International Refugee Law: Adapting in a Climate Crisis?

Sadhvi Mehandru

The scope of the vastly prominent and long-standing issue of climate change has notably expanded in recent years, coming to correspond with various political and social issues. In the case of many in impoverished or conflict-ridden areas, homelands have become inaccessible due to ferocious storms and natural disasters, which are unprecedented, due to the recent worsening of global conditions. While the climate crisis has been evidently occurring since the 1970s, the urgency and severity that the crisis demands have been significantly bolstered in recent years, with the direct impact of climate change becoming readily visible. One of the notable impacts is upon those who have come to be referred to as "climate refugees," a term first circulated by Lester Brown in the 1970s (although not an internationally recognized term). In the face of rising sea levels and increased frequency of natural disasters, among other predicaments, is the current international legal framework to aid these climate refugees and others forcibly displaced from their homes adequate?

To accommodate the recent influx of climate change and subsequent climate refugees, the Supreme Court, in a few instances, has taken into consideration this category of displaced individuals. In other words, a new "particular social group" of refugees, as those impacted or likely to become impacted by climate change, has become more widely recognized. With this newfound recognition, the dire situation corresponding to both the climate crisis and the international refugee crisis comes to light. The true plight of climate-affected individuals around the globe is shown through the original outline of refugee law and clear limitations embedded in it. In other words, the 1951 Refugee Convention sparsely accounted for refugees displaced by the climate crisis, which was only developing at the time of this convention. More aligned with the

concerns of the mid-20th century, the Convention primarily focused on persecution by human actors–instead of those displaced by climate issues. In fact, Article 1A(2) of the Convention explicitly mentions that a refugee is someone with a "well-founded fear of persecution," for reasons connected to race, religion, nationality, etc. Furthermore, this 1951 Convention aligned with how most sources from this period understood the term "refugee", as exclusively people who cross international borders to escape persecution.

This definition is a significant detriment to the overall aid of refugees, but especially worsens the situation of those displaced by the climate crisis, because climate-induced displacement majorly occurs internally or domestically. In essence, a foundational element of refugee/asylum law (the 1951 Refugee Convention) is starkly limited in latter-day applicability, despite containing integral portions inherited by large corporations like UNHCR. Furthermore, even with its lacking provisions for domestic refugees and climate-induced displacement, the 20th century Convention lives on as a crucial legal instrument for protecting refugees, and is even often reaffirmed in international agreements (for example, the Global Compact on Refugees).

Beyond the lack of attention to climate refugees in foundational documents and Conventions regarding the refugee crisis in its entirety, various other demonstrations of negligence towards climate refugees are present in international refugee law. For instance, in 2020, *Teitiota v. New Zealand* surfaced, featuring an overarching decision via a UN Human Rights Committee. The Committee finally recognized the argued and long-ignored issue of climate-induced displacement in refugees.

To elaborate, Ioane Teitiota, a citizen of Kiribati, sought protection in New Zealand and argued that the rise of sea levels and further environmental degradation threatened not only his

livelihood but his life itself. While the court itself did not label Teitiota a "climate refugee", the ruling remained significant because it opened the door and broadened the path for future cases, essentially recognizing the potential for climate change to highlight non-refoulement obligations. In other words, New Zealand's Supreme Court ultimately denied refugee status for Teitiota, his asylum claim being rejected. Additionally, while the HRC (UN Human Rights Committee) found that New Zealand had not violated Teitiota's right to life, it was still upheld that some recognition or addressment of climate change and the climate crisis as a whole was vastly necessary to ensure the safety of all refugees.

In essence, the HRC established that the worsening climate crisis was a significant threat to life for certain refugees (as the justification for rejecting Teitota's call for asylum was a lack of evidence, Kiribati's unlikeliness of becoming truly inhabitable, etc). In fact, it had been explicitly introduced by the Committee that "environmental degradation and climate change constitute serious threats to the ability of present and future generations to enjoy the right to life." So, even when the 1951 Convention doesn't apply, nations still have the aforementioned non-refoulement obligations because of the court's ruling in this case. Looking past the 2020 case of *Teitiota v. New Zealand*, a similar case was brought to light in 2022. *Billy v. Australia* showcased an arguably direct disapproval of a state's inaction on climate change and failure to tie it to human rights violations.

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