

Humanitarian aid relief or displacement protections: Assessing the appropriate framework response to the effects of climate change.

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Abstract

Now that the debate over climate change has gained many allies in framing it as a human rights concern, the focus has been shifting to what measures and responses are needed for its many consequences. This research delves into the issue that no official and legal answer to the humanitarian crisis and displacement of people by climate change disasters has been realised, particularly from the international community. It is examined with four key questions of 1) Whether there is an argument for fresh human rights provisions for displaced victims, 2) What form can these protections take? 3) Whether humanitarian aid should be the main focus as a response and 4) how effective and challenging will it be for displacement policies and humanitarian aid to be a combined response? This research argues that a robust response to the human rights crises of climate change is needed through a displacement, a humanitarian and human rights framework, which are all inter-related. It suggests that the processes involved in this issue and the inability to find lasting solutions are just as much political processes as they are environmental. It will also submit that the impact of our responses - or lack of a response - will become a greater issue than the actual ecological developments causing the problem. It recommends further research into the feasibility of implementation of these frameworks into a single international instrument.

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List of Acronyms

CRC	United Nations Convention on the Rights of the Child
GHG	Greenhouse gases
IASC	Inter-Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
IDP	Internally Displaced Person
IFRC	International Federation of the Red Cross
IOM	International Organisation for Migration
IPCC	Inter-governmental Panel on Climate Change
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
OCHA	UN Office for the Coordination of Humanitarian Affairs
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRO	United Nations Disaster Relief Organisation
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNISDR	United Nations International Strategy for Disaster Reduction
WHO	World Health Organisation
WMO	World Meteorological Organisation

1. Introduction

1.1 Background

The climate change debate has been raging for several decades now and with no end in sight. In the last few years, the conversation has evolved to intertwine the more scientific discipline of the causes and environmental consequences of climate change with the human rights aspect that seems to encourage a greater level of concern.

Human-induced climate change is an issue that has already brought significant tragedy and natural disasters to populations around the world in the form of droughts, floods and famine (Humphrey, 2011a). In light of this, scholars have in the last five years written considerably on the important links between human-induced changes in the climate and the human rights consequently affected. Several of these, as will be examined in this research, have called out for such links to human rights to play a greater role in how mankind responds to the threats of climate change.

Unfortunately, all this talk has not awoken the international community to act beyond their only and current focus which is the scientific aspect of the climate change. Such a gap in action and protection leaves populations around the world with pronounced weaknesses and the potential for catastrophic consequences. Just recently in 2011, former OHCHR High Commissioner Mary Robinson lamented that the world lacks any form of “efficient response mechanism” and coordination that is so desperately needed to overcome the destruction expected from climate change.¹

The climate of the earth is altering at a speed that has surpassed previous predictions² that are based on the science. As a result, populations and countries have begun feeling the effects through increasing natural disasters that are affecting the lives and safety of their inhabitants (Humphreys, 2011). With no full-proof solution yet achieved by the international community to prevent or significantly reduce the impact, continued climate change disasters will be a foreseeably frequent occurrence; events that will see persons forced from their homes or even their countries and, that will cause diminished food security³ and depletion of many of the resources needed for survival.

As these events could witness the displacement of about six million people every year,⁴ the prospect of great numbers of people moving around countries and regions is

¹ See Mary Robinson’s foreword in S. Humphreys book, *Human Rights and Climate Change* (Robinson, 2011).

² For more, see UNHCR: ‘Climate Change: The Storm ahead’, 2012 at <http://www.unhcr.org/pages/49e4a5096.html>

³ Note 2 above.

⁴ For more statistical information on displacement numbers, see UNHCR’s ‘climate change is a humanitarian problem, 2009 at <http://www.unhcr.org/4937fc712.html>.

after all, an uneasy thought for many. An enormous and significant humanitarian response to climate change disasters will be needed if states around the world are to avoid a calamitous future, compounded even further by the lack a robust response.

Unfortunately, this area of human rights has taken on a very political tone (Humphreys, 2011b) and this political nature of the debate may be, as of late, further delaying any new developments in preparing for and protecting the world's population from climate-induced disasters. When and how this is done remains the major issue and question of the times.

1.2 Research aim and objectives

In light of the above, this research will analyse specifically two of the major areas of a response that can be expanded to avoid further catastrophic effects. The first is legal protection policies for those who have no chance but to migrate or are being displaced; and those who cannot or do not need to but who still are in grave need of resources and aid for continued survival.

The main question that this research project seeks to answer is: Should the response to climate change be one mainly of humanitarian aid relief or should a forced displacement framework be the priority? This question seeks to understand what type of framework needs to be adopted in a rights-based response.

This leads to other important questions that serve as objectives for this research and that will be key to understanding and answering the main question. These include:

1. Is climate change really a concern that needs to be viewed under a human rights lens?
2. Is there a case for new provisions in human rights systems, geared toward refugee or displacement protections for victims of climate change?
3. What protections can be provided in international law for those facing forced migration and displacement?
4. Should humanitarian aid be the main and most plausible focus as a response?
5. Can the two be combined to make effective use of all options while minimizing the burdens that could be encountered separately and are there any barriers to achieving this?

1.3 Value and focus of research

As this dissertation will show, there is a lack of consensus on the actions that need to be taken to prevent catastrophic humanitarian crises from occurring due to climate change. Not even the more successful scientific debates and policy negotiations have yielded absolute consensus from most key actors or all countries. As mentioned in the background of this introduction, individuals like Robinson (2011) and the UNHCR (2009) warn that if more is not done to mitigate the consequences of such disasters through a human rights response, then an even greater catastrophe can ensue. However, without even so much as agreement on the issue, it is difficult to envisage much progress on the horizon.

This research is important as it seeks to analyse this gap that exists by identifying the key types of response needed to minimize the negative human rights implications of climate change. While much of the previous research into this area has focused solely on the individual types of responses, this study follows a different angle in comparing two of the most important responses and evaluating whether the international agencies in operational responsibility are prepared for them. This is therefore unique in its nature and adds good value to the debate.

1.4 Outline Structure

This dissertation is broken down into several sections that focus on the arguments for and against new or improved responses to climate change. Chapter two speaks briefly of the methodology employed in putting this research piece together.

Chapter three undertakes an analytical review of the literature on the topics covered. This section puts together a strong analysis of the issues by first providing a brief and scientific examination of what climate change is and how it has successfully been linked to the human rights discipline. It analyses the arguments that have been made both for and against new norms for the displaced and what has been written about the need to take a humanitarian approach to any response.

Chapter four then focuses on an examination of the protection options that are possible for victims of disasters. This takes the form of first determining whether any current international instruments provide them with protections. The result of this analysis and the content from the literature review will help to determine and debate the types of protections that are seen as possible future options. It will also analyse how practical such new protections may be and the political atmosphere that prevents full implementation.

In chapter five, a study of humanitarian aid relief as the response and possible substitute for a lack of displacement protections will be carried out. This section reviews the scale of the need for a more robust system of providing aid relief to affected populations. It utilizes this knowledge to determine whether it can be an adequate humanitarian response or whether it has to be paired with expanded or new norms of protection for this response to work.

Finally, the research closes in chapter six by looking at the previously stated questions and objectives posed and the findings from the analysis. Conclusions are drawn from the extensive analysis of the issues and these are used to offer recommendations for the future in chapter seven.

1 Methodology

The aim of this dissertation is to provide an analysis of the right framework that is needed in a response to the disasters of climate change. This will take the form of a review of the literature specific to the issues of climate change, forced migration or displacement, humanitarian assistance and UN agency work. This literature review will cover scientific documents and articles, social science journals, UN, NGO and other inter-agency reports, and other documents. An analysis of the themes discovered in these secondary sources will be employed in this research to answer the questions asked in the introduction. This method has been chosen since it would not be possible or effective due to time limitations, the nature of the analysis, and access to appropriate actors in the field to use other methods of information gathering like interviews and questionnaires.

3. Literature review: Climate change and the human rights response

3.1 Introduction

The literature review seeks to assess the emerging issues that are linked to the protection of populations affected by climate change disasters, particularly protection through a humanitarian response. This study of the related published materials in this section places direct emphasis on questions 1 and 2 of section 1.2 and a brief review of what has been said about question 5's focus on humanitarian aid. This will provide a brief assessment of the views and recommendations of the authors and evaluate how it applies to this research. Questions 3 and 4 will be tackled using an analysis of the literature reviewed for questions 1, 2 and 5 in sections 3.4 and 3.5 respectively.

Undertaking this review of the literature, reports and academic journals allows for a valuable contribution to be made to this study. The issue of what is climate change and how it affects the world will be assessed. This will be followed by a much needed overview on the link that has been made and mentioned by many, between climate change and the concern for human rights. Additionally, the information on legal protections that are currently or could possibly be available to ease the effects of the disasters will be examined. This will include a look at the rights that are deemed to be affected by climate change disasters plus the value of using a human rights approach to the problem. The review of this literature will assist in the analytical approach to understanding what the best response to climate change disasters is.

3.2 Defining Climate Change

The United Nations Framework Convention on Climate Change (UNFCCC)⁵ describes the climate change referred to in this research as:

“...a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is...observed over comparable time period”. (IPCC, 2007a, p.2)

Climate change and its effects has been a fiercely debated issue so far. Many have attributed it to man's activities. One of the most vocal about the role man plays in these occurrences is Joel Kovel who suggests that capitalism and man's greed for more is fuelling this increasing change in the earth's climate. The deeds of governments and

⁵ The UNFCCC, an international treaty, is one that was signed by a host of countries in 1992 to set guidelines on limiting average rises in the global temperature of the earth that would cause climate change. For more about the UNFCCC, see 'Background on the UNFCCC: The International Response to Climate Change' at http://unfccc.int/essential_background/items/6031.php (UNFCCC, 2012).

corporations has contributed to this, and therefore assisted in what is broadly known as the ecological crisis, he says (Kovel, 2007).

Kniveton, et al. (2008) further explains that climate change over the previous century has occurred mainly due to changes in the level of GHG⁶ in the atmosphere. This increase has been attributed to man's activities who have been the main offender toward further climate change.⁷

Human activity that continues on a daily basis has been offered up as that which is continuously contributing to the phenomenon known as the greenhouse effect⁸ (The Great Warming, 2006). People around the world have increasingly been using and burning gases for electricity production for running vehicles and other machines. Officially, the UNDP (2007) in its report has heaped blame on such activities as significant contributors to the heating effect. The UNDP notes from scientific data and observation that the atmospheric temperature has so far increased by 0.7 degrees Celsius from the start of the 20th Century and will be increasing at an even faster rate due to these activities. The IPCC⁹ is cited in a CHA document which suggests that the speed at which the temperature is increasing puts projections for the warming of the earth's atmosphere to have warmed by up to one degree. This is predicted to occur by 2050 (OCHA, 2009).

Prediction and speculation with observation on any increase in temperature has been a regular activity in climate change circles. Magdoff and Foster (2011) go further than the IPCC in predicting that the temperature of the earth will increase by two to four degrees within 50 to 80 years. They see this as activity that will cause irreversible damage to the planet. These changes in climate will lead to severe problems such as sea level rises, reduced food production, ice caps melting, coastal ecosystems and settlements being threatened, droughts, and the forced movement of people. The consensus has so far and more recently been overwhelming, as has been the scientific evidence (Stern, 2006). Stern, in his document for the UK government, highlighted that climate change and its associated disasters will affect the lives of millions of people around the world.¹⁰ The concern for these disasters and its effects on people has, not surprisingly, created an

⁶ GHGs are gases such as Carbon dioxide and methane that trap heat in the atmosphere. For more on this activity see the EPA website on *Greenhouse Gas Emissions* at <http://epa.gov/climatechange/ghgemissions/gases.html>.

⁷ For more, see Kniveton, et al. (2008).

⁸ The greenhouse effect occurs when the GHGs, trapped in the atmosphere by the ozone layer, causes warming of the planet. This warming weakens the ozone layer which leads further to climate change. See the 'Climate Change Factsheet' from the Great Warming at www.thegreatwarming.com/pdf/climatechangefactsheet.pdf.

⁹ The IPCC, established by the WMO and UNEP, is the leading body on the international stage responsible for assessing climate change including mitigation and adaptation issues (IPCC, 2012).

¹⁰ See the Stern Review for more. Stern (2006) page vi.

intense debate on how climate change is linked to human rights. The literature on this will be discussed in the next section.

3.3 The human rights link

As the previous section discussed, man-induced climate change has become a serious concern; one that threatens populations, their security, and most importantly their lives. This part takes a look at how climate change has been linked to human rights and what others see as the benefits of using a rights-based approach. As Mary Robinson¹¹ mentions in the ICHRP (2008) report, an unfortunately high number of communities around the world are already experiencing the adverse effects of climate change. As will be shown here, many others including scholars, observers and international organisations agree that this is occurring and affecting the rights of these populations. Yet, what does not seem to draw consensus are what remedies should be in place to counter disaster. Mary Robinson suggests this as a reason why so few solutions are accessible to them.¹²

3.3.1 Human rights affected by climate change

Though much of the debate has focused on the future effects of climate change, a considerable amount of it have found it essential to pronounce that this activity is “...already undermining the realization of a range of internationally protected human rights...”¹³ In this regard, the current High Commissioner at the OHCHR Navi Pillay noted that there are numerous universal human rights that face threats which are connected directly to the effects of atmospheric climatic changes (OHCHR, 2008). Even Humphreys (2011b) wrote that ultimately the inherent significance of human rights to the issue of climate change would become obvious. This is seen today with much of the literature referring to the rights affected.

Adelman (2011) suggests that if the scientific agreement is accurate, and it is (based on the literature)¹⁴, then climate change will pose great threats to life, health, food, culture and property. This, he notes, will materialize from the rise in temperature mentioned in section 3.2. This assertion is supported by the IPCC’s 4th assessment report

¹¹ Mary Robinson is the former High Commissioner for Human Rights at the UN in Geneva.

¹² See ICHRP (2008).

¹³ See note 12 above, page 1.

¹⁴ The ICHRP, in its report “Climate Change and Human Rights: A Rough Guide” asserts that though at present it may be a challenge to predict exactly which areas will become affected or how damaging it may be, the signs are evident that climate change is happening and will continue to cause destruction if it is not mitigated (ICHRP, 2008).

which found that any increase in temperature of 2°C will present greater flooding, droughts, heat stress, and food shortages.¹⁵

It has been observed that climate change is affecting, and will continue to affect, the sources of water and food supplies of settlements, while also leading to epidemics of horrible diseases (Oxfam International, 2008). These events will result in grave human rights violations that are protected in several international instruments for human rights. This includes the right to health particularly with children suffering increased malnutrition or others from hunger due to famines and droughts (Hunt and Khosla, 2011). Hunt and Khosla write passionately about the right to health being impacted by climate change and that it is covered by the ICESCR¹⁶.

Climate change has such a great effect on health that a threat to life is posed. So says Caney (2011) who writes that the devastation from floods and landslides can lead to loss of life. This was evident in similar events in Venezuela in 1999 and Mozambique in 2000 where 30,000 and 1,800 people died respectively.¹⁷ The right to security is one other human right that is mentioned as a sure right that will be affected. The UDHR’s article 3 stipulates that the “right to life, liberty and security of person” must be valued (Stern, 2006). Table 1 below gives a short summary of some of these rights affected.

Rights affected	How and by what measure
Right to life and security.	As temperatures increase, so will mortality rates from rising sea level and famine. This is addition to threat against people’s security that could arise from conflict. ¹⁸
Right to water	Rise in water stress from droughts, flooding leading to increased demand. In less than 10 years, 75-250 million people are predicted to be at risk of this water stress. ¹⁹
Right to Food	Access to food is expected to be greatly affected by climate change through decreased numbers in available foods from animals. About 50 million extra persons

¹⁵ See IPCC (2007a) for more on the effects of these temperature increases.

¹⁶ Article 12.1 of the ICESCR notes that States Parties to the Covenant should recognize the right to an “enjoyment of the highest attainable standard of physical and mental health”. See also Art 12.2(b).

¹⁷ See page 77 of Caney (2011) for further instances.

¹⁸ See page 103 of The Stern Review (Stern, 2006) and for international protections see the ICCPR, Article 6.1.

¹⁹ See IPCC (2007b, p.13)

	will be threatened with hunger by the year 2020 on top of the 800 million already at risk. ²⁰
Right to health	From lack of food, to malnutrition, unsafe drinking water ²¹ and diseases such as dengue fever. ²²
Sustainable development	It is projected that changes in climate will impose on the sustainable development of many countries. ²³

Table 1. A representation of the human rights affected by climate change.

It has also been suggested by Hunter (2009) that climate change could have an effect on the right to self-determination. One such illustration of the impact of climate change on self-determination is found with the Inuit people²⁴ of Alaska.

Even with these noted observations of a link between climate change and human rights, Humphreys (2011b) and Adelman (2011) note that the conventional writings on climate change have only just recently started giving attention to the associated human rights worries. As this is only very recent in the debate, the conversation has not really led to or reached the stage where an informed consensus has been reached on the exact response needed.

3.3.2 Using a human rights approach

Framing of the problems being faced as a result of climate change in a human rights lens has been seen to be a rather fitting tool for engendering greater cognizance of the effects it may have and ensuring that the issue reaches new actors and key policy makers, while swaying the process for a much better outcome. Adelman (2011) supports the use of the human rights approach as a positive way of attaining just that. So does John Merrills who noted that “rights are a good way of ensuring that something is taken seriously” and so believed that if the issue is labeled as a human rights one, then advocacy on the issue would be more productive (Merrills, 2007, p.666).

²⁰ Ibid.

²¹ Read Document A/64/350 from the UNGA report to the Secretary General, “Climate change and its possible implications” at the 64th session.

²² See Caney (2011, p.78)

²³ See note 19 above.

²⁴ The Inuit people are an indigenous group who in 2005 filed a case with the Inter-American Court of Human Rights arguing that their way of life is being hampered by the effects of climate change which included an effect on their culture and therefore their sustained survival.

The ICHRP (2008) also agrees that using a human rights approach is useful and helps in handling climate change. As it notes, the “framework reminds us that climate change is about suffering...about the human misery...from the damage we are doing to nature”. The report suggests, rightfully so, that if a human rights approach is applied to any planning for climate change catastrophes, it is more than likely that there will be a greater comprehension of those at risk and what needs to be done to protect these people. Deputy High Commissioner at OHCHR, Kyung-wha Kang is also in agreement with his statement that there is a need to put human rights as the focus of any policy-related responses. This is why this section has taken a look at the views of key actors and voices in this debate to provide an argument for the response that is required to minimize the effects of climate change. The succeeding section takes a look at what has been said about or proposed for such a response.

3.4 Forced flight: Human rights legal protections

3.4.1 The need for protection

As the climate change discussion has gained many who support its framing as a concern for human rights, the focus has now shifted to the responses that are desired for its numerous effects. The OCHA (2009) in its report has underscored that food insecurity and the livelihood of many are being exposed even greater to the rising number of disasters that are connected to climate change. Mention is made of the influence it has on “agriculture production...availability of water...and rising sea levels”²⁵. The report also submits that this will bring about increased conflict and rivalry for those resources that have become even more limited. The result being that many will be confronted with the reality of needing significant support for their survival or by way of forced migration or displacement.

Hodgkinson, et al. (2010) contends similarly that the effects of human-induced climate change are bringing about and in the future will realize more widespread movements of populations. From desertification to increasing severe storms, they have stated that the consequent displacement of populations will provide the world with a very serious problem. They refer to estimates of the number of persons who would be involuntarily pushed out of their habitats by climate change. It includes the assessment that at least fifty million may be affected. Many of these statistics continue to be disputed by experts and scholars, however, Hodgkinson, et al. (2010) have determined that regardless of the uncertainty in numbers, what is certain is that many people will suffer immensely from the disasters of climate change and that they will require some form of

²⁵ See the report ‘*Climate Change and Humanitarian Action: Key Emerging Trends and Challenges*’, page 2.

protection or assistance. Present day, Gelsdorf (2010) notes that about 20 million people were displaced in 2008 by climate change-related disasters.

The literature is so far considerably deficient in giving a clear and well-thought-out mindfulness of the rights-based response needed to help those who are victim to climate change events. Though it has been observed that climate change will affect and violate many universal rights such as life, right to food and health²⁶, there does not seem to be consensus on how the community needs to tackle the issue. However, there have been some proposals so far considered.

Much like Burleson (2010), some have noted that as a result of the rate at which resources are diminishing due to climate-related events, a robust and adequate humanitarian aid strategy is required. However, not all subscribe to only just this response. Since numerous other areas will experience much worse dangers like rising sea levels and possibly the ensuing loss of their homes, others for example Fleming (2009) express the need for some type of new legal protection mechanism(s). This is why this research will look at whether there is a case for forced displacement protections in international human rights law. The following section reviews the works that have so far dealt with the prospect of extending safeguards for these people in new legal instruments.

3.4.2 Old options and new proposals

To date, it has been noticed that there is an inadequate answer to the coordinating the displacement of those affected by the events of climate change. Different nations have been taking on the duty, at their discretion, of allowing victims the chance to move to these countries. Numerous scholars and other actors in the human rights field have been referring to such people as “climate change refugees”. VonDoussa, Corkery and Chartres (2008) contend that this term is not a wholly correct interpretation of these people’s standing in applicable international human rights law. This is so as the leading convention’s legal norms on refugees, which is the 1951 Convention Relating to the Status of Refugees (hereinafter referred to as the 1951 CSR), does not entirely offer protections or even any reference to climate change-affected groups.

Under the 1951 CSR, there is the requirement for states not to send back (*refouler*) someone to a place where they are possibly likely to be tortured or persecuted²⁷. Article 1(A)(2) of the CSR specifically outlines a refugee as someone who faces persecution as a result of their religion, their race, nationality, for one’s political

²⁶ See note 25.

²⁷ United Nations Convention Relating to the Status of Refugees, 189 UNTS 150, 28 July 1951.

opinion or being a member of a particular social group.²⁸ They settle that through this definition, climate change victims would not be qualified as their dilemma would not be considered as persecution. As they note, ‘the requirement is counterintuitive to the indiscriminate nature of climate change disasters’ (VonDoussa, Corkery, Chartres, 2008).

Even though suggesting that eligibility as a refugee is not available to them, their article argues that other key instruments do offer some protection. The case is made for protection of victims from the ICCPR²⁹. They contend that article 7 of the ICCPR³⁰, a provision that prohibits torture and cruel, inhuman and degrading treatment, can be used to protect people who face climate-induced forced migration, through the principle known as *non-refoulement*³¹. Their argument: that the notion of ‘degrading treatment’ can be convenient in conditions where affected people are left deprived or in regions that may not be liveable. Nevertheless they acknowledge that at present there is the uncertainty on whether *non-refoulement* can be referred to by using current jurisprudence (VonDoussa, Corkery, Chartres 2008).

Kolmannskog (2008) also notes the gap in protections provided by the 1951 CSR to those affected. He attacks this convention for its inability to support the many issues being faced recently and asserting that it does not provide refugee status to victims. Climate change, he warns, is not recognised as a concern that is worthy of provisions in the definition of the 1951 CSR. Kolmannskog (2008) submits that it is possible to use the grounds for membership of a social group in the Convention as one area that can be used. However, just like VonDoussa, Corkery and Chartres (2008), the article suggests that any ‘persecution’ established in the definition cannot be used to define this ‘social group’.³²

Both Hodgkinson, et al. (2010) and Burleson’s (2010) articles argue in the same way that insufficient cover is provided for persons who are at present and those who will experience climate-related events. As highlighted, there is extensive agreement by legal professionals that existing international norms do not satisfactorily establish safeguards for those at risk of displacement. Kolmannskog noted the range of actions that can be taken to make provisions for victims in this study. This comprises suggestions of integrating a supplementary component in the Refugee Convention definition in article

²⁸ Note 27.

²⁹ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.

³⁰ The obligation not to return someone to a place where there is a likelihood that they may face torture and other degrading treatment.

³¹ Currently, this principle provides protection in situations of conflict but is suggested by Kolmannskog it may be possible to extend any use of this to encompass the environmental destruction of climate change. For instance when one’s environment that they lived in no longer exists for example in the case of sea level rises and the subsequent result of submerged islands (Kolmannskog, 2008).

³² See note 29 above, article 1(A)(2).

1A(2). He concludes that this can be done through nations adopting a new additional protocol to the Convention.³³ However, he rapidly devalues this suggestion by asserting that there is a chance that such a protocol may come to “weaken the protection available to the Convention refugees” (Kolmannskog, 2008, p.31) and that such changes to the CSR can only be counterproductive.

As this seems to likely run into resistance by current member states to the 1951 CSR, others like Docherty and Giannini (2009) have suggested the creation of a completely new and independent international treaty that would combine refugee and environmental law into an instrument of ‘hard law’³⁴. An in-depth analysis of the exact provisions that may be included in such a treaty has hardly been provided by those who suggest new hard law and so this research aims to analyse whether this is a sound and practical option. Kolmannskog (2008: 31) recommends that “much more research is needed...before concrete measures are identified” that would be useful for a binding treaty. He also mentioned that with displacement protection provisions, additional analysis of the prospects for protection is also required and can “prove very useful”.

Though Docherty and Giannini (2009) suggest a new legal instrument, it should be noted that they speak little of including internally displaced persons (IDPs) in such a new treaty. The article briefly mentions that IDPs should be included in this new treaty but that this issue of IDPs seems outside the scope of the piece. They cite the lack of protection in existing international legal frameworks as their reasoning for a new convention and like Kolmannskog, believe that an optional protocol would not suit the problem. Docherty and Giannini do provide a glimpse of what they believe a new treaty could encompass – “guarantees for human rights protections and humanitarian aid”³⁵.

Dewitte (2010) is another that advocates for a new legally binding instrument. In her argument for it, she mentions the millions of people who may lose their livelihoods and environment³⁶ to climate change disasters. Her use of predictions that as many as 200 million persons will be affected by such events by the year 2050, plus the opinion that the 1951 CSR does not provide protections, goes a long way in supporting her argument.

Not everyone agrees with formulating an entirely new convention though. Mayer (2011) suggests that a new legally binding treaty would not gain enough ratification by states that would allow it to be effective. As a result, Mayer put forth the idea of

³³ See Kolmannskog’s report ‘*Future floods of refugees: A comment on climate change, conflict and forced migration*’ page 31 for more on the suggestion of an optional protocol.

³⁴ ‘Hard law’ in this case meaning the instrument is legally binding upon States Parties.

³⁵ Docherty and Giannini (2009, p.350).

³⁶ The event she mainly cites here is the sea level rises that have been shown to be consequent of climate change.

instituting a ‘framework’ to be accepted by the UNGA in a resolution. Such a framework has also been supported in the article of Betts (2010) and cited in McAdam (2011a). Both are more or less against the idea of a new treaty for the displaced or migrants created by climate changed disasters with McAdam vehemently against one. They argue that legally binding norms (hard law) are not required. Betts is however, in agreement with Mayer, that a ‘soft law’ framework is the way forward to protect irregular migrants that have become vulnerable from climate-induced events.

Betts (2010, p.215) suggests that such a framework could be established by incorporating existing legal international norms into what he refers to as “sets of guiding principles for different groups” that provide consensus on these norms. He also suggests that this framework can include enhanced machinery for cooperation between agencies on providing a support system for the norms that will be included in this framework.

McAdams (2011a) argues that calls for a new treaty on climate change displacement will not provide the solutions that others think it will. She suggests that the slow onset of events of climate change like sea level rises gives an exceptional chance to be able to strategise for an adequate response instead of depending on some corrective instrument that will protect in situations of ‘spontaneous flight’. She notes this nonetheless without giving thought to the climate change-induced disasters already occurring and displacing many people.

From this and the other literature, it is evident that international human rights law and refugee law are not quite yet prepared to respond sufficiently enough to the forced migration and displacement that results from climate change disasters. Much of the literature and opinions have focused on protections through the use of international treaties that will help ease and distribute the evolving problem of climate-related migration while defending the rights of all those touched by this phenomenon. The next section looks at what the literature mentions on the other option available in the form of humanitarian aid relief, and how without such legal protections and even with them, is essential to any form of response.

3.5 Responding with humanitarian aid

In its report on climate change and humanitarian action, the OCHA (2009) emphasized one of the problems the world faces by stating:

“Although climate change effects are being experienced in all parts of the world, the poorest most vulnerable communities will suffer most and are most at risk”.

The agency explains that there will be a much greater humanitarian workload from climate change-related events. The report notes that these effects arising from such disasters is already breaking and stretching the relief system. Any future increases in these disasters will most likely result in an even bigger need for humanitarian assistance and they maintain that this will become even more expensive in time. The effects of climate disasters are already being seen especially combined with the rise in “social vulnerability” and this is causing countless more climate change catastrophes (OCHA, 2009).

Nguyen and Rowling (2012) fret that an increased caseload of humanitarian tragedies might not be covered under policy frameworks or other international law. This is seen to compare with the last section’s concentration on whether legal protections are needed for forced displacement. Since there are limited related legal protections in place, there will be great need for other forms of assistance or protection. Nguyen and Rowling view this as a call for increased humanitarian assistance from the international community. One such area they mention that will require addressing is the food insecurity climate change-induced calamities can bring. The need for food supplies will increase and in due course lead the demands for humanitarian assistance.

In analyzing the situation of climate-related disasters that affect people around the world, the OCHA (2011) stated that in order to confront the problems of climate change, there needs to be a broad response. While this will obviously include areas such as cutting carbon emissions, the goal for human rights and humanitarian actors is to provide an effective reply to such threats. This note ties in with the questions of this research which seeks to determine what type of response is needed to safeguard the rights of those affected by climate change events. While the OCHA is the authority for many of the responses to disasters currently around the world, the office of the United Nations High Commissioner for Refugees (UNHCR) based on its current and previous work also seems somewhat responsible for the response to such events. It mentions:

“While natural disasters are not included in the Office’s mandate, UNHCR has increasingly been called upon to assist the overall humanitarian effort in the aftermath of a natural disaster”. (UNHCR, 2009)

Johnstone (2008) ponders on who precisely will manage this humanitarian response. His suggestion is that the effects of climate change on populations, particularly on people’s rights, is a universal issue which therefore means that the United Nations should be the obvious one to have a part to play in this. As to which sections of the United Nations structure he assumes is prepared to do so, Johnstone is actually not very clear. He does however acknowledge, rightfully so, that the work of the UNHCR is to assist refugees and displaced persons.

3.6 Emerging issues

This review of the literature has uncovered several issues that have arisen from all the talk and writing on the issue of responding to the human rights debate/effects on climate change. Several important points have been raised while other themes have emerged. First, a very strong and essential link has been made between climate change and human rights. This, as previously mentioned, has allowed for greater attention to the threats posed and possible danger that ensues. In this review, it has emerged that with almost unanimous consensus that current instruments do not provide adequate protection for those forced to flee their habitats due to climate change. As a result, a few have called for a new instrument that focuses on providing protection for affected populations. Some have argued that an entirely new treaty is needed, while others have put forward that any new hard law convention will not work and what is really needed is a soft law option.

While this debate rages, there is also the option of providing relief aid to the victims of climate disasters. Though there is limited writing on this area, much of the relevant literature through agency reports suggest that relief aid is just as important and a vital part of the response. However, capacity and unwillingness of agencies in charge may be hindering any efforts.

4 Displacement and forced migration protections: The practicalities and the politics

4.1 Introduction

It was noted previously in section 3.2 and 3.3 of the literature review that there is very reliable evidence and consensus among scientists, scholars and other international actors that climate change will be, to put it plainly, big with many negative consequences for the environment and for human life.³⁷ In fact, the effects of climate change are already being felt around the world with significant increases in natural disasters occurring and a rise in the events that have been predicted to cause such disasters.³⁸ As a result of this, it was seen in chapter 3 that effects of climate change will result in 6 million displaced individuals every year (IPCC, 2007b).

This chapter analyses the case for new legal provisions for those displaced³⁹. It will attempt to determine whether a valid reasoning exists among the many voices calling for new protections for those forced to flee from climate change effects. This includes an assessment of which of the proposed options is the most promising and effective as well as the issues surrounding its successful implementation in international law. To understand whether such displacement protections are the most effective response to climate change events, deeper thought will be given to the politics involved in the process and whether implementation is practical. This section will propose that while there already are existing international norms that provide such protection to victims, it is highly inadequate. However, it also suggests that calls for a new convention may be counterproductive and that the right balance must be [determined].

4.2 Ineffectiveness of current norms

The question that is being asked here is whether there is a case for new provisions in human rights systems that can be geared toward refugee or displacement protection for victims of climate change events.⁴⁰ This section suggests that there is a very strong case for new protections on the international legal stage by looking at how current normative frameworks do not provide the safeguards that those experiencing climate change disasters require and deserve.

³⁷ See ICHRP (2008) and IPCC (2007a).

³⁸ Note 21 above for more.

³⁹ ‘Displaced’ in this paper refers to those who have been forced out of their habitat whether within national borders or across international borders.

⁴⁰ See section 1.2, page 8 for a recap of the questions asked in this research.

Earlier⁴¹, the literature showed that there is a rather healthy discussion by numerous authors on the current legal instruments not providing adequate protection for this group of people. The biggest issue in this is the fact that the 1951 CSR, the all-important legally binding document on refugee protection, does not make provisions for those displaced by climate change. Hodgkinson, et al. (2010) and Kolmannskog (2008) suggest that this has caused an enormous gap in protection for those affected, and they are right.

It is interesting that with the various current protections available to those displaced compulsorily, that climate change victims somehow do not have valid or adequate protection under these. The 1951 CSR⁴², and the ICCPR's application of *non-refoulement*⁴³ were cited previously as the key normative instruments of protection. However, many have vehemently decried the refugee convention as not suited to the climate change-displaced. Von Doussa, Corkery and Chartres (2008), as previously mentioned, noted that there is a requirement in the 1951 CSR to not send back individuals to a place where they will face torture or persecution based on the five key characteristics found in the Convention.⁴⁴ This eligibility requirement precludes climate displaced people from protection under the 1951 CSR they say. Others like DeWitte (2010) have suggested that a case can be made in some instances where the security of those displaced may be put in jeopardy by conflict which arises after a disaster. In other cases, this may be possible where the authorities in a person's state may withhold assistance or protection based on the five characteristics⁴⁵ in the Convention (Kalin, 2010). While this is a very valid and noteworthy point in the debate, it does not take away from the fact that conflict or discrimination from authorities arising from climate change events is not a guaranteed occurrence. Therefore, this protection through conflict still does not protect the millions of others who will be forced out of their territories.

The prospect of using the principle of *non-refoulement* as provided for in the 1951 CSR⁴⁶ has also been briefly brought up. Jane McAdam⁴⁷ has spoken about this considerably, more specifically against its applicability. As with the above which spoke on conditions of conflict as a form of eligibility, *non-refoulement* may have the potential to provide protection for some but this is still not enough. As McAdam (2009) stated, this

⁴¹ Section 3.4.2, page 17.

⁴² See note 27

⁴³ Note 29 above, art 7.

⁴⁴ To qualify as a refugee, one needs to be persecuted based on the five characteristics of their religion, their nationality, race, political opinion or being a member of a particular social group. See note 27 above, art 1(a)2.

⁴⁵ Ibid.

⁴⁶ Article 33(1).

⁴⁷ For more on McAdam's writing on *non-refoulement* for climate change displaced, see McAdam (2009) and McAdam (2011b, p.46).

principle deals specifically with the risks that lead to persecution and as a result, does not apply to those who have been forced out by climate-induced disasters.

It is believed that these current provisions in international instruments can possibly protect some victims of climate change disasters. However, such provisions have not been widely used in the past and so there is difficulty in knowing whether states would allow forced migrants into the borders based on them. It is for this reason Zetter (2011, p.13) suggested that these provisions as it relates to climate change be given even more legal analysis through a “systematic empirical review of their appropriateness”. This deficiency in an exhaustive review of the applicability of these provisions for refugee status or displacement protections seems to be a hindrance in moving forward with finding the right protection response to the plight of the displaced.

In the meantime, the debate continues about what protections are available or can be implemented. While those current normative frameworks are thought to have potential use in protections for climate victims, the fate of many displaced or soon-to-be displaced people could be in jeopardy or limbo. This provides for the possibility that when the time comes to invoke these current protections, state authorities may suddenly, in a bid to move away from their responsibilities under international law, argue that such provisions do not provide eligibility for climate-related displacement. Hence the reason others like Docherty and Giannini (2009), DeWitte (2010) and Betts (2010) suggest a new international instrument. Ultimately, as a result of the huge gap in protections and the great threats that climate change poses, there is a strong case for new provisions to protect those who are forced to flee. The next section discusses such.

4.3 New legal protections: For a valid response to climate events

To understand what response agenda needs to be established for those affected by climate change disasters, the question was asked⁴⁸ of what types of protection can be provided through international instruments. As was also noted previously in the literature review, several key actors in the field and other authors have argued for differing types of protection documents. Some have proposed ‘hard law’ while for others the only viable option is through ‘soft law’. In this section, it is noted that either of the two could be a welcome boost for any response to climate-induced disasters but both also come with their imperfections and impracticalities.

⁴⁸ See section 1.2.

4.3.1 Legally binding norms

In the previous section, the prospect of using the 1951 CSR was discussed as an instrument for protection of those displaced by climate change disasters. The conclusion from the analysis of it was that the Convention does not provide adequate protection as it is. As introduced in section 3.4.2 of the literature review, Kolmannskog was one of those who suggested establishing an additional protocol to the 1951 CSR to include displacement through disasters.⁴⁹ It is possible that an additional protocol would be a useful tool in providing protection to such people without the significant burden of creating an entirely new treaty or depending on the insufficient provisions of current norms. However, Kolmannskog (2008) also argued that this may not be in the best interest of the Convention which would most certainly become diminished in the eyes of its states parties. There also seems to be a lack of political will in altering the fundamental meaning of the 1951 CSR (Docherty and Giannini, 2009).

Additionally, the fact that the key part of the CSR to provide refugee protection based on that one word, ‘persecution’, would significantly change the nature of the Convention. Although in the nature of feeling the absolute need to make provisions for those displaced by climate change, it seems a very valid point that the Convention should not be interfered with for the sake of the issue of climate change. This is especially so, keeping in mind the millions of people around the world who depend on the Convention as a form of protection from conflict and persecution.

It is for this reason, and the lack of protections elsewhere in international human rights and refugee law, that others have put forward the idea of implementing a new treaty. This new treaty would utilise existing human rights law, environmental and refugee law as a guide (Kolmannskog, 2008). There is sense in Docherty and Giannini (2009, p.350)’s pitch for a new “independent convention [as being] the best option” for a legal response to the problem. It would not unnecessarily interfere with existing norms but rather complement them. Also, as they suggest, climate change displacement should not be pushed into current frameworks such as the 1951 CSR that were not intended for the issue. However, it may seem slightly premature to forge ahead with proposals for a completely new instrument that involves a relatively new topic of climate change migration/displacement without the necessary data and research to show exactly what is needed in this new treaty.

One of the main arguments for a providing refugee or migration provisions to climate change victims lie in the notion that in many instances, climate change will cause habitats to become perpetually unusable in the future.⁵⁰ But this is not the case for everyone who will be forced out by climate change which has led to the debate on

⁴⁹ See note 33 above.

⁵⁰ See Docherty and Giannini (2009), page 369 for more on this.

classifying those who have been displaced. Kalin (2010) noted the categories they could possibly be identified with: refugees, stateless persons, IDPs or some other grouping, and suggests that these could be used to determine what protections are suitable. This in fact does help with the analysis of a possibly new treaty.

First off, it has been noted (Zetter, 2009) that most of those who will be forced to move by climate change events would be doing so internally (as IDPs)⁵¹. This may help to soften any resistance to provisions for the recognition of international migration in such a case and is especially so as those countries that will face permanent damage to their environment tend to be the smaller island states. As Mayer (2011) notes, displacement of an internal nature in these small states is difficult to fathom and so provides a major boost to the call for a new instrument. On the other hand, bigger nations would have less of a case for international migration options. Even with the argument for refugee status for those forced out of their islands by sea level rises, there are still some skeptical about it. McAdam (2011b) and Kalin (2010) note that a problem like sea level rises is one that occurs over a longer period or what they call it slow-onset disasters. Gathered from this is that with slow-onset there would or should have been adequate preparations made for mitigation or possibly that such states would have had the time to forge bi-lateral agreements with other countries, versus waiting for use of multi-lateral arrangements. That does not mean that there should not be protections in place – just in case it is needed – especially as it is not yet known the magnitude of some of these events.

Unfortunately, such a proposal for a new instrument has not been met by very much enthusiasm among academics and other actors and this gives the impression that there is currently little appetite for it, meaning that any move to establish one may likely fail. Key among them is Betts (2010) who is resolute that there is no requirement to create new norms in the form of an international instrument. This is not surprising considering the political nature of the debate. There appears to be little desire by states to support any international instruments related to migration. For example, the Convention on the Rights of Migrant Workers (ICMW)⁵² which has a total of only 46 States Parties. Compared to other international treaties, it is significantly lagging in parties. The ICCPR has 167 parties⁵³ to the Convention, the ICESCR with 160 and the Convention on the Rights of the Child (CRC) has 193 parties. Even the CRC's optional protocol, which was signed and entered into force ten years later, has 129 signatories, well over that of the

⁵¹ That is, not crossing any international boundaries.

⁵² See UNGA, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158, available at: <http://www.unhcr.org/refworld/docid/3ae6b3980.html>.

⁵³ See note 29 above.

ICMW. This suggests that there is little interest by states on agreeing to treaties that relate to the movement of people. As Betts (2010, p.224) put it,

“In the context of state concern with migration and security, this reluctance is even greater with respect to negotiating binding agreements in relations to the rights of non-citizens”.

On one hand, there is that great need to implement something that will provide protection for those affected as a response; on the other, there is the pragmatism that establishing a new treaty just for climate change may not offer all, of even many of the solutions needed. For one, what if a country like Bangladesh with its millions, are forced to flee by intensive flooding, which they are already facing – and thus need to cross international borders. Where do all these millions go and who would be willing to accommodate them, regardless of whether a convention exists that obliges them to accept those displaced? It is a complicated area that needs to be looked into further and additional research to determine whether a new treaty is suitable.

While there is certainty on the devastating nature of climate change⁵⁴, the fact that its disasters (like sea level rises) have not yet occurred on the wide scale that it is predicted to, means that there is still no certain knowledge of how devastating it will be and the exact impact on already vulnerable environments. This provides little incentive for states (political and otherwise), to agree on new legally binding norms. In light of this, and in the event that there are severe disasters, it may be more suitable at this time to investigate whether adequate protections from potential host states for the displaced may be more forthcoming from a set of guiding principles as with those on IDPs⁵⁵. The next section examines this in more detail.

4.3.2 A soft law option?

Section 4.3.1 reviewed the feasibility of establishing a new legally binding instrument to protect those displaced by climate change. It was concluded from this analysis that such hard law may not be the right approach at the current time and would not be practical or successful in the necessary timeframe before the climate change threshold is predicted to be reached. It is for this reason that this section looks at whether

⁵⁴ See the ICHRP report in note 14 above.

⁵⁵ Internally Displaced Persons.

a soft law⁵⁶ framework as suggested by others, is the most appropriate way forward in determining which response is needed.

As noted in the review of the literature, Betts (2010), Mayer (2011) and to a certain extent, McAdam (2011a) support the call for a soft law structure versus binding norms. McAdam's point, however, refers more to a regional soft law approach than an international one. Betts (2010, p.25) suggests creating soft law guidelines to deliver influential and guiding principles in order to avoid the trouble of having to agree new norms. As Betts put it, these guiding principles will "help states by offering an authoritative and agreed interpretations of the existing standards". He suggests this because of what was discussed in the previous section that in some instances many of the norms are already provided for in existing human rights or refugee law. Zetter (2009) also makes a case for building a framework based on existing norms.

Even the Nansen Principles⁵⁷ suggested that is best to use current norms found in international law while looking into any gaps in the norms. With many of those who have written about it, including the many scholars, NGOs, inter-governmental agencies, rapporteurs etc. some of whom were at the Nansen Conference and suggesting it, it shows that there is broader agreement for a soft law framework than a new legally binding document.

Judging from this level of support, there appears to be a greater desire for such an instrument. This seems the case especially looking at the previous implementation of the 1998 Guiding Principles on Internal Displacement⁵⁸ and other examples of soft law that have been used before to fill any gaps in protections for people. The IDP framework, for example, attracted significant support during negotiation and upon implementation. The successful establishment of these Guiding Principles provides optimism that a similar framework can be negotiated for climate change-induced displacement protections.

Although, it should be noted that the Guiding Principles were based on internal displacement while a new one for climate-induced displacement would cover displacement over international borders as well. With this in mind, a new soft law

⁵⁶ According to R. Smith (2009, p.35), soft law "includes a variety of instruments concluded under the auspices of international organisations". Soft law is not legally binding but it does "enshrine principles [that have been] agreed to by states".

⁵⁷ The Nansen Principles on Climate Change and Displacement are a set of recommendations put together during the June, 2011 Nansen Conference of the same name in Norway. More information on the Principles can be found here: Norway Ministry of Foreign Affairs, 2011, "The Nansen principles on climate change and displacement. Available at http://www.regjeringen.no/en/dep/ud/aktuelt/nyheter/2011/nansen_konferanse.html?id=651568.

⁵⁸ The Guiding Principles on Internal Displacement was negotiated between 1992 and 1998 by finding gaps in norms relating to IDPs, then identifying and collating current norms in human rights and humanitarian law. For more, see Betts (2010, p.224).

instrument may still experience some resistance unlike the 1998 IDP Principles from those who do not appreciate the inclusion of anything ‘migration-related’ in it. Still, those like Zetter (2011) believe that such a framework is useful and that it should be modeled after the 1998 Guiding Principles on IDPs. This is seen to be true considering that the IDP Guidelines can also be used in events of climate change disasters if there are subsequent cases of IDPs.

This soft law framework also seems likely to pass much quicker than a new treaty and can take less time to negotiate. Being passed by a UNGA resolution, as Mayer (2011) suggests, is a less demanding process and of course less politicised. Unfortunately for this option, which seems to garner more support, it does not have a binding structure and so states would not have any legal obligation to adhere to it. However, Betts (2010) counters this argument by stating that states still need to continue being bound by the existing norms that have been put together from all the other instruments.

Smith (2009) in defense of soft law believes that if states do not comply with it, then just because it is legally non-binding does not mean that there are no adverse impacts. She suggests consequences of a political nature could arise. While this may be true, the likelihood of political fallout from non-adherence to a soft law instrument on an issue that deals with possible migration seems slightly unrealistic or in the least, not very likely.

This has been the main sticking point of a soft law option for a displacement framework in the response to disasters relating to climate change. The possibility of a lack of enforcement abilities makes it a much weaker option. It is one that states, who would otherwise not agree to a binding instrument, agree to as they may see it as a way of taking the pressure off them to agree to a some form of legal protection but actually not adhere to it in time. This would certainly not be the first time for this. In spite of this, and based on the need for a displacement framework to a climate change response, this option is potentially the more practical approach at this time. While there have been a few calls for an entirely new convention, especially from Docherty and Giannini (2009), the majority so far appear more comfortable with a soft law option in the form of guiding principles.

One other example of a potential soft law protection option is Millar (2007) and DeWitte’s (2010) suggestion for a protocol to the UNFCCC. This she suggests would cover the areas of protecting, resettling and recognizing those displaced by disasters. To start off, it seems counterintuitive to create a protocol to a soft law instrument that already is seen as lacking any authority and one which is also seen to have had little success in fulfilling its intended objectives. Furthermore, the UNFCCC’s very well-

known Kyoto Protocol⁵⁹ has not made the impact it was anticipated to. Burns and Osofsky (2009) mention that since its inception in 2005, the Kyoto Protocol and the UNFCCC have gone at a “glacial pace” in its obligation to reducing GHGs that exacerbate climate change. Not only that, the USA refused to sign up to the protocol (Burns and Osofsky, 2009) and in December 2011 Canada officially withdrew from its commitment to Kyoto (Carrington and Vaughan, 2011). That this has been the fate and success of the Protocol does not bode well for another protocol to the UNFCCC, especially one that may deal with migration.

This brings the debate back to the suggestion of a set of guiding principles on climate change displacement as a more feasible solution. Since the previous section⁶⁰ noted that a hard law framework is not currently practical or achievable, a soft law framework looks more likely the next best thing. The call for one to be implemented is bolstered by the thought that in several instances, instruments of soft have been the catalyst for succeeding binding instruments (Smith, 2009).⁶¹ There may be hope still for some form of displacement framework for the serious issue that is a climate change response and if there is, it in all probability is in a soft law instrument.

4.4 The cost of doing nothing

It is noted from the preceding sections that a displacement framework should be a key part of any response to the effects of climate change. However, it is still very much up for debate what form this framework could take especially as there is still limited consensus on the options. The lack of adequate data and analytical research on the best decision does not help with the problem.

As was seen in section 3.2, there are and will be disastrous consequences from climate change disasters. Gogarty (2011) noted that these events will create severe displacement which in turn may result in instability in those regions. Even de Sherbinin, et al. (2011) and the IPCC⁶² warn of the impending crisis that will ensue eventually compelling the inevitable resettlement of millions of people. Without some form of displacement framework to facilitate the resettlement or protection of the many that will be forced to flee their homes, catastrophic consequences have been predicted. Social instability and conflict may also arise as a result (Gogarty, 2011). With this in mind, and the predicted scenarios set to occur as a result of climate change, as reviewed in section

⁵⁹ The Kyoto Protocol was created to ensure states decrease their emissions of GHGs by certain levels over a period of years. For more on the protocol see Burns and Osofsky (2009).

⁶⁰ See section 4.3.1, page 27

⁶¹ This is evident with the UDHR which eventually found its legal manifestation in the ICCPR and the ICESCR.

⁶² Note 19 above.

3.2 and 3.3, there needs to be a significantly robust response. Anything less may find a situation where the actual occurrence of the disaster is dwarfed by the level of (or lack of) a response.

Piguet (2008) has a very valid point when stated that it is not believed that every one of those threatened by climate disasters would altogether start migrating. He suggested that any movement would be contained, steady and more regional. However, this may not always be the case, especially in situations of sudden-onset⁶³ events such as floods and hurricanes. But then again, as Kalin (2010) notes, those affected by this type of rapid-onset disaster tend to remain in their country or region – for which case the IDP Guiding Principles and other human rights law could then be used.

Regardless, a displacement framework is key to preventing further unfortunate consequences. Doing nothing when there is the possibility that many may become vulnerable to the destruction of their environment is not an ideal thought. Whether they are IDPs or potential migrants, those affected may end up facing great difficulties especially if they find themselves in displacement camps with limited rights and protection.

This is why this section of the research looked into the displacement framework that is needed for a climate change response. It has now suggested, after reviewing all the arguments in the debate, that there is a valid case for new legal protections for those who are being or will be displaced by climate change. Failure to do so may result in added catastrophic results and a threat to the lives, health and security of populations. It is best to implement what is implementable right now in the form of a soft law framework. But there will be those who have not, do not need to or cannot move from their habitat. Obviously they do not require such displacement protections. The next chapter will look at what type of response is needed in this case for those individuals.

⁶³ Disasters that provide little time for planning.

5 Humanitarian assistance and a human rights framework in the response

5.1 Introduction

The question being investigated and answered here is whether a humanitarian framework should be the main focus in response to climate change effects on populations. This question arises from the analysis in the previous chapter which observed that while a displacement framework is useful and probably essential, it will still not be sufficient to respond fully to the disastrous effects of such disasters. This chapter thus proposes to look at whether a humanitarian agenda is a useful tool and/or if it should be the most plausible response. It also shows that such a humanitarian framework can only work effectively if a human rights foundation is applied to it.

5.2 The scale of need

According to the GHA (2012), a humanitarian response involves providing relief and aid, in the event of a disaster, that seeks to ease the suffering, to save the lives of those affected, and to “maintain their human dignity”. Such a response, they note, is meant only as a short-term approach.

With the vast effects of climate change on populations and people, discussed in section 3.3.1, it is a response framework that needs to be addressed. While it may be assumed that such a framework is an obvious and automatic response to any disaster, it should not negate the fact that climate change is becoming a significant global problem. As the OCHA (2012) highlight, climate change should not be seen as a future and distant hazard especially as it is currently “the main driver behind increasing humanitarian needs...” It notes that so far the figure of those impacted and the destruction caused by climate change events has been extraordinary. This is what was shown in the literature review and why section 3.5 focused on the consensus that humanitarian action, relief and aid is needed to prevent further catastrophic occurrences after a disaster.

With limited migratory opportunities⁶⁴ and protections as the previous chapter showed, very few people will be able to move from their affected territories. This means that for many, the reality may be to remain in an environment that lacks many of the basic requirements for survival and a good standard of living. This is why a humanitarian

⁶⁴ Note that this is in comparison to the vast numbers that are predicted to be affected by disasters and with the current lack of a displacement framework that provides protection and rights to such people.

agenda is viewed as necessary: to ensure that those people are provided the relief and protection they need for continued survival.

Such need for humanitarian assistance is highlighted in the PDSB's policy briefing on humanitarian action.⁶⁵ It notes that increases in temperature from climate change will severely increase the number of disasters around the world. In fact, this has already been seen as disasters recorded in the last twenty years have more than doubled. They write that this is causing roughly 634 million people to live in high risk areas where sea level rises bring them to within only several metres above the sea (Gelsdorf, 2010).

In addition, these temperature increases have caused vulnerable regions in Africa to experience even less rainfall which is placing a strain on over 250 million people who desperately need water already water-deprived regions. This in turn leads to droughts which end in decreased crop yields and thus a food crisis.⁶⁶

Up to the mid-70s, over 750,000 are recorded to have been "totally dependent on food aid".⁶⁷ This may seem like a rather large number of people to be dependent on humanitarian food aid, but those were the numbers for only three countries⁶⁸. This number was quoted by Warner, et al. (2009) who mention that such a need resulted from droughts that had been partly caused by climate change and its constituent warming. If this was the case over 30 years ago, it is left to the imagination what the need is currently or will be in the future for humanitarian relief for the many, and bigger, disasters that will arise from increasing temperatures.

The UNISDR (2008) also backs up such a view by sounding the alarm that climate change will place millions of people in danger of hunger, in need of water and at risk of diminished health, death and injury. This will arise from increasing storms, floods, heat waves and fires which will witness many falling ill to malnutrition, waterborne infections among others. According to a humanitarian appeal by the UN, tens of millions needed emergency humanitarian aid to survive in 2011 (UN, 2011).

All of these issues provide a real sense of the scale of the problem and why a humanitarian response is needed. Implementing such a structure will be analysed in the next section.

⁶⁵ See Gelsdorf (2010), page 17. The PDSB is the policy department of the OCHA that provides guidance on policy issues pertaining to humanitarian matters.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Mauritania, Mali and Niger.

5.3 Humanitarian response on its own

It has just been shown that climate change can be a big and worrying humanitarian problem. The vast amount of destruction, the lives and livelihoods affected, the possible resulting crisis in forced movement thus demands a robust humanitarian response. While section 3.4 identified the need for legal protections for those displaced by climate change events, chapter 4 analysed the types of protection that are possible options and how likely or practical their implementation is.⁶⁹ It was observed in this analysis of the legal opportunities to provide protection for the displaced that several factors⁷⁰ are hindering their realization. With this in mind, it is possible that a humanitarian response may, for many, be the only response option there will be.

Individual states, however, usually do not have the capacity and resources to deal with such disasters as was witnessed with the Indian Ocean Tsunami in 2004 or the Pakistani flooding of 2005 (de Urioste, 2006). Hence the reason humanitarian assistance tends to be provided by the UN inter-governmental agencies, NGOs and other states. The question now may be whether a humanitarian response can work on its own. While such assistance through relief aid in food, medicines and shelter have been provided to affected regions around the world for many years now, it still lacks the level of coordination and response that seems necessary to respond to such a huge issue with its anticipated tragic results.

This lack of coordination may be a result of the limited international disaster response law (IDRL) available as suggested by de Urioste (2006). de Urioste compares this gap to the vast body of norms that are in place for a humanitarian response to those affected in wartime. He suggests that any existence of such disaster response law may just be a “patchwork of treaties and customary international law (de Urioste, 2006, p.182).

Although this IDRL is not specific to climate change, it provides a glimpse into the reality of the availability, or lack thereof, of a credible humanitarian framework for climate change events. It is important to note however that lacking solid data on the exact consequences and effects of climate change (e.g. how extensive sea level rises will be or flooding levels), it is difficult to suggest a split between coordination of a disaster response in general and a climate change disaster response.

There is also the UN Resolution on Strengthening and Coordinating Humanitarian Emergency Assistance⁷¹ which was implemented to provide guidance on coordinating

⁶⁹ See section 3.4.1 and chapter 4.

⁷⁰ These include politics, a lack of appetite for new norms or the length of time it takes to implement.

⁷¹ UNGA Resolution 46/182 (December 17, 1991).

humanitarian assistance (Scheffer, 1992). Nevertheless, this resolution was established over 20 years ago and so it would certainly lack some of the issues that the more current debate on climate change and its humanitarian response requires.

Thankfully, this is not the only authority on humanitarian assistance available. As Scheffer (1992) notes, existing bodies (institutions) have been engaged in the relief assistance for disasters for years. These include the UNHCR, OCHA, UNDRP, among others. For those agencies, it is included in their mandate and scope, the need to provide humanitarian assistance to states or regions in times of disaster. As to whether such agencies are up to the task of a humanitarian response to climate change is beyond the scope of this paper.

Such a need for authority on and a framework for humanitarian issues related to climate change compelled the IASC (with its 18 constituent organisations) to call for the humanitarian effects of these disasters to be included in any new international agreements such as the update to the Kyoto Protocol (IFRC, 2009). This move shows the importance that is placed on a humanitarian framework for climate change effects, especially with the risk it carries to people's lives.

It is important to also keep note that in times of forced migration and displacement, even without being afforded displacement protections through legal norms, humanitarian assistance is still needed. As Docherty and Giannini (2009) put it, "...in the aftermath of a forced migration, climate change [displaced] also require aid⁷² in the form of water, food and shelter. They suggest that this could be provided for in a new international treaty on climate change displaced, however seeing the little appetite for a new treaty means that these provisions may need to come from elsewhere, such as potential soft law guiding principles.

Going back to the previously mentioned disasters of 2004 and 2005 and their subsequent chaotic humanitarian response⁷³, it seems in the best interest of everyone that a humanitarian framework should not be the only approach to a response. As de Urioste (2006) states, the failure to organize a plan for assistance ended in great confusion and 'infighting' which eventually led to greater suffering and loss of life. In light of this it is thought that a humanitarian response, while essential and useful, on its own is not the best response as will be seen in the next section.

⁷² Docherty and Giannini (2009, p.378).

⁷³ de Urioste (2006, p.182).

5.4 All hands on deck: Humanitarian aid plus displacement protections

This section seeks to answer the question of whether humanitarian aid and displacement policies can be coupled to make effective use of all the options, so as to minimize burdens on each system as well as assessing whether there are barriers to achieving such. So far, this study has shown that climate change is a serious and complicated issue. So much so that not enough is understood or known about the full extent of its force or the exact response that is needed.

Where consensus has been shown to be present is in acknowledging that protections and assistance are both needed to prevent further catastrophic effects from related disasters. Burleson (2010), Hodgkinson, et al. (2010) and Kolmannskog (2008) all observed that forced displacement provisions for climate victims are inadequate and need to be established or current norms consolidated.

Regarding humanitarian assistance, de Urioste (2006) and the OCHA (2009) both note the enormous requirement for aid with the occurrence of disasters attributed to increasing climate change. All these writers have acknowledged that displacement protections and a humanitarian approach can both be a very useful for this issue as a response. The analyses in sections 4 and 5 have shown that on their own, they lack sufficient ability to be exclusively effective for the crisis at hand. So the next almost obvious idea is that two approaches should be put together in a joint framework as the ideal response.

Such a combined structure is even more noteworthy when displacement is considered. This is because in many instances of forced migration, humanitarian assistance is needed, not just for those still in their home state but also for those in a host state who may be stuck in the horrible conditions of refugee/displacement camps (Sheridan, 2000 and Docherty and Giannini, 2009). Providing affected people an avenue to flee the destruction zone through displacement protections (whether cross-border or not) is a welcome provision. It would be even more useful to be able to simultaneously provide those displaced people with the relief aid they need in such a situation, otherwise a bigger more devastating humanitarian crisis may develop.

While this may seem like the best option to utilise both approaches, there are some barriers to this. Foremost is the coordination issue. As different UN agencies⁷⁴ are currently responsible for the different areas and with certain agencies' mandate not covering both, it could be difficult and confusing in terms of coordinating a response. Ultimately, a good response to climate change would involve an effective use of all options. Alex de Waal notes that sending relief aid is a "weapon of first resort" that is

⁷⁴ This research focuses on UN agencies as those best equipped to provide a non-political and more effective response.

generally supported and that this should be followed by more concrete steps to solve the problems affecting those impacted (de Waal, 2002, p.134). Instead humanitarian relief aid is sometimes used as a justification for not considering in deeper detail the actual needs of those populations particularly as they see other options in a political sense. This is why a combined approach and structure is necessary to prevent such from occurring.

Finally, the analysis of the type of framework that is needed in responding to climate change has shown that human rights are important for any framework. This view is supported by The Brookings Institute (2008) which stated that “human rights need to be the legal underpinning of all humanitarian work pertaining to disasters”. From this, it can be seen that a humanitarian and displacement framework, as this research calls for, requires that they both be based on a human rights agenda. Failure to do so would possibly allow the emphasis of a response to become overly short-sighted and lead to the rights of those affected not being included into such response structures.

5.5 Need for a human rights approach

In reviewing the literature and reports on climate change and the response that is needed, one key theme that has consistently been noted is that a human rights approach is also needed; or at least that a displacement humanitarian framework should make provisions for safeguarding the human rights of those affected.

5.5.1 Displacement framework and human rights

First it will be to look at how a human rights approach is needed and should be applied to any displacement response provisions in international law. In section 3.3 and 4 was seen that there was a strong link between climate change and human rights. As Adelman (2011) noted, disasters are affecting and will impact on the rights of many people, including their rights to health, life, food, shelter, culture and property. Any displacement of people by disasters may pose an additional threat to these rights already being affected. So it is essential that in any displacement provisions, human rights protections are also highlighted.

Unfortunately, the fact that there is limited protection for displaced in climate change makes it obvious that the recognition of many of the other rights that are in need of protection also have few provisions. Zetter (2011) supports this view and suggests that

climate change displacement “reinforces the need to strengthen human rights protection.”⁷⁵ He was even more specific when Zetter (2010, p.150) said that:

“Upholding and enhancing international and national human rights obligations must play a crucial role in the global response to the displacement effects of climate change...”

His statement rings true as it has been noticed that even in times of displacement, especially in such times, human rights of those affected are still the key aspect of providing any response. It is thus submitted that any new soft law frameworks on climate change and displacement should include provisions for safeguarding the victims’ rights during displacement. This, Docherty and Giannini (2009) notes, could come in the form of non-discrimination and fair treatment for all involved. While many of these human rights are already enshrined in various international legal instruments, having such rights consolidated into the climate change displacement framework would be an important step.

5.5.2 Humanitarian aid and a human rights approach

It was previously noted that even though climate change disasters may cause widespread displacement, and considering that such legal protections may be available, there are still many regions where the majority of people cannot leave. Those individuals also need major humanitarian assistance particularly if the event has been catastrophic or if it is an ongoing disaster.

As The Brookings Institute (2008) report put it, several forms of humanitarian aid relief need to be passed onto the victims of these disasters in the form of sufficient food, shelter water and good health services. The report notes that in order to receive such aid, there should be equal opportunity for these. This brings to mind the fact that discrimination can still take place during such disasters.

Ultimately, a human rights approach is and should be essential to any response to climate change, whether it be with humanitarian aid or displacement protections. It is seen as a requirement to insert human rights into the centre of all the policy answers that are implemented for climate change.⁷⁶

Based on the literature and reports that climate change will have serious implications on lives and livelihood around the world, this chapter analysed whether a humanitarian response to climate change is necessary. It found that such a response is

⁷⁵ Zetter (2009, p.7).

⁷⁶ This was also noted by the Deputy High Commissioner at the OHCHR, Kyung-waha Kang.

indeed essential, but also that a human rights framework approach is also necessary for a humanitarian as well as displacement framework response.

6 Conclusions

This research set out to answer the question of what type of framework is needed to respond to the global effects of climate change. Its aim was to understand whether such a response required humanitarian assistance or displacement protections by first understanding what type of problems arise from climate change disasters.

Question two asked whether there is a case for new provisions geared toward displacement protections for those affected by climate change while question three asked what forms such protections can take. The first was answered using the literature review which showed that as a result of the significant gaps in protection of the climate change-displacement in international norms, there is a need for such protections. This was also answered in the analysis which showed that there is a great need for an international framework on the displaced but there is currently no consensus on what form this should take. From the analysis, the more practical and less drawn out option to go with may be a soft law framework, as any new legally binding norms were seen as unrealistic in the short term. Seeing as global climate change is fast upon us, the study found that it is imperative that some form of protection is available for such affected people. A displacement framework would help with that, although responding with a soft law instrument is seen as more of a band-aid response than a steadfast solution. It was also discovered that implementation of a new binding treaty was impractical due to the political nature of the debate among states and the length of time one would take to be established.

Question four sought to consider whether humanitarian aid relief should be the main focus of a response, seeing as a displacement framework may be ineffective, insufficient or impractical. This was followed up by a look at whether a displacement framework and humanitarian assistance should be combined to make use of all options. It was concluded that a humanitarian agenda is essential to any response provided for those impacted by the effects of climate change. This goes whether displacement provisions are in place or not as humanitarian aid relief is usually required both for those forced to flee the destruction and those left behind. While there seems to be limited cover of such relief through a humanitarian framework for those affected, there is already a semi-effective organisational structure in place that is responsible for humanitarian assistance to disasters in general. Whether this structure is enough for a response to climate change remains to be seen, however, the right approach may be in having this operational responsibility dictated by an authoritative legal instrument, in this case the soft law proposed for the displaced. It was also concluded that the best solution for the issue is the implementation of a robust displacement framework to make provisions for potential victims while providing humanitarian assistance to all affected.

Question one asked whether the occurrence of climate change is one that needs to be looked at with human rights in mind. This was answered in the literature review but also expanded in the analysis. Key to the successful implementation of the displacement and humanitarian responses is the realization and safeguarding of the rights of those at risk. And so, a human rights approach and framework is also an important factor in the response to climate change. A new and effective displacement framework should be built on the premise of protecting such rights as the right to life. A humanitarian aid response, which is already structured to safeguard the rights of those affected like their right to health, water and shelter would continue to build on this and make protecting their rights a key part of the agenda.

This dissertation has thus concluded that the disasters of climate change produce can produce humanitarian, displacement and human rights issues for many people and that any response to it must include provisions, framework and an agenda for a response to all three as they are all inter-related with the occurrence of and destruction that climate change causes. Furthermore, it has been noted that the effects of climate change may end up less about how much physical damage occurs but instead it may end up being about the extent of the humanitarian crisis and the human rights problems that occur as a result of inaction or an ineffective response.

7 Recommendations

While this research has noted that a new legally binding instrument on the three responses to climate change is needed, and that this may be more practical through a soft law instrument, it does not at this time make the case for implementation of such. Seeing as the study concludes that the inter-related areas of displacement, humanitarian assistance and a human rights approach are all necessary as a response, the recommendation of this research is as follows:

A new instrument for norms on a climate change response needs to apply to all three approaches and so it is recommended that they be applied to the creation of a new soft law framework for responding to climate change disasters. However, since there is still a lack of consensus on what type of soft law framework should be established, this paper proposes that in the short term, further research should be carried out on an inter-agency level at the UN to determine the exact specifics of such a framework including which human rights will be covered by it, the practical definitions of those displaced that can be protected by its norms, and the level of protection and humanitarian assistance it can provide. Research on the levels of cooperation from states on such a framework is also encouraged as is what form such an instrument will take, whether it is through a new soft law document or as a protocol to the UNFCCC. It is hoped that this research will lead to great strides in the international community coming together to provide adequate protections to victims of climate change.

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