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Climate Migrants and the Denial of Refugee Status

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ABSTRACT

Climate change is a worldwide phenomenon that is gradually transforming every aspect of our world. A consequence of the many environmental effects, a significant humanitarian outcome of it is climate migration. Not covered by the 1951 Convention on Refugees and lacking any other comprehensive legislation, climate migrants are unprotected and vulnerable. Considering the high possibility of further environmental degradation, this paper explores the current situations of the impacted people by examining the legal definition outlined in the 1951 Convention and by looking at ways to ameliorate the issue. Focusing strongly on the denial of the refugee status and the importance of perspective, I prioritize an anthropological methodology through the investigation of two case studies, Kiribati's Ioane Teitiota and the country of Guatemala. With an analysis of their past, current, and possible future situations, I highlight the difficulty of distinguishing economic migrants from climate migrants and point out the importance that the factor of time has in these cases.

Introduction

After a rapid growth from 1,300 cases in 1975 to 1984 to a number greater than 3,900 from 2005 to 2014, it is undeniable that there has been a world-wide surge in severe environmental events (Thomas and López, 2015). These climate-related disasters such as storms and floods, heightened by the rising unpredictability of temperatures demonstrated by heatwaves and droughts, are a growing area of concern in the 21st century (Thomas and López, 2015). Victims of such environmental change, climate migrants are individuals subjected to worsening disasters who are forced to move from their original place of residence. Despite the decaying projected situation, there is no existing legally binding legislation that would provide any significant protection for these individuals. With the increase of climate-related disasters, it is imperative to establish this. In the case of cross-border climate migrants, one solution could be to provide them the rights given to refugees.

However, this question is of much debate in the academic context. In the terms of the 1951 Convention on Refugees, climate migrants are not considered refugees. There are hence disagreements critiquing the narrowness of the current definition. However, other scholars have also discussed whether climate migrants create a strong enough case to be even applicable for the consideration of the term 'refugee'. My work adds to this discussion by looking into the personal experiences of climate migrants through the use of case studies. By adopting this anthropological methodology, I will look at the effect of the denial of refugee status on climate migrants. Throughout this investigation, the importance of the distinction between climate migrants and economic migrants, as well as the factor of time, becomes especially clear.

In this paper, I will begin by examining the official definition of a refugee as stated by the 1951 Convention on Refugees, as well as proposed alternatives. I will then transition into a review of literature on the topic of climate change and climate migration. After this, my paper will go into a discussion of the methodology of choosing case studies and an investigation of Kiribati's Ioane Teitiota and Guatemala. I will then conclude with an analysis of the case studies and will provide some recommendations on which questions need to be answered in order to move forward in the matter of legislation for climate migrants.

Definition of a Refugee

Since World War II, the subject of refugees has been a prominent point of discussion within the international community. With the volatile nature of the 21st century, the subject only continues to rise in importance. However, with the progression of time, there have been growing concerns regarding who exactly should and should not be considered a refugee. I will focus on the crucial components that make up this debate by looking at the 1951 Convention on Refugees and an alternative to it, as well as some additional considerations.

The 1951 Convention on Refugees

In 1950, after World War II, the United Nations High Commissioner for Refugees (UNHCR) was specifically created with the purpose to aid those who have fled a particular location. The 1951 Convention on Refugees, as well as the 1967 Protocol, is considered to be the foundation for the UNHCR, and consequently dictates much of the agency's work on refugees.

The Convention seeks to accomplish three objectives: to define the term 'refugee', to outline the rights given to a refugee, and to lay out the legal obligation of States to protect refugees. The deliberations outlined in the document are only legally binding for its signatories, which include the United Kingdom, France, and Germany. Regardless, the document has become known as the internationally accepted norm for refugee policy.

The definition of the term refugee is focused on in article I of the Convention and creates several classifications that individuals must fall under in order to be considered. These include being outside the country of origin and possessing a "wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" (1951 Convention on Refugees, 1951, Article 1), thus being unable or unwilling to return to the country of origin. The second distinction is for those without nationality who are unable or unwilling to return to the "country of … former habitual residence" (1951 Convention on Refugees, 1951, Article 1) for that reason. It is of importance that the distinctions are very strictly defined, and hence narrow. Therefore, individuals who do not distinctly qualify, such as those who are fleeing their area of residence for environmental reasons, automatically cannot be legally recognized as refugees.

Additionally, the document prioritizes three central standards: non-discrimination, non-penalization, and non-refoulement. Non-discrimination ensures that no-one can be refused consideration as refugee simply for reasons of "race, religion or country of origin" (Convention on Refugees, 1951, Article 3) and non-penalization states that refugees who enter a country illegally cannot be penalized as long as they present themselves to the authorities in a timely fashion. Both are important in terms of refugee rights, however, non-refoulement is the highlight of the list. Considered to be included in customary international law, non-refoulement refers to the principle that one cannot "be returned to a country where they face serious threats to their life or freedom" (UNHCR). Qualifying for the term refugee automatically gives and puts particular emphasis on the right to non-refoulement as it is the first step in ensuring an individual is no longer at risk for lethal consequences.

It must be noted that there is one amendment in the 1951 Convention through the previously mentioned 1967 Protocol. Before, only those individuals who became refugees from European events before the 1st of January of the year 1950 were included in the original document. The 1967 Protocol absolved this classification by eliminating the geographic and time restrictions of the 1951 Convention, hence broadening the definition of those who can be considered refugees (Convention on Refugees, 1951).

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

It is evident that the 1951 Convention on Refugees is very narrow. For this reason, some scholars argue that the legal definition should be expanded, as the current version excludes certain groups of people who are also in

need of aid. The definition included within the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa is an example that has been brought up as a possible alternative or as a guideline for proposed modifications to the 1951 Convention.

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa was adopted on September 10th, 1969, by the Organization of African Unity, currently the African Union, with the purpose to address the "increasing number of refugees in Africa" in order to be able to provide them better support. The OAU Convention is considered a regional complement to the 1951 Convention, and hence, has no power beyond the African continent.

Covered in Article I, The OAU Convention adopts the exact language as in the 1951 Convention, but with one crucial addition. In the OAU definition, "the term 'refugee' shall also apply to every person who" is forced to "flee their place of habitual residence" for another country due to "external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality" (OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, Article I). This clarification serves to expand the original definition by addressing external dangers outside of country borders in addition to internal crises. Adopting a definition as such would then allow a larger pool of individuals to fall under the category of refugee and achieve the rights consequently allocated to them.

General Academic Context and Current Situation

In general, the debate on refugees is vast and not always limited to classification issues, with another common point of deliberation being specific rights allocated to refugees. Nevertheless, with a rising number of cases, as seen in 2017 when 68.5 million people were forcibly displaced from their place of residence, a number larger than at any other time in the history of humanity (Podesta, 2019), the question of a specific definition remains prevalent as the global situation continues to produce examples that do not necessarily fit into current guidelines.

Scholar Chandran Kukathas (2016) addresses the question from a relatively general standpoint, stating that it has become increasingly challenging to make a distinction between refugees and migrants. Kukathas discusses the reality of the predicament, stating that the situations of various economic migrants vary from one another, just as the situations of various refugees also differ from one to the next. For instance, while this is not true for one hundred percent of cases, there are economic migrants who choose to leave their place of habitual residence because "their lives, or the lives of their loved ones, are at risk" due to "adverse economic conditions, environmental catastrophe, or … the poverty of … surrounding circumstances" that "cannot be addressed by domestic institutions or the help of fellow citizens" (pp. 8-9).

In this particular situation, these individuals would greatly benefit from the expansion of the definition of refugees. This could be accomplished in the form of amending it to an interpretation of all those "whose human rights have been violated and need to be restored" (p. 8) qualify as refugees. However, with Kukathas arguing that the true issue remains distinguishing refugees from economic migrants, such an outcome only complicates the matter.

Exploring the other possible direction, narrowing the definition would make distinguishing the difference between migrants and refugees a lot simpler, largely because of the fewer individuals who would hence qualify. However, Kukathas then returns to the original problem that such a situation would exclude a large number of people who are seeking asylum and are unable to attain it due to such rigid guidelines.
Kukathas eventually ends in an aporia, stating that it is impossible to think of an ideal and feasible solution. However, among other scholars, there is still a general consensus that certain adjustments need to be made or at least considered. At this point, other papers tend to discuss the question from the standpoints of particular categories of people not covered by the 1951 Convention definition. Each of these areas poses their own challenges that need to be addressed accordingly. It is hence logical that this paper will entertain a similar approach.

Noting that of the various individuals not covered by the 1951 Convention, climate migrants are particularly unprotected under any legislation or document, I have chosen this category as a focal point for the rest of my investigation. The following section will thus be a more in-depth literature review regarding material in the area of climate migration (Kukathas, 2016).

Literature Review

Of the several categories of individuals who are a part of the debate on the 1951 Convention refugee definition, climate migrants are one of the most controversial parties. Due to worsening climate change, it is of general consensus that climate migrants are widely unprotected and require some form of aid. However, thoughts on what solutions should be differ. From ideas of mitigation to those that call for an expansion of the 1951 Convention, there are many angles from which the issue of unprotected climate migrants can be approached. In order to get a better understanding of the situation, I will explore the literature on the origins of climate migration, the perception of climate migrants, and suggested solutions.

Climate Migration

"In 2017, 68.5 million people were forcibly displaced" from their homes (Podesta, 2019, p. 2). Approximately one third of this number was due to weather events such as flooding and intensified storms. With circumstances like this increasing in number, climate change has rapidly become a prominent issue of the 21st century. If it continues to worsen as projected, future outcomes have the potential to drastically change the topography of the Earth and put into motion large-scale human migration due to resource scarcity, increased frequency of severe weather events, and disease outbreaks (Blake et al, 2021; Podesta, 2019).

The three primary consequences of climate change are changes in temperature, fluctuation in precipitation, and rise in sea levels. Environmental effects stemming from these three causes can thereupon be categorized into either sudden-onset or slow-onset disasters. Sudden-onset disasters include extreme storms and consequent flooding, while slow-onset disasters refer to events such as desertification, sea-level rise, ocean acidification, air pollution, rain pattern shifts, rising salinization of freshwater, and loss of biodiversity (Leal-Arcas, 2012; Blake et al, 2021; Podesta, 2019).

With no widely existing legal framework or binding agreements, the current state of international law has no specific protections for individuals looking to escape climate change, otherwise known as climate migrants. Any few existing measures regarding them are temporary or very limited. This can be applied in the case of Temporary Protected Status (TPS) in the United States. Included in the Immigration Act of 1990, TPS provides temporary immigration status to individuals who cannot be deported back to their original countries due to it being 'unsafe'. An environmental disaster is included as a viable reason for such. An acquisition of TPS then allows an individual temporary alleviation of deportation and temporary permission to acquire an occupation within the United States. However, as per the name, TPS is temporary and is not offered on an individual basis. Instead, as of August 2022, only persons of fifteen designated countries may apply for this protection. Even including TPS, a limited policy that only functions in the United States, climate migrants, in general, still do not often have the right to permanently resettle in another country and are not guaranteed support or assistance with relocation costs from countries or international institutions (Blake et al, 2021; Leal-Arcas, 2012; Podesta, 2019; American Immigration Council, 2022).

Climate Migrant Perception

When interacting with the debate on climate migration, it becomes increasingly clear that one of the most prominent questions is how exactly to frame the discussion. It can be assumed that if a certain perspective is adopted, it would dictate any consequent action. Therefore, in order to find an approach to the issue of climate migrants, the perception of their situation is of the utmost importance. As a result, in order to conceptualize possible policy responses, the research community has created a multitude of different ways of framing climate migrants.

For the most part, quite a few of the different perspectives utilized by activists, policy-makers, researchers, and other parties fit into the following categories: victims, security threats, adaptive agents, and political subjects (Ransan-Cooper et al, 2015). Each of these are used in a way to push certain narratives regarding climate migrants.

For instance, in the case of mainstream media, Lauren Micheal Kelley (2020) identifies several categories that are utilized to push a specialized view of climate migrants on the general public. The direction of public perception is quite powerful and can help build support for any adopted policies. In Western media outlets in particular, the five frames most commonly used are outsiders, illegal individuals, threats, victims, or activists. Categorizing climate migrants as 'outsiders' occurs when host countries engage in ostracizing climate migrants and presenting them as a separate group to that of the host country population. This could result in anti-migration sentiment, accompanied by either increased fear of migrants and refugees or general apathy. The effects of the frame of focusing on climate migrants being 'illegal' can be used in tangent with the former category, with the similar possibility of also increasing fear, apprehension, and suspicion of climate migrants. The frame of 'threat' builds on this fear, by focusing on the idea that refugees and migrants "disturb public order". The lens of 'victim' is on the other end of the spectrum to 'outsiders', 'illegal individuals', and 'threats'. With the use of pathos, painting climate migrants as 'victims' can result in the population of the host country recognizing them as fellow humans rather than just faceless entities. The last perception is 'activists'. Kelley pushes for this view in particular as she believes it would give climate migrants an opportunity to avoid unwanted victimization and instead "regain autonomy and agency" (Kelley, 2020).

This idea of the 'activists' frame is prominent even outside of mainstream media but not without disagreement. For instance, François Gemenne (2015) states that he used to advocate for climate migrants to be portrayed, similarly to the latter view, as "resourceful agents of their own adaptation" (p. 70). However, Gemenne now advises against this frame as he believes it "de-politic[izes] the reality" (p. 71) of the climate migrant situation, creating the idea that climate migration is solely an environmental issue. On these grounds, Gemenne introduces another important frame in the debate on climate migrants: the idea that climate migrants are owed a debt because humans are the ones becoming the main instigators of climate change. This perspective paints climate migrants as a "wronged party" (Saad, 2017, p. 99) who are hence owed some form of compensation. This idea of compensation can open a pathway towards legal legislation (Gemenne, 2015; Saad, 2017).

An alternate view that is quite different from the previous examples presented stems from the occasionally seen aversion to the topic of climate migrants. Rafael Leal-Arcas (2012) infers that this comes from the notion that the focus on climate migration takes away attention from initiatives of "climate change mitigation" (p. 88). Roman Felli (2013) adds to this discussion by stating that 'climate migrants' and 'climate refugees' are only justified as strategies "to adapt to climate change" (p. 351). In this case, climate migrants would be used solely as justification to push forward the angle that adaptation to climate change must happen. Giovanni Bettini et al (2017) contribute by discussing the value of this frame, but much like Gemenne, also express their worry concerning the de-politicization of the issue should the 'migration as adaptation' view be adopted universally.

Various Approaches

Regardless of the frame eventually adopted, the question of perspective initially comes up because of the general consensus that some type of action needs to be undertaken to ensure that climate migrants will have adequate support. Various scholars proceed to propose various approaches that each in turn interpret the idea of climate migrant 'support' in different ways.

With the complexity of passing and enforcing extensive international legislation, policy-making often relies deeply on nation states. Accordingly, some researchers believe that this mindset should also be applied in the current situation. With this in mind, a possibility is that each country should individually revisit any existing policies in order to create stronger versions. By the pursuit of further research through the study current approaches, this interpretation of 'support for climate migrants' would promote an analysis and better comprehension of which policies are functional and which ones are not. It could also yield realizations and observations that would create stronger and more effective policies for climate migrants (Blake et al, 2021; Andeva and Salevska, 2020).

Building upon this, an extension to the possibility of each country negotiating their own solutions is the idea of doing the same through a regionalized team-effort. Specifically, the focus on encouragement of "regional cooperation between states" and continuation of development of "existing geopolitical, economic, cultural, and environmental relationships" (Williams, 2008, p. 524). While this solution doesn't offer a distinct answer, it could pave a path to a more comprehensive strategy (Andeva and Salevska, 2020). Coordination between states has the possibility to both yield innovative thoughts and ideas and could also provide safer situations at borders for climate migrants. Additionally, the prospect of pooled resources would provide better means for the accomplishment of any directives. However, with both the former and the latter solutions, it is important to acknowledge that without a formidable incentive, it is challenging to ensure that countries will indeed decide to pursue such steps.

There are also other strategies that focus on a more preventative approach. For example, more effective management of resources and infrastructure needs. This two-pronged solution would yield several effects. First, more rigorous and proactive management of resources such as land and water during calmer periods of time has the potential to compensate for when disasters do occur. Second, addressing infrastructure, both physical and institutional, has the capability to bolster stability during environmental fluctuation and crisis, enabling living conditions that would allow the affected community to remain in their original location. In a balancing act, if such a solution is approached, infrastructure would also be strengthened in locations accepting climate migrants, such as in the case of internally displaced persons moving from a rural area to an urban city. This strategy would not only increase the quality of life for already settled citizens, but would also allow the area to be better equipped if it receives a large, sudden influx of climate migrants or internally displaced persons from another area of the country (Andeva and Salevska, 2020). With the allocation of more resources, for instance through the creation of a dedicated fund, towards initiatives such as management of infrastructure, water, and increased migration monitoring, an improvement in this sphere could be accomplished with "medium-term investments" (Podesta, 2019, p. 5) in about five to ten years (Podesta, 2019).

Another perspective comes from Brock's theory, a concept originated by Gillian Brock (2020) that places an emphasis on solutions for forcibly displaced persons that extend beyond humanitarian aid under the belief that the latter is often not enough (Brock, 2020). Additionally, the idea also provides justification for why these initiatives are needed, attributing it to obligation. Scholar Shelley Wilcox (2021), upon examination and analysis of Brock's theory, came to the conclusion that the international community owes climate migrants solutions such as "collective resettlement, continued political self-determination, … and access to a new territory" (p. 76). This is a very distinct example of how the way in which climate migrants are framed could influence legislation. With the adopted lens being 'obligation', Wilcox's three pronged approach seeks to preserve existing "social support systems" (p. 82) and general community norms while moving the impacted group away from the point of environmental instability (Wilcox, 2021).

However, despite other possibilities, many solutions still specifically regard the classification of climate migrants. Some claim that, due to a lack of a concrete one, the definition of climate migrants themselves needs to be clarified (Andeva and Salevska, 2020). One way this could be accomplished is through the expansion of the definition of the 1951 Convention on Refugees. This approach would not only clear up the climate migrant definition, but would also allow these individuals access to rights such as non-refoulement. Issa Ibrahim Berchin et al (2017) hence indicate that this new subcategory of refugees, climate refugees, is then "vital" (p. 149), as it would give legal grounds for proper measures and clear legislation to be put in place (Berchin et al, 2017). Previously mentioned scholar Shelley Wilcox (2021), would also be in favor of such an amendment to the 1951 Convention as, in the perspective of Brock's theory, which encourages a more comprehensive refugee definition, climate migrants should fall into the refugee category (Wilcox, 2021).

Without question, there are those that argue against the expansion of the 1951 Convention for reasons of the idea being unrealistic (Williams, 2008), largely due to the currently anti-immigrant stance of Europe and the United States (Podesta, 2019). However, despite the limitations, the idea of expanding the legal definition is of particular interest because it has been debated internationally in a variety of other situations. In the next section, my paper will continue to explore whether such a direction should also be considered for climate migrants. By focusing on the effects of the strict guidelines of the 1951 Convention, two distinct cases will be taken into account in order to gauge the impact of the lack of legal protection given by the refugee status on individuals affected by climate-induced disasters.

Case Studies

To select my two cases, I considered the process discussed in Mala Htun and Francesca R. Jansenius (2018) "Comparative Analysis for Theory Development: Reflections on a Study of Women's Empowerment." In particular, I focused on finding case studies that were diverse in circumstance but still had commonalities. By considering the kind of locations, disasters, and individuals involved, such facets create ground for comparison and ensure that the study is covering a wide range of affected individuals. While it is natural that not every climate migrant will fall under akin situations as in the chosen case studies, the balance of similarities and differences will ensure a degree of comprehensiveness that will act as an insight into the discussion at hand. For, in order to answer the normative questions, it is imperative that smaller empirical inquiries must be answered first. Whereas legal material, documents, and statistics are essential in forming a foundation for discussion, it is crucial to seriously consider the perspectives of the individuals involved. Adopting an anthropological viewpoint, case studies enable the acquisition of a much needed emic insight that could pave the way towards a tangible solution. Therefore, in order to find a resolution to the 'climate refugee' debate, this humanitarian insight is of the utmost importance for constructing an outcome that would be directly beneficial for the persons affected.

Ioane Teitiota

The first case study involves the country of Kiribati, a nation in the Pacific that consists of several islands. Projected to be one of the first countries to be submerged due to sea-level rise, two uninhabited islands, Abanuea and Tebua Tarawa, are already completely underwater as of 1999 (Mulhern, 2020). Currently, 64,000 people, out of a total population of more than 114,000, live in the capital island South Tarawa which, despite its small size, has a population density that can be compared to that of Tokyo, Japan. It is currently less than three meters above sea level. With extreme overpopulation and poor conditions, finding consistent occupation proves to be an acute challenge for individuals living in South Tarawa (CIA World Factbook; McDonald, 2015).

Such is the case of Ioane Teitiota and his immediate family. Before 2007, Teitiota lived with extended family on the island of Tarawa without an established job. However, in a turn of events in 2007, he and his wife

were able to acquire work visas to New Zealand and, seizing the opportunity, promptly moved. Finding work as a farmhand, Teitiota acclimated and established a relatively stable life in the new country. His three children were also born in New Zealand during this time period.

Notwithstanding, three years later, the work visas eventually expired. With unsuccessful attempts to renew it and fearing the return to the conditions he left in Kiribati, Teitiota attempted to claim refugee status. Nonetheless, Teitiota was deported back to Kiribati in September, 2015. If he was acknowledged as a refugee, this would be seen as a violation of the principle of non-refoulement. However, despite the fact his claim that "Kiribati [had] … become an untenable and violent environment," (Ioane Teitiota v. New Zealand, 2019, p. 2), Teitiota's case was refused by the New Zealand government.

Ioane Teitiota, supported by his lawyer, Michael J. Kidd, brought his case to the New Zealand government. The court, following the 1951 Convention on Refugees and the International Covenant on Civil and Political Rights, acknowledged and deliberated upon the testimony and evidence provided by Teitiota, his wife, as well as John Corcoran, a doctoral candidate who was researching climate change in Kiribati. However, the tribunal decreed that, "There was no evidence establishing that his situation in the Republic of Kiribati would be so precarious that his or his family's life would be in danger," (Ioane Teitiota v. New Zealand, 2019, p. 4), concluding that the information presented still didn't meet the requirements that would allow Teitiota a solid foundation on which to base his claim. The New Zealand Supreme Court took the same stance, stating that, "while the Republic of Kiribati undoubtedly faced challenges, [Teitiota] would not, if returned there, face serious harm," (Ioane Teitiota v. New Zealand, 2019, p. 5), denying Teitiota's appeal to the original decision of the Tribunal.

Some of Teitiota's most prominent reasons for refusing to return were "because of the difficulties he and his family faced there, due to the combined pressures of overpopulation and sea level rise" (Ioane Teitiota v. New Zealand, 2019, p. 4). Despite the fact that Teitiota did not immediately perish upon his deportation, the issues highlighted came into light upon his and his family's return to Kiribati. For one, the struggle to access safe drinking water remained. There is only so much rainwater that can be acquired, and while groundwater is also used, its proximity to the surface puts it at high risk for human and animal contamination, an effect that is only intensified by overpopulation. Although groundwater is only used for sanitary needs, it has had a negative effect on Teitiota's children. Having been born in New Zealand, they do not possess an immune system that is developed enough to be able to adequately handle these conditions, and as a result, all three have developed skin conditions. Whereas these seem to be non-lethal, water is a large reason for a lot of childhood illnesses in Kiribati. With an infant mortality rate consistently higher than that of Bangladesh since 2005 (World Bank), there is no guarantee that these skin conditions will not progress into something more serious.

Rising sea levels also remain a threat. One of the reasons for increasing overpopulation, they ensure that internal migration is simply not possible and make finding occupation difficult, showcased by the unemployment rate of over 30 percent (International Labour Organization, 2019). It is unlikely that the situation will improve, and it is very possible that the conditions will just continue to degrade. Teitiota's opinion in this case is clear, and he has stated that, "I'm the same as people who are fleeing war. Those who are afraid of dying, it's the same as me … I think being a refugee is the best way of protecting myself. Especially if something happens to Kiribati" (McDonald, 2015).

It is important to acknowledge that the Tribunal took an open-minded stance during the duration of the case stating that, "while in many cases the effects of environmental change and natural disasters will not bring affected persons within the scope of the Refugee Convention, no hard and fast rules or presumptions of non-applicability exist" (Ioane Teitiota v. New Zealand, 2019, p. 4). Nonetheless, one distinction eventually led to the decree that Teitiota did not fall under the official refugee definition as stated by the 1951 Convention: Teitiota was not under the threat of persecution if he returned to Kiribati. Despite Teitiota's claims that land disputes happened in Tarawa due to overpopulation, there was no evidence of a similar situation affecting Teitiota himself. Even if something akin to this did happen, there was no indication that such a situation would

lead to life-threatening injuries. Moreover, Teitiota would be able to find housing for the time being and acquiring sources of food and water was difficult, not impossible. Therefore, the implied risk remained "in the realm of conjecture" (Ioane Teitiota v. New Zealand, 2019, p. 6).

Upon Teitiota's appeal of the Tribunal's decision, New Zealand's Supreme Court rejected it and took the same stance as the Tribunal. However, even with their final judgement, the Court did not exclude the outcome that "environmental degradation resulting from climate change or other natural disasters could 'create a pathway into the Refugee Convention or other protected person jurisdiction'" (Ioane Teitiota v. New Zealand, 2019, p. 5).

Guatemala

The second case concerns the country Guatemala. Guatemala is a part of the Dry Corridor, an area in central America that is highly susceptible to unpredictable rain patterns and drought, a phenomenon worsened by climate change. These uncertain conditions result in a domino effect of droughts, floods, and other natural disasters, all of which consequently result in job loss, infrastructure damage, food insecurity, malnutrition, and poverty. With a range of such environmental havoc, life is difficult for those who depend on an agricultural lifestyle (Marcy and Tyson, 2022). With rural poverty rates at more than 70 percent, rural Guatemalans happen to be among those most affected (The Climate Reality Project, 2019).

Between 2015 and 2018, one of the main reasons for migration was drought. In 2020, two back-to-back hurricanes Iota and Eta, both within two weeks of each other, provided yet another situation for increased migration (Marcy and Tyson, 2022). Migration also tends to be external rather than internal. If at first affected individuals move to larger, urban areas, systemic problems and vulnerable infrastructure push a move across the border, towards Mexico and the United States (The Climate Reality Project, 2019). An increase in migration due to reasons related to climate change has not gone unnoticed. Fifty thousand families were caught at the United States border in 2018, a number that is twice as high compared to 2017. Additionally, twenty-two thousand Guatemalan children were also documented. A large portion of these cumulative migration numbers come from the Guatemalan western highlands that covers about twenty percent of the country. This area is incredibly susceptible to climate change and suffers a malnutrition rate of above sixty percent. Of ninety-four thousand individuals deported back to Guatemala, half of these persons were from the western highlands (Blitzer, 2019).

An indigenous town in Guatemala called Xucup provides a similar story. Threatened by drought and food insecurity, Miriam Noemi Cuc Cac and Irma Cuc Cac, two sisters that live in Xucup, tried to migrate to the United States in December 2019. However, on the journey, they were stopped and sent back home by Mexican law enforcement. Upon return, the sisters were subjected to the same conditions they tried to escape from. With crop loss from the Iota and Eta disasters in 2020, they were unable to make income, Miriam stating that, "There's no way to make money here. It's only getting harder" (Rodriguez, 2021).

The Guatemalan government is aware of the situation, and have started discussions with the United Nations, as well as the United Nations Food and Agriculture Organization and USAID concerning possible solutions and mitigation strategies. However, the actual individuals these actions concern are not aware and do not feel the effects of these measures. For instance, a representative from the Guatemalan Ministry of Agriculture, Livestock, and Food visited the town of Chivich. They promised that the government would send assistance such as agricultural and financial assistance. However, with none of the materials ever received, nothing came out of the agreement.

Analysis

Since World War II, the subject of refugees has been a prominent point of discussion within the international community. With the volatile nature of the 21st century, the subject only continues to rise in importance. However, with the progression of time, there have been growing concerns regarding who exactly should and should not be considered a refugee. I will focus on the crucial components that make up this debate by looking at the 1951 Convention on Refugees and an alternative to it, as well as some additional considerations.

Ioane Teitiota

With Teitiota's case, the outcome is all a point of perspective. In all matters of legal protocol, the Tribunal operated in a justified manner, especially considering the fact that they made a note to be as open-minded as possible. In the matters of the 1951 Protocol, there was indeed no one-hundred percent chance that Teitiota would immediately perish upon return to Kiribati. With no previous evidence of land or accomodation disputes in which he was involved, Teitiota could also not be considered at risk for fatal physical injury and persecution upon his return. He also, for the time being, had a designated place of housing that he could return to. Additionally in the terms of food or water resources, there was no immediate proof that backed Teitiota's claim that nurturing crops and acquiring drinking water was impossible, rather than merely difficult. Finally, there was no evidence that the rising sea levels and other climate-related events would be serious enough that Teitiota would undoubtedly perish. Because of these classifications, Teitiota could in no regard be considered a refugee by the official definition as dictated from the 1951 Convention.

Notwithstanding, particular attention should be paid to the language in which the Tribunal conducted the trial. In particular, they stated that "[Teitiota] could not establish that there was a sufficient degree of risk to his life, or that of his family, at the relevant time" (Ioane Teitiota v. New Zealand, 2019). There is an emphasis on "at the relevant time". This wording puts into perspective that the Tribunal, and consequently the New Zealand Supreme Court, were operating in consideration of a strict time frame that is later quantified to be ten to fifteen years. Upon these immediate time horizons, Teitiota, as stated previously, was not in immediate danger of losing his life the moment he returned to Kiribati. This fact only solidifies that Teitiota does not fall under the requirements of the 1951 Convention. It is hence legally undeniable that Teitiota does not qualify as a refugee, and clarifies that with this adopted perspective, neither the Tribunal nor the Court went against the principle of non-refoulement.

However, broadening the time horizons, it is very likely that Kiribati will continue to sink. With internal migration not possible, it is inevitable that external migration will have to occur at one point or another. Additionally, within Kiribati, all the effects the Court considered to be not probable or severe enough to justify granting Teitiota asylum have, as time progresses, a strong chance of intensifying. For example, the continuation of the over-salinization due to climate change will amplify the issue of finding potable water, the lack of which can cause serious diseases and illness. As previously mentioned, Teitiota's children are already exhibiting the repercussions of such an outcome. It can then be inferred that with the escalation of the causative issue, the effects of the sickness may be amplified as well. Rainfall, a possible solution for this particular problem, is unpredictable due to the unstable rain patterns and is yet another consequence of environmental instability. Moreover, with rising sea levels causing land loss, the already existing issue of overpopulation only increases chances of violent land disputes, especially when considering the already existing complications concerning Teitiota's place of residence.

It must be noted that Teitiota was aware of the difference broadening time horizons could make, and this was one of the reasons he appealed the original decision of the Tribunal. Nonetheless, the Court decided not to consider this element in their evaluation of his case.

Guatemala

Like Teitiota from Kiribati, Guatemalans such as sisters Miriam Noemi Cuc Cac and Irma Cuc Cac cannot be considered refugees under the jurisdiction of the 1951 Convention. With the main issue concerning agriculture and the implication of significant crop loss, it is still possible to produce at least some number of food supplies even if the action is difficult. In terms of housing, there is no evidence of high risk of dispute between neighbors directly stemming from the effects of climate change on the Dry Corridor. In the case of physical injury resulting from non-human events such as droughts or extreme floods, any injuries are not one-hundred percent guaranteed, and in the case of the Cuc Cuc sisters who have a designated place of residence not under any threat of being violently disturbed, their possession of this house actually prevented them from sustaining any bodily harm, "Our house was safe. We were safe" (Rodriguez, 2021). Additionally, because individuals fleeing Guatemala to seek asylum in Mexico and the United States often do so to improve financial situations, the question of whether they can even be considered climate migrants persists. This divide between the possibility of classification as an economic migrant or a climate migrant is yet another important distinction that weakens the case of Guatemalan migrants under the requirements of the 1951 Convention.

Thus, while on a surface level, the described situation seems to be adequate grounds for an economic migrant, it is essential to recognize that the majority of the issues causing rural Guatemalans to move are occurring because of the severe effects of climate change. For example, in the case of drought, the phenomenon prevents individuals from growing an adequate number of crops. This shortage then hinders acquisition of income from the grown plants, which thereupon severely impacts one's ability to provide for themselves and their family. This lack of finances also creates the inability to purchase materials to strengthen agrarian pursuits. The stated chain effect is only strengthened if one's sole source of income is reliant on agriculture, as is the case with many Guatemalans living in rural areas. Hence, there is a clear link between climate change in the Dry Corridor, seen through extreme floods and droughts and the consequent effects, such as inability to grow crops and therefore generate income. This makes it undeniable that many Guatemalans can and should be considered climate migrants.

With deportations of Guatemalan migrants from the U.S. and Mexico common, time horizons in this case must also be considered, even if from a legal-standpoint, the principle of non-refoulement is not being contradicted. Unlike in Kiribati where there is no opportunity for internal migration, Guatemalans can still attempt to move to larger cities instead of leaving their country altogether. The issue with this particular scenario is the lack of existing infrastructure to support incoming persons. In theory, it would be assumed that with designated resources, the situation could be ameliorated. However, with the frequency of disasters increasing, demonstrated by the back-to-back hurricanes Iota and Eta, the challenge lies in providing noteworthy improvement before the conditions in rural areas deteriorate further. With no current tangible results from the Guatemalan government on mitigating climate change that can be felt on a day to day basis by citizens, significant progress that is feasible in an efficient period of time is unlikely and without guaranteed results. Moreover, systematic issues, with many baked into ideologies of various systems, can also not be changed in a quick turnaround. The same applies for any existing initiatives working to revive damaged land. Although these show more promise of yielding results, the effectiveness of any program remains uncertain.

Discussion

In comparison of the two cases, two points become especially clear. First, the idea that climate migrants are very difficult to distinguish from economic migrants. It has already become clear in analysis of the Guatemala case that the effects for climate migration can often be disguised under economic reasons. The same argument can be applied to Teitiota's case. While it has been verified that his initial move to New Zealand was made possible by the acquisition of the work visa, that change in lifestyle was required because Teitiota could not find occupation within his own country. This particular difficulty can be attributed to overpopulation in South

Tarawa, which occurred largely due to other Kiribati islands slowly becoming uninhabitable due to sea level rise, an effect of climate change. It can hence be seen just how intertwined economic and climate migration are, with effects from both sides coming into play in Teitiota's case. Therefore, in the creation of new policy, it is essential to figure out how to differentiate between the two.

The second point revealed through the analysis is the importance of time. Discussed in both cases, both situations could have had different outcomes depending on the time horizons considered. In Teitiota's case, this is distinctly seen through his legal case and the slow-onset disaster timeline the Tribunal was operating under. In terms of the Guatemala study, without the foundation of consistent, tangible progress, many of the proposed solutions lose their credibility when put under the pressure of the clock. The situations in Kiribati and Guatemala are undeniably worsening with the progression of the severity of climate change, a fact which sets an unspoken deadline that is approaching sooner rather than later. Through the evaluation of both case studies, it is evident that what might have been possible or applicable in an ideal scenario, is not realistic under the current circumstances, where an underlying race against time severely limits possible options. It is for this reason that the possibility of expanding the 1951 Convention refugee definition, an outcome that has one of the highest possibilities of yielding results, must still be considered in the ever-evolving debate on climate migrants.

Conclusion

Through the investigation in this paper, it is clear that due to worsening global climate situations, climate migrants are in urgent need of concrete legislation and assistance. With the passing of time and considering the worsening plight of these individuals who are continuously sent back home against their will, deportation as a result of no legal protections is becoming no longer feasible nor morally acceptable. Unlike alternate possible options, being granted refugee status would provide immediate protection and provide the invaluable right of non-refoulement in a legally-binding manner.

In 2020, the U.N. Human Rights Committee made a new decision regarding the case of climate refugees. In this judgement, upon recognizing that climate change and consequent environmental damage can result in a "violation to the right to life" (International Covenant on Civil and Political Rights, 2020), the committee deliberated that climate migrants should not be deported back to their original countries. However, the agreement is not legally binding and the language remains unclear in specifying an exact time span that should be utilized when deciding climate migrant cases.

Therefore, alongside many other intricacies that need to be further considered, developing protocol for the time boundaries utilized in deciding the verdict of various climate migrants is of the utmost importance in this discussion. While in both of the considered case studies the individuals were not in immediate lethal danger when originally deported, evidence points to the fact that both situations have a high chance of drastically worsening as the climate crisis intensifies. As a consequence of non-existent, ineffective, or failing systems put under pressure due to the evolving global world, the outdated definition in the 1951 Convention on Refugees is yet another system where re-evaluation needs to be considered. Climate migrants are in urgent need of such legislation and deciding the timeline with which such cases need to be considered is just the first step towards adaptation in a world where climate change has become an undeniable, escalating reality.

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