

# The Dilemma and Solutions of Climate Refugees under the Perspective of International Law

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**Abstract:** Recently, the international society has paid increasing attention to the saving of climate refugees. Climate refugees are people who are forced to migrate across borders because their survival rights and development rights are threatened or will be threatened due to abnormal climate changes. However, as the international status of climate refugees is still unclear, the protection of their rights also faces many difficulties. First, it is difficult for climate refugees to obtain legal status in international law. Second, the existing international migration system is not comprehensive. Third, the judicial relief method is not perfect, and there exists increasing difficulty of the climate refugees to prove their identities as plaintiffs. Therefore, this essay advocates that climate refugees should be incorporated into the refugee protection system. In other words, international legislation should be adopted to make specific provisions for climate refugees, to clarify the scope of responsibility of international entities for the protection of climate refugees, to establish a special relief fund for climate refugees, to reverse the burden of the proof in judicial relief, and to actively promote the improvement of the system for the protection of the rights of climate refugees under the framework of the international law.

**Keywords:** Climate Refugees; International Law; Dilemma and Solutions.

## 1. Introduction

At present, the academic field has not reached a consensus on the definition of climate refugees. For example, in 2008, the Hong Kong Sun defined climate refugees as "refugees who have lost their original living environment and forced the local people to migrate from their residential areas due to climate deterioration, ecological imbalance, geological variation and environmental pollution [1]." Some scholars defined climate refugees as "people who are forced to migrate temporarily or permanently across borders from their own countries due to environmental pollution or geological variation caused by abnormal climate, which ultimately threatens the living environment and quality of life; or people who do not have nationality but who, as a result of the environmental circumstances, are obliged to move temporarily or permanently to a country other than their former living areas." Some defined climate refugees as "refugees caused by human migration due to climate change and its consequences [2]." Based on this, this essay argues that climate refugees, refer to people who are forced to migrate temporarily or permanently from their own countries due to the abnormal climate change that threatens or will threaten human survival rights and development rights. Or people who do not have nationality, but are forced to migrate temporarily or permanently to a country other than their regular living areas due to climate change.

The protection of climate refugees not only promotes the protection of human rights, but also helps to guide people to pay more attention to the consequences of climate deterioration. Thus promoting the world's environmental governance and the development and growth of human rights protection. Due to the uncertainty of the definition of "climate refugees" in academic fields, they have gone through hardships on the way to obtain international law status and protection of rights but still failed to receive effective responses. Some scholars believe that climate refugees should also be classified as refugees. Since the existing international law provides protection for common refugees due to the function of human rights protection, climate refugees should also be protected by human rights. In

addition, the protection of climate refugees will not only increase the ratings on the issue of climate refugees, but also arises awareness of climate change issues.

## 2. Characteristics of Climate Refugees

According to the above definition of climate refugees, it is not tough to see that climate refugees have the following characteristics [3]. First and foremost, the abnormal change of climate is the main cause of climate refugees. The reason is that the abnormal climate change will lead to the threatening or will threatening of the survival rights and development rights. For example, the 2004 tsunami in Indonesia forced local Indonesians to seek shelters outside their original living areas. In the Maldives, rising sea levels due to global warming are threatening the survival rights of its local people and forcing them to move to countries other than their home countries.

Secondly, climate refugees must have the behavior of forced migration. People who, under the provisions of the Convention relating to the Status of Refugees, have a justifiable fear of remaining in their own country on grounds of race, religion, nationality, belonging to a particular social group or political opinion and who are unable or unwilling to be protected by that country because of that fear; Or a person who does not have a nationality and, because of the above, remains outside the country of his former living area and is now unable or unwilling to return to that country because of the above fears is defined as a refugee [4]. Thus, refugees are often the result of a combination of factors that is inevitable, human factors or both, triggering the forced migration of human beings to places other than their original place of residence [5]. However, individuals or groups who migrate voluntarily based on their own will for their own survival and development are generally called voluntary immigrants and do not belong to the category of refugees. Therefore, the definition of refugees must consider whether there is forced migration. Voluntary migration can only be defined as an immigrant, not a refugee. It should be noted that, under the Convention and the Protocol on the Status of Refugees, voluntary migrants are not necessarily available for the protection of common refugees in their status under international law [2]. If climate refugees include voluntary migrants, the definition of climate refugees may be blurred, making it more difficult for climate refugees to obtain legal rights in international laws' perspective.

Finally, climate refugees must migrate across borders. According to the above definition of refugees, some residents need to carry out migrations which across regions within the country due to climate reasons or other factors, and they are called migrants rather than refugees [4]. Therefore, climate refugees need to migrate across borders under the impact of climate change. The reason is that the local climate change caused by the deterioration of the living environment has been unable to adapt to their survival, so they need to carry out cross-border migration.

## 3. Development status of climate refugees

According to the comprehensive report of the fifth evaluation of the IPCC, the total increased between the average values of 1850-1900 and 2003-2012 is 0.78 [0.72 to 0.85] °C. Globally, ocean warming was the greatest near the earth's surface. Between 1971 and 2010, the upper 75 meters warmed by 0.11 [0.09 to 0.13] °C every decade [6]. While ocean warming provided more energy for "tropical storms", it can be seen devastating tropical storms and typhoons in Asia, as well as cyclones that hit the Pacific Islands and Southern Africa. On March 15, 2019, tropical cyclone IDAI landed in Mozambique, which was one of the strongest cyclones known to land on the east coast of Africa, causing many casualties and extensive environmental damage. Ocean warming also led to a record number of hurricanes in the Caribbean last year. In addition, the increase of atmospheric humidity led to the more frequent occurrence of severe floods related to storms. Over the past 40 years, the oceans had been absorbed, 20 to 30 percent of the carbon dioxide emissions caused by human activities [7], leading to ocean acidification, which had also had a significant impact on ecosystems, human society, and the economy. The unusually heavy rainfall at the end of 2019 was also one of the

important factors for the outbreak of large-scale desert locust disaster in Africa, which was the also most serious one in recent 70 years in Kenya.

According to the 2019 global climate statement, the total number of "climate refugees" in 2020 will be close to 22 million [6]. In addition, the extreme high temperature caused by climate warming is damaging human health. In 2019, Australia, India, Japan and Europe all experienced record high temperatures. Two strong heat waves occurred in Europe in late June and late July 2019. France set a national record of 46°C (1.9°C higher than the previous record), while Germany (42.6°C), the Netherlands (40.7°C), Belgium (41.8°C), Luxembourg (40.8°C) and the United Kingdom (38.7°C) also set national records. The highest temperature had been recorded in Helsinki since February 28. Among them, the heatwave caused more than 100 deaths and 18000 hospitalizations in Japan, 1462 abnormal deaths in France from June to September 2020. More than 20000 people were treated for diseases related to high temperatures [8]. According to the report of the United Nations Economic and Social Council, about 24.2 million people were transferred due to climate reasons in 2016, three times the number transferred due to war and conflict in the same period. The World Bank estimated that 143 million climate refugees will emerge in Latin America, sub-Saharan Africa and South Asia in 2050[9]. It can be seen from the above data that the overall increase in the number of climate refugees in the future will be the general trend of world development.

#### **4. Current situation of international law protection of climate refugees**

On February 21, 2018, the State Oceanic Administration of China revealed that the problem of the disappearance of islands has an increasing trend year by year. China's islands are disappearing at an alarming rate, with data showing 806. Eight former islands in the Pacific, such as Kepidau en Pehleung and Nahlapenlohd, have disappeared. [9] The guiding principles on internal displacement mention the need to include refugees and displaced persons in The UN Refugee Agency's (UNHCR) assistance targets. Although the principle still lacks universality and legal effect, and there is no corresponding international treaty stipulating that other countries have the obligation to protect inbound displaced persons, it does have pioneering guiding significance for the protection of climate refugees at this stage.

On January 20, 2020, the United Nations Human Rights Committee made a landmark ruling that it was illegal for the government to repatriate "climate refugees" to countries that might be threatened by the climate crisis. This was the first such ruling, which represented a legal milestone for future protection requests from those threatened by global warming.

In addition to the refugee conventions of Latin America and Africa, the regional scope of refugees has been broadened. In 1969, the Convention on the specific aspects of refugee problems in Africa adopted the definition of refugees in the 1951 International Convention and the 1967 Protocol. At the same time, people who fled their country due to the instability of public order were also included in the scope of refugees. In 1984, the Cartagena Declaration on refugees adopted in Latin America further expanded the confine of refugees, including those who fled their country because their lives, security and freedom were threatened [10]. Although both conventions do not explicitly include climate change in the identification of refugees, they have shown the intention to expand the scope of refugees according to the actual situation, which can provide a reference for the protection of climate refugees in the future.

#### **5. The Dilemma of Climate Refugees**

As a kind of refugee, climate refugees deserve human rights respect and protection. However, there are still many dilemmas for climate refugees to obtain corresponding legal status in international law.

Firstly, because of the lack of traditional refugee protection method, it is difficult for climate refugees to obtain international status and legal protection. There is no specific protection content for

climate refugees in international contracts and articles, only existing refugee conventions and protocols on the status of refugees [4]. However, the legislative situation of climate refugees is even less optimistic, and the traditional refugee protection method cannot meet the protection method needed by climate refugees. On the one hand, the issue of climate refugees is not regulated by international law, the legal status of climate refugees is not clear, and climate refugees need cross-border migration. An entry application is required for cross-border migration to another country, but for the protection of climate refugees is not covered under international law [10], it means that countries have no international obligation to agree the entry application. As a result, climate refugees may be defied entry and thus unable to move across borders. In addition, stowaways who cannot enter other countries through normal channels, due to inevitable force and other factors, cannot enjoy their basic rights in other countries and their human rights cannot be guaranteed. Thus, it is important to give climate refugees legal status under international law. On the other hand, the existing international law is not clear about the distribution of refugee protection responsibility. Existing protection is limited to humanitarian aid, but climate refugees are essentially a human rights issue. According to the existing international law, the protection of human rights is the unshirkable responsibility of each country, and when laws are formulated or policy measures are conducted, human rights violations cannot occur [4]. It should be noted that there are no detailed regulations on how to allocate responsibilities and who should bear obligations under international law. The content of the existing international law is only a principle without specific conducting measures.

Secondly, the existing international migration system cannot provide effective protection for climate refugees. A large quantity of references suggests that regional migrant protection systems may work better in dealing with climate refugees. Regional Immigrant Protection System [11] is a directive of European countries specifically for immigrants, namely the Temporary Protection Directive, which plays a good role in implementing refugee protection issues, but it has regional restrictions. Refugees have the right to move to any other European country if they are citizens of the European region. But because the scope of the protection is limited to Europe, other continents such as Asia are not covered by the Temporary Protection Directive, and this protection system has some drawbacks. Regional measures, for example, are often temporary, entering another country on a temporary basis and not leaving the home country. This means that refugees can return to their countries of origin[3], which is a limitation that does not apply to existing climate refugees. In addition, international conventions on migration cannot provide international protection for migrants. All the contents and provisions of international conventions are initiated and principled [4], while the initiative international conventions have little impact on the protection of refugees' human rights.

Thirdly, the judicial reliefs for climate refugees are not perfect. From the perspective of the current international environment and the existing judicial relief methods. it is difficult for the plaintiff to prove the burden of proof. Especially for the infringement cases involving human survival rights and development rights. It is difficult for the plaintiff to provide effective evidence to prove that the result is directly related to the defendant's behavior [4]. It is more difficult in this situation that climate refugees need to provide evidence as plaintiffs because of the particularity of climate refugees. It is a tough process to prove the causal relationship between greenhouse gas emission in one country and the impact of climate change in another country because it is complex and variable. Therefore, judicial relief presents a very unfavorable situation for climate refugees.

## **6. Suggestions on improving the protection of climate refugees**

Climate refugees are essentially no different from traditional refugees. First of all, climate refugees, like traditional refugees, are subjectively panic being difficult to protect their survival and human rights. Traditional refugees fear for political reasons, while climate refugees fear that environmental changes threaten their basic right to survive. Secondly, both traditional refugees and climate refugees are forced to choose to seek asylum across national borders. In the process of migration, climate refugees are far away from their own country and separated from the asylum of their own government,

and it is difficult to enter other countries through legal channels. Integrating them into the refugee protection system is a relatively fair means of protection at present.

### **6.1 Set specific provisions on climate refugees through international legislation**

All states should attach importance to the existence of climate refugees and make a unified definition to clarify their rights. If simply modifying the original convention on refugees, that is, adding climate factors to the causes of refugees is indeed the simplest definition method, but it may undermine the system of the original convention. After all, climate refugees have different characteristics from traditional refugees, and the protection measures should not be exactly the same in the implementation process. In terms of practice, the current allocation of funds and relief personnel to climate refugees also limits the protection of them, which cannot be equal to convention refugees. Therefore, a separate International Convention on climate refugees is the optimal choice. The International Convention on climate refugees should clearly define and define the specific identification methods and processes for this group, and enumerate the rights they have.

### **6.2 Clarify the responsibilities of international actors for climate refugee protection**

Further to combine the world as a whole, only by helping each other can achieve long-term stability and harmonious development. The essay believes that countries around the world should be promoted to actively undertake the obligation of climate refugee protection and reception. The most essential thing is to properly set the obligations of countries to receive climate refugees. At present, whether to receive refugees or not mainly depends on the free distribution of the state, which means that receiving climate refugees is a kind of moral assistance. In this situation, even if the convention makes detailed provisions on the specific rights of climate refugees, it cannot be implemented. Only by clarifying the receiving obligations of all countries can the protection of climate refugees be truly guaranteed. Specifically, on the one hand, the premise of effective protection of climate refugees is to play the role of sovereign states. Sovereign states not affected by climate can provide basic living and development space for climate refugees by sharing their inherent territory, which is the first step to ensure the rights of climate refugees. Sovereign states can formulate relevant rules and regulations on the basis of maintaining their own development, so as to ensure that climate refugees can enjoy the same treatment as local citizens in other countries. On the other hand, international organizations should play their due role as well. Compared with sovereign states, international organizations have stronger action power. Since most international organizations are composed of States, that is, intergovernmental international organizations, the decisions made are usually the result of discussions between sovereign states, and the specific measures they implement are more acceptable to all states.

### **6.3 Establishment of climate refugee relief fund**

UNHCR plays an irreplaceable role in the protection of climate refugees. But in the current practice of assisting refugees, UNHCR often finds it difficult to effectively protect refugees due to lack of funds. If such problems arise in the protection of traditional refugees, the relief of climate refugees could be more arduous. Most of the existing climate refugee relief funds are used to protect people displaced by climate change in a country, and there are few to protect transnational displaced people [11]. Therefore, trying to set up a special relief fund to safeguard the legitimate rights and interests of climate refugees through the forces of the international community. The Green Climate Fund has been launched at the Durban climate conference in South Africa; The Cancun agreement also stipulates the management method of the fund, that is, after three years of management by the world bank, it will be managed by a special committee. It is a feasible measure to use part of the funds and personnel of the fund for special protection of climate refugees, and its implementation is faster than the establishment of a new fund. New funds can also be established to expand the scope of fund-raising. Sovereign states, international organizations and individuals can make voluntary contributions. Of course, countries should be forced to pay part of the funds in accordance with the "principle of common but differentiated responsibilities".

The identification of climate refugees, the collection of management funds, the implementation of national responsibilities, the supervision of national protection and the publicity of climate refugee protection should be carried out by special organizations. Existing international environmental protection organizations can be used or new international organizations can be established, which can greatly promote the protection of climate refugees. In terms of the use and distribution of funds, as climate refugees are caused by irreversible environment reasons, it may be more effective to use the funds for the construction of basic living facilities and the maintenance of public resources for climate refugees. This would not only conducive to safeguarding the legitimate rights and interests of climate refugees, but also conducive to strengthening the willingness of refugee receiving countries to receive them. In terms of the disciplinary path of violating the fund operation, an internal disciplinary mechanism can be established. Substantial penalties could be imposed on the fund managers or relevant countries for violating the fund operation mechanism, so as to give full play to the guarantee role of the fund to the greatest extent [12].

#### **6.4 Reversion of the burden of the proof**

In 2014, Ioane Teitiota, a Kiribati citizen who had emigrated to New Zealand for many years, applied to the New Zealand court for recognition of his climate refugee status. The New Zealand immigration and protection court and the high court held that it was not in line with the connotation of convention refugees. Only those who might be persecuted after returning home could obtain refugee status [13]. But Teitiota was no different from other Kiribati citizens, the Kiribati government was already trying to take measures to avoid the negative effects of climate change, and their situation was not up to the level that needs the protection of the New Zealand government. The judge also considered that if the petition was supported, other regions would follow suit and flood into New Zealand for protection, which would put great pressure on the country. In similar cases, applications for refugee status due to climate reasons were rejected without exception. It can be seen that in current practice, climate cannot be a factor in determining permanent residence or refugee status. The current international legislation makes judicial relief difficult. If you apply for compensation for climate change damage, you must prove that there is a causal relationship between the emission of greenhouse gases by one country and the climate deterioration of another country. This burden of proof is indeed a bit difficult for the plaintiff. Therefore, it can be established that the defendant should bear the burden of proof to prove that the emission of greenhouse gases in their own countries does not lead the plaintiff to become a climate refugee.

### **7. Conclusions**

At present, under the framework of international law, the legal status of climate refugees is still not clear, and the protection of their rights is facing many difficulties. There is a lack of specific legislation in the international legal system to protect the rights of climate refugees; the existing international migration regime is also difficult to provide effective protection to climate refugees; and it is difficult for climate refugees to prove their case as plaintiffs in judicial remedies. These problems need to be solved urgently. With the overall number of climate refugees continuing to rise in the future, it is very important to speed up the establishment of a sound climate refugee protection mechanism. Taking into account what is discussed above, the essay believes that sovereign states, international organizations and other international entities should automatically take the responsibility of protecting climate refugees, formally bring climate refugees into the scope of legislation. The principle of "common but differentiated" should be used to clarify the scope of responsibility of various international entities. It should also set up a special relief fund for climate refugees and reverse the burden of proof in prosecution. It is undeniable that the protection of climate refugees will continue to attract the attention of the international community in the future. All international entities should work together to promote the construction of the international relief system for climate refugees and jointly improve the governance capacity and level of climate refugees.

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