate change: relocation efforts have already begun in the islands, where, during a third of the year, inhabitants store possessions in nets hung between trees to keep them dry.¹ The cost and resource requirements of relocation, however, may delay complete evacuation until 2020, five years after some predict the Carterets will be submerged and uninhabitable.² Tuvalu and Kiribati, island nations in the Pacific, face similar fates and, as independent countries, are likely to become two of the first countries wiped off the map by climate change.³ One of the more proactive countries in this arena, the Maldives, an island nation in the Indian Ocean, has built a sea wall around its capital island and is considering buying land to resettle its population.⁴ They are, in short, planning on moving a country.

In Bangladesh the population faces different, but similarly foreboding, consequences of climate change. As a flat country surrounded by water and covered by rivers, increased flooding is displacing Bangladesh's population.⁵ Rising sea levels are "salting" the land, decreasing, and in some cases devastating, crop production.⁶ These changes are forcing the population of one of the most densely populated countries into a smaller area and decreasing its food supply.⁷ Internal movement only exacerbates the problem by decreasing crop yields and pushing millions below subsistence levels. While Bangladesh's population is not facing the threat of drowning that the islanders face, the

Justin S. Rubin is an Adjunct Policy Analyst at the American Security Project. Prior to joining the American Security Project Mr. Rubin was a senior counsel at the Project on National Security Reform and a litigation associate at Wilmer Cutler Pickering Hale Dorr LLP. In 2006, Mr. Rubin graduated the University of Chicago Law School, where he was a member of the Law Review.

danger it faces is similarly troubling as it will lead to starvation, poverty, and death as well as the potential destabilization of the country and the region.

Climate change is here. While individuals can continue to debate its causes and our ability to mitigate its impact by changing our behavior, glaciers and permafrost are melting, sea levels are rising, and ecosystems are changing. As a result, a growing number of individuals will either be forced to leave their homes or live on land that is unable to support its population. Commonly referred to as either climate migrants or refugees, they are neither refugees, as they do not meet the legal definition of the term, nor migrants, as they are often stuck on their land. Instead, individuals impacted and displaced by climate change (IIDCCs) are their own category, and islands in the Pacific and Indian Oceans, along with Bangladesh, are only the most noticeable examples of the danger climate change represents. In fact, displacement caused by climate change will only multiply: some estimates claim that by the year 2050 between 150 million and 200 million people will be displaced by global warming.⁸ The United States is already facing its own IIDCCs in the form of Alaskan villagers who, with their villages, must be moved inland or face falling into the Arctic Ocean.⁹

Despite the impending threat climate change represents, the world lacks a coherent legal framework for addressing climate change and the challenge of IIDCCs. While developing this framework will require the work of experts from diverse fields, four elements seem necessary to its success:

- a binding agreement between developed nations;
- a commitment by those nations to evacuate and resettle climate change victims;
- an adjudication method for deciding who needs to be relocated and to where individuals should be relocated; and
- job and skill training for resettled IIDCCs.

While this approach may seem like a paternalistic form of imperialism, it is not meant to empower wealthy nations over poor ones, but to reflect the responsibility and need for wealthy nations to play a significant role in relocating IIDCCs. Moreover, developing nations and their citizens would play a part in the adjudication process, not merely be subject to the whims of the developed world.

International Refuge Law is Not the Solution

The lack of an international framework for addressing climate change refugees is a reflection of the limits of international refugee law. International refugee law was created and defined by the 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.¹⁰ In creating refugee law, the Convention and Protocol define a “refugee” as an individual who has escaped the country of her nationality or habitual residence and cannot return to that country due to a “fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. . . .”¹¹ While this definition creates a wide category of refugees, it is

limited to those in fear of persecution. It does not include individuals who are impacted or displaced by natural disasters or environmental factors, including climate change. As a result, unless climate change leads to an ethnic war or the persecution of a specific group, IIDCCs are left outside of the scope or refugee law. While the United Nations Guiding Principles on Internal Displacement includes individuals displaced by environmental factors, they are non-binding and only apply to internally displaced people, giving no protection to those forced out of their countries.

A seemingly easy fix, adding victims of climate change to the definition of “refugees,” is neither a viable nor appropriate solution to the problem of IIDCCs. It took decades to negotiate the current Convention Relating to the Status of Refugees, including 16 years to update it to include post-1951 refugees. Amending the Convention would require a similarly long process and likely lead to an attempt, as part of the negotiations, to weaken refugee rights and protections.¹² Moreover, even if amendable, the Convention is poorly suited for addressing IIDCCs. Refugee law is based on a reactive “escape and asylum” model, which requires individuals to escape, or be exiled, from a home country or place of residence, reach a new country, and, only then, claim asylum as a refugee. Under the system, potential refugees have no protections until they reach a new country and countries are only responsible for individuals that reach their territory and claim asylum within it. This system will not work for IIDCCs, who, in many cases, will be unable to leave their homes or home countries without assistance, leaving them on their own to face rising waters, declines in crop production, inadequate drinking water, and overcrowding. Moreover, those that can leave their countries without assistance will likely move to poor and developing nations that are close to home and have limited capacity to absorb displaced people.¹³ To avoid these problems and ensure IIDCCs are given adequate assistance, a new framework for addressing climate change victims must depart from the refugee system and require countries to positively assist and protect IIDCCs.

A New System

To ensure that IIDCCs are adequately assisted, a new system for addressing them must, therefore, be adopted. Four seemingly necessary pieces of this are: a binding agreement between developed nations; a commitment by those nations to evacuate and resettle climate change victims; an adjudication method for deciding who needs to be relocated and to where individuals should be relocated; and job and skill training for resettled IIDCCs.

A Treaty Between Developed Nations

A successful, international framework for addressing IIDCCs requires the participation of developed nations in the form of a binding international agreement. Many developing nations live on the brink between success and failure. They are often politically unstable, overpopulated, have limited resources and limited ability to distribute the resources they do have, and, thus, are barely able to serve their populations’ needs. In contrast, developed nations’ economies and governmental systems are relatively stable, have distribution systems in place to support their populaces, are able to cope with an influx of

immigrants, and have greater economic and aid resources to devote to assisting IIDCCs. As a result, even though the vast majority of those in need of assistance will come from the developing world, developed nations' participation in the system is of greatest priority. Without them, success is unlikely. Moreover, developed nations' participation must come in the form of a binding international agreement. A successful framework for addressing IIDCCs will both create positive rights for IIDCCs and the obligation on countries to enforce those rights. Such rights and obligations can only be created and enforced through a binding international treaty that commits its signatories to specific actions.

A Commitment to Evacuate and Resettle IIDCCs

While institutionalized protections for IIDCCs are important, such protections will be meaningless without developed nations committing to enforce those rights. Accordingly, as many IIDCCs will be unable to reach new countries without assistance, an international framework for addressing climate change victims must include a commitment to help relocate those in need of evacuation. This should come in the form of positive obligations on developed nations to evacuate and resettle qualifying victims of climate change. While not all IIDCCs will need relocation in new countries, many will. A treaty addressing IIDCCs must, therefore, include a commitment by developed nations and other capable countries to both evacuate IIDCCs in need of relocation and agree to their admission as either temporary or permanent residents.¹⁴ This would differ from the existing refugee system's "escape and asylum" model by requiring countries to act when individuals are in danger, not just when they are able to claim protections within a passive country. Moreover, to lessen the burden on any nation, the agreement should share responsibility for relocating and evacuating IIDCCs among signatory countries.

While accepting a significant number of IIDCCs may not be politically popular in all countries, developed nations must agree to do so to avoid the humanitarian and security crises that could arise as a result of climate change.

An Adjudication Process

In assisting IIDCCs, a number of decisions would have to be made, including whether IIDCCs need to be relocated and to where they should be relocated. These decisions should be made through a technocratic adjudication process. For example, while a whole population would clearly need relocation when rising sea levels submerge an island, when climate change causes desertification in Africa, questions will arise about whether a drop in crop production is the result of normal fluctuations or a real change in the land's ability to support its populace and whether a populace can adapt to the change. In a case like Bangladesh, where climate change "merely" floods a coastal area or, due to salinization, kills crops, questions will arise about whether IIDCCs that can move internally should still be resettled outside of their home countries to limit overcrowding and, potential, related impacts. In both these types of cases a further decision will have to be made about what percentage, if any,¹⁵ of a

populace should be resettled. Moreover, after deciding on resettlement, a decision also will have to be made about where the population should be resettled.

The adjudication process would be overseen by a professional staff and, on a case by case basis, address issues through specialized administrative commissions that include voices from both the developed and developing world as well as experts on climate change, population relocation, and global security. Moreover, clear standards should be created for how decisions are made. For example, in making decisions about whether to resettle a population, the commission should take into account both humanitarian and global stability concerns as well as the impact of resettlement on those that remain, including ensuring that relocation does not preference a society's best and brightest and cripple a population that remains on its land.

Similarly, in deciding where to resettle a population, the commissions should also balance a range of issues, including: proximity to the population's current home; the political, social, and economic ability of a country to absorb a specific population; and the presence of an existing diaspora community. This balancing is essential to ensure that resettled IIDCCs thrive in their new homes and that countries that accept IIDCCs are sufficiently capable of absorbing them. This process should also ensure that responsibility for resettling IIDCCs is spread throughout the developed world and that a few countries are not forced to bear the burden of resettling the vast majority of IIDCCs.

The adjudication process should also define resettled IIDCCs as either temporary or permanent and prioritize countries that help retrain populations when deciding where to resettle IIDCCs. While many IIDCCs will be forced to relocate permanently, as populations learn to deal with new climates and new infrastructure is created, some resettled will be able to return to their native lands. In that vein, populations that could be repatriated in the near future should be defined as temporary residents. The existence of this status would encourage efforts to mitigate the harm of climate change on the developing world as well as the retraining of IIDCCs. Moreover, repatriating IIDCCs would alleviate the burden on nations absorbing them. To avoid a population's temporary status becoming permanent and populations remaining in limbo and unable to build lives in their new homes, this status would be time-limited.

Retraining

The final piece of the framework for addressing IIDCCs should be job and skill training for displaced populations. To assist in the assimilation of IIDCCs into their new countries as well as the potential future repatriation of willing IIDCCs to their former homes, the commission responsible for overseeing IIDCC relocation should, with local governments' help, institute job retraining and other initiatives to ease the transition to a new land. These programs are essential to both ensuring resettled IIDCCs do not become part of the underclass in their adoptive countries and that later repatriation is both responsible and successful.

Our Values and Our Security Require Action

This approach is not without challenges—both practical and political. While this proposed framework and its elements could be seen as a paternalistic attempt to control developing nations, it is not. While developed nations would play an essential part in the framework and its success, they would be given no authority over the developing world. The goal of the framework, far from being to increase developed nations' power, is to force the developed world to fulfill its responsibilities with regard to climate change. Moreover, no population would be forced to move and populations would have a say in their relocation. Similarly, while no country would be allowed to hold its population hostage, countries would be involved in decisions related to the relocation of their populaces.

After World War II, the world faced displaced populations throughout Europe, albeit on a smaller scale. In that case, the world was able to address the issue through a combination of repatriations and banding together to individually accept a number of displaced persons through quotas. While the efforts in that case showed the ability of the world to address a significant displaced population, those efforts were largely a success because the United States and Israel accepted a significant percentage of the non-repatriated and there was a finite number of displaced people. In this case, the problem we face is much larger in scale and will only continue to grow. Moreover, we do not have the luxury of time to wait for countries to agree on a case by case basis to open their borders.

The time to act is now. The developed world owes it to the rest of the world to use our resources to alleviate and limit the suffering caused by climate change. It is our moral and practical responsibility as wealthier countries that benefited from the technology that helped cause climate change. Moreover, it is in our self-interest: if we do not assist climate change's victims, we will face greater global instability and insecurity as well as be blamed for climate change's effects. The nations of the world need to work together, as they did after World War II, to solve this problem. Otherwise, we risk the alternative: refugees living in squalor, indefinitely, where they will become targets of—and fertile soil for—radicalization and terror.

The time for debating whether climate change will impact populations is over. The world must work to create a framework for addressing IIDCCs and global warming's humanitarian and national security impact now.

Endnotes

- 1 See http://www.nytimes.com/2009/05/29/world/29refugees.html?_r=1 and http://www.un.org/ga/64/generaldebate/pdf/PG_en.pdf.
- 2 See http://www.un.org/esa/dsd/resources/res_pdfs/ga-64/cc-inputs/PSIDS_CCIS.pdf (page 11); and <http://www.digitaljournal.com/article/248946>.
- 3 See http://www.pacinst.org/publications/worlds_water/World_water_fact_sheet.doc (Chapter 5); <http://abcnews.go.com/WNT/story?id=3002001&page=1>; and http://www.europarl.europa.eu/news/public_story_page/064-66081-341-12-50-911-20091207STO66066-2009-07-12-2009/default_en.htm.
- 4 See <http://www.nytimes.com/2008/11/11/health/11iht-11maldives.17705046.html>; and http://news.bbc.co.uk/2/hi/south_asia/7719501.stm.
- 5 See <http://www.independent.co.uk/environment/climate-change/bangladesh-at-the-mercy-of-climate-change-436950.html>.
- 6 See http://www.swissinfo.ch/eng/index/Rising_tides_raise_fears_in_Bangladesh.html?cid=7837318.
- 7 See <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/26/AR2007092602582.html>.
- 8 See <http://www.nytimes.com/2009/05/29/world/29refugees.html>; and <http://www.guardian.co.uk/environment/2009/nov/03/global-warming-climate-refugees>.
- 9 See <http://www.cnn.com/2009/TECH/science/12/03/shishmaref.alaska.climate.change/>.
- 10 See <http://www.unhcr.org/3d4aba564.html>.
- 11 See <http://www.unhcr.org/3b66c2aa10.html>.
- 12 See <http://www.spiegel.de/international/europe/0,1518,667256,00.html>.
- 13 The United Nations Guiding Principles on Internal Displacement is unhelpful for similar reasons as many impacted developing nations will be unable to cope with significant internally displaced populations, which will cause overcrowding and its associated effects.
- 14 Temporary should not mean that individuals will be forced to leave their new homes at some point, but that there is a plan to, when an area is suitable for resettlement, return interested individuals to their original homes.
- 15 While at risk populations should be resettled, the default should not be resettlement. Mitigation of climate changes' effects and societal adaption will often be both possible and desirable to limit the human capital drain on the developing world and avoid overburdening countries accepting IIDCCs.

Building a New American Arsenal

The American Security Project (ASP) is a bipartisan initiative to educate the American public about the changing nature of national security in the 21st century.

Gone are the days when a nation's strength could be measured by bombers and battleships. Security in this new era requires a New American Arsenal harnessing all of America's strengths: the force of our diplomacy; the might of our military; the vigor of our economy; and the power of our ideals.

We believe that America must lead other nations in the pursuit of our common goals and shared security. We must confront international challenges with all the tools at our disposal. We must address emerging problems before they become security crises. And to do this, we must forge a new bipartisan consensus at home.

ASP brings together prominent American leaders, current and former members of Congress, retired military officers, and former government officials. Staff direct research on a broad range of issues and engages and empowers the American public by taking its findings directly to them.

We live in a time when the threats to our security are as complex and diverse as terrorism, the spread of weapons of mass destruction, climate change, failed and failing states, disease, and pandemics. The same-old solutions and partisan bickering won't do. America needs an honest dialogue about security that is as robust as it is realistic.

ASP exists to promote that dialogue, to forge consensus, and to spur constructive action so that America meets the challenges to its security while seizing the opportunities the new century offers.



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