

The Point of No Return - Exploring Law on Cross-Border Displacement in the Context of Climate Change

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Climate Change and Displacement

The First Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) noted that the greatest single impact of climate change might be on human mobility (Intergovernmental Panel on Climate Change 1990). In 2007, the Fourth Assessment Report of the IPCC authoritatively established that human induced climate change is accelerating and already has severe impacts on the environment and human lives (Intergovernmental Panel on Climate Change 2007). A significant impact of climate change is the increase in the frequency and severity of climate-related hazards. Hazards combined with vulnerability can result in disasters (International Strategy for Disaster Reduction 2004). The overall trend shows that the number of recorded natural disasters has doubled from approximately 200 to over 400 per year over the past two decades and the number of people reported affected has reached an unprecedented high, annual average of 231 million people, of whom 98 per cent are affected by climate-related disasters (Emergency Events Database). This may be "the new normal" (Holmes 2008).

There may be a risk in focusing on protection of displaced persons in a climate change context, namely that we put less effort into *preventing* climate change, disasters and displacement. For example, the government of Tuvalu does not want relocation to feature in international agreements because of its fear that if it does, industrialised countries may simply think that they can solve problems like rising sea levels by relocating affected populations rather than reducing greenhouse gas emissions (Inside Story 2009). It is important to stress that the international community's responsibility regarding climate change and displacement has at least three main elements.

First, mitigation of climate change is a must. This is a question of preventing displacement from occurring in the first place, and all authorities

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and international actors are obliged to respect and ensure respect for their obligations under international law so as to prevent and avoid conditions that might lead to displacement (see for example 1998 UN Guiding Principles on Internal Displacement, Principle 5). Mitigation of climate change is an obligation under climate change law (see for example the 1992 UN Framework Convention on Climate Change article 2 a). The broader concept of sustainable development also limits some rights to development so as not to cause damage to the environment of other states (see for example the 1992 Rio Declaration on Environment and Development, Principle 2; and McAdam and Sau 2008). Similarly, the no-harm rule in international law requires states to prevent damage and to minimise the risk of damage to other states (Verheyen and Roderick 2008).

Second, the international community has a responsibility to support and strengthen states' adaptation to climate change (see for example the 2007 Bali Action Plan article 1 c). This is also a question of preventing displacement. While reducing the disaster risk can reduce the need to move, however, some people are displaced now and are likely to be displaced in the near future by climate change and disasters. Adaptation action must include the protection of those who are displaced.

Third, the international community therefore has a responsibility to support protection of internally displaced persons but also provide substitute protection to those displaced across borders.

While there is not a monocausal relation between climate change, disasters and displacement, the existence of a clear link between the phenomena is increasingly recognised (Kolmannskog 2008a). Voluntary migration can be a form of coping or adaptation, but climate change and disasters also contribute to forced displacement as a survival strategy. The current projections for the number of people who will be displaced by climate change vary wildly. According to a recent study by OCHA and IDMC, millions are already displaced by climate-related disasters each year, disasters which are increasing both in frequency and severity due to *inter alia* climate change (OCHA and IDMC 2009).

A typology of climate change, displacement and protection has been developed by the Inter-Agency Standing Committee (IASC) Task Force on Climate Change (Informal Group on Migration/Displacement and Climate Change of the IASC 2008). One type is displacement linked to sudden-onset disasters, such as floods and storms. According to the OCHA-IDMC study, more than 20 million people were displaced as a result of climate-related sudden-onset disasters in 2008.

A second type is displacement linked to slow-onset disasters, such as drought, which can seriously impact on people's livelihoods. According to the OCHA-IDMC study, more than 26,5 million people were reported affected by drought in 2008, but estimates for slow-onset disaster-related displacement are not readily available, and determining the element of force and ascribing causation is much more complex than in sudden-onset disasters. A particular slow-onset disaster case, which is separated out as a

third type in the IASC typology, is that linked to sea-level rise and resulting in loss of state territory as in the case of small island states.

A third – the fourth in the IASC typology – type is displacement linked to conflict. According to the OCHA-IDMC study, 42 million people were living in forced displacement due to conflict and persecution in 2008. According to some researchers, climate change impacts such as drought may have consequences for conflict, for example by making resources scarcer (German Advisory Council on Global Change, 2008; Black R. et al., 2008).

In addition to those mentioned in the IASC typology, we could also add another type linked to response measures to mitigate or adapt to climate change. For example, biofuel-projects and forest conservation could lead to displacement (IDMC 2007), and climate change may increase evacuations and relocations (Kolmannskog 2009a).

Finally, it is important not to overlook those who are not displaced. While some remain because of resilient capacity, others may in fact be *forced to stay*. They do not have the resources to move (Black R. et al., 2008). Displacement will result in particular needs, but it is important to stress that many of those left behind after a disaster may also have very serious protection concerns and there is a need for an inclusive approach to all affected.

While there may be several other effects of climate change on displacement, this article uses the IASC typology focusing on disasters and conflict as a background. While climate change is a point of departure, much of this article will also apply to those displaced by events or processes less related to climate change, and the terms “disaster” and “conflict” are used broadly. The end results for someone fleeing an earthquake, tsunami or cyclone are often the same, namely displacement with particular protection needs.

In all the four types relating to displacement discussed above, the displacement may be internal or cross-border, temporary or permanent. While it is likely that the majority of the displaced remain within their country of origin and the 1998 UN Guiding Principles on Internal Displacement applies to them, some may cross internationally recognised borders (Informal Group on Migration/Displacement and Climate Change of the IASC 2008). In the following, the focus is on cross-border displacement and protection possibilities within existing instruments and mechanisms. A main contribution of this article is the clarification that some of the displaced should indeed be considered refugees and a proposal that considerations relating to the possibility, permissibility and reasonableness of return may provide a starting point to strengthen or even expand existing instruments and mechanisms to address the cross-border protection gap.

Cross-Border Relocation, Resettlement and Statelessness

While there is a refugee resettlement regime built on principles of solidarity and burden sharing, there is no established international law,

policy or practice on cross-border relocation and resettlement in the context of climate change and disasters. Involuntary relocation can only be a last solution (Kolmannskog V 2009a; Barnett J and Webber M 2009). In some extreme cases, such as in the case of potential statelessness, there may be a need for a cross-border relocation. The President of the Maldives has announced that they want to buy land in another country (Guardian 2008). The government of Kiribati is trying to secure enhanced labour migration options to Australia and New Zealand, but they also recognise that migration schemes will eventually need to be accompanied by humanitarian options and are keen to secure international agreements in which other governments recognise that climate change has contributed to their predicament and acknowledge relocation as part of their obligation to assist (Inside Story 2009). As already mentioned, the government of Tuvalu, on the other hand, does not want relocation to feature in international agreements. There are references to relocation in the negotiating text for a new climate change agreement (Kolmannskog V 2009b).

It is still unclear whether people who lose their state due to climate change impacts, such as the “sinking” island state citizens, would be considered stateless. According to the 1954 Convention Relating to the Status of Stateless Persons article 1, a stateless person is “a person who is not considered as a national by any state under the operation of its law.” According to McAdam, the “sinking” island citizens would not be protected because the definition of statelessness is premised on the denial of nationality through the operation of the law of a particular state, rather than through the disappearance of a state altogether (McAdam and Sau 2008). Furthermore, current legal regimes are hardly sufficient to address their very specific needs, including relocation.

The Office of the UN High Commissioner on Refugees (UNHCR) has been mandated to engage in preventing and reducing statelessness as well as to protect stateless persons (see GA/RES/50/152, 9 February 1996, paras.14-15). In a recent submission to the climate change negotiations, UNHCR recommends multilateral comprehensive agreements that could provide where and on what legal basis populations affected by climate change would be permitted to move and their status (UNHCR 2009a). Stateless refugees are protected by the 1951 Convention relating to the Status of Refugees.

The Refugee Regime

According to article 1A of the 1951 Convention relating to the Status of Refugees, as modified by the 1967 Protocol, a refugee is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country or who, not having a nationality and being outside the country of his former

habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Displacement in the context of climate change and disasters was not considered by the drafters when formulating this definition. Nonetheless, some people displaced across borders in the context of climate change could qualify for refugee status and protection. Serious or systematic human rights violations are normally considered to amount to persecution (UNHCR 1992 para 53). Experience shows that situations of both natural disasters and conflict are prone to human rights violations. For example, the recognition of the human rights, discrimination and persecution aspect in natural disaster situations, in particular in the aftermath of the 2004 Asian Tsunami, led to the development of the IASC Operational Guidelines on Human Rights and Natural Disasters. The 1951 Convention as well as UNHCR's mandate, will as a minimum be applicable in situations where the victims of natural disasters flee because their government has consciously withheld or obstructed assistance in order to punish or marginalize them on one of the five grounds (UNHCR 2009b). In addition, there are often several reasons why a person moves, and convention refugees may flee in the context of disasters while the well-founded fear of persecution exists independently (Kolmannskog V 2008a).

There are regional instruments with broader definitions, but none explicitly mention climate change or disasters as a reason to grant refugee status. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa article 1.2 includes as refugees persons forced to flee due to "events seriously disturbing public order." Although there have been examples of practice to permit people displaced by disasters across borders to remain temporarily, it seems that in most cases African governments have not characterised this as an obligation arising under the OAU Convention (Edwards A 2006). In Latin America, the 1984 Cartagena Declaration on Refugees, which has inspired the legislation of many states in the region, also includes as refugees in article 3 persons forced to flee due to "other circumstances which have seriously disturbed public order." However, the International Conference on Central American Refugees does not understand the "other circumstances" to include natural disasters (CIREFCA 1989). Jurisprudence based on these regional definitions is scarce, however, and there is a need to develop doctrine and guidance to states on the interpretation of these criteria. We may also see a change in practice and interpretation with the increasing frequency and severity of disasters and ensuing displacement.

The Possibility, Permissibility and Reasonableness of Return

Since many of the cross-border displaced persons will not qualify as either stateless persons or refugees, some advocates for their protection have suggested amending the 1951 Convention. But any initiative to modify the refugee definition would risk a renegotiation of the Convention, which,

in the current political situation, may undermine the international refugee protection regime altogether (Kolmannskog V 2008a; and UNHCR 2009b). Some solution to the normative protection gap may be found in the broader human rights law and considerations of the possibility, permissibility and reasonableness of return.

We may see cases where return of a person to his or her place of origin at some point becomes *impossible* due to climate change and disasters. The “sinking” island states may be an extreme example. In other cases disasters are likely to affect infrastructure, which may be necessary to effectuate a return.

Forced return may also be *impermissible* either because it is considered a direct breach of a fundamental right or considered to be a more indirect breach of such a right. (There is also a prohibition of collective expulsion, i.e. of decisions to collectively send persons back, without assessing their individual situation, in for example the 1950 European Convention on Human Rights and Fundamental Freedoms Protocol 4 article 4.) The principle of *non-refoulement* in the Convention relating to the Status of Refugees article 33(1) stipulates a prohibition of expelling or returning (“refouler”) a refugee “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a social group or political opinion.” This fundamental principle is widely regarded as being a part of customary international law and has counterparts in human rights law. Since many of the displaced in the context of climate change will not qualify as refugees, the focus here is on the broader human rights principle.

In human rights law, *non-refoulement* is an absolute and general ban on sending a person, independent of conduct or status, to places where they risk certain rights violations. The 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment article 3(1) states that “[n]o State Party shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” According to case-law, the 1950 European Convention on Human Rights and Fundamental Freedoms article 3, the ban on torture and inhuman and degrading treatment, implies a duty not to return a person to a place where they risk exposure to the prohibited treatment (see for example *Soering v. the United Kingdom*, application no. 14038/88, 7 July 1989; and *Chahal v. the United Kingdom*, application no. 22414/93, 15 November 1996). There are also statements to a similar effect by the Human Rights Committee regarding the 1967 International Covenant on Civil and Political Rights article 7 (*Chitat Ng v. Canada*, Communication No. 469/1991, UN Doc CCPR/C/49/D/469/1991). Most agree that the prohibition on torture is a peremptory norm, but there is disagreement regarding the extent to which one is protected by customary law against lesser ill-treatment and human rights violations.

No matter how much a disaster has been induced or created by humans, it is doubtful, to say the least, if it can meet the international definition of torture as the infliction of severe pain or suffering by a public official for an enumerated purpose such as punishment or obtaining a confession (see also McAdam and Sau 2008). It could also seem far-fetched to call a disaster cruel, inhuman or degrading treatment. In some cases, rather than claiming that a person is returned to ill treatment, the return itself could arguably constitute the ill treatment and perhaps even torture. Let us illustrate with a rather extreme example: How should we consider a case where a public official leaves a person to fend for himself with hardly any means in the middle of a desert? There is a continuum between direct and indirect human rights violations.

Generally, courts have carefully circumscribed the meaning of “inhuman or degrading treatment” so that it cannot be used as a remedy for general poverty, unemployment, or lack of resources or medical care except in the most exceptional circumstances (see for example *HLR v. France* (1997) 20 EHRR 29; and McAdam and Sau 2008), but there are cases where the concept of “inhuman treatment” has been interpreted rather progressively. In the case of *D v. the United Kingdom* (application number 30240/96, 2 May 1997) the European Court of Human Rights considered that returning an HIV-infected person to St. Kitts would amount to “inhuman treatment,” due to *inter alia* the lack of sufficient medical treatment, social network, a home or any prospect of income. During and after the hurricane Mitch in Central-America in 1998 homes and vital infrastructure was destroyed or damaged hindering the provision of basic services such as clean water, electricity and food. One could consider that persons with particular vulnerabilities are protected against return to such circumstances. In *D v. the United Kingdom* the Court reserves to itself “sufficient flexibility to address the application of that Article in other contexts which might arise”, and even when “the source of the risk of proscribed treatment in the receiving country stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country” it is not prevented from scrutinising a claim under article 3. Clearly, law relating to the permissibility of return is relevant in a climate change context.

It may also be considered that return in some cases is *unreasonable*. The circumstances in *D v. the United Kingdom* were categorised by the Court as “very exceptional”, and subsequent case law has interpreted the possibilities offered by the case quite restrictively. In for example *Bensaid v. the United Kingdom* (application number 44599/98, 6 February 2001) the applicant was suffering from schizophrenia, but was not protected against return to Algeria. The risk that the applicant would, if returned, suffer treatment reaching the threshold of article 3 was “less certain and more speculative” than in *D v. the United Kingdom*. However, there was a separate opinion joined by two other judges, clarifying that it was only with “considerable hesitation” that they had found that return would not violate article 3, and, there exists “powerful and compelling humanitarian

considerations in the present case which would justify and merit reconsideration by the national authorities of the decision to remove the applicant to Algeria.” Not only strict permissibility, but also a more discretionary reasonableness of return, would be relevant for states to consider in the context of climate change.

Climate change and disasters have negative effects on the realisation of several human rights (OHCHR 2009). In theory any human rights violation under systems such as the European Convention on Human Rights could give rise to a *non-refoulement* obligation (*R v. Special Adjudicator ex parte Ullab*, 2004 UKHL 26, paras 24-25). Importantly, the right to life is non-derogable and has very limited exceptions (article 2(2) and article 15(2)). Hence, a person should not be sent back where there is a danger to his or her life. In addition one could apply the *non-refoulement* of refugee law (which includes protection of life) by analogy. Climate change and disasters also effect other human rights such as the right to food, the right to water, the right to health and the right to adequate housing (OHCHR 2009). Except for absolute rights such as the right to life and the ban on torture and certain ill treatment, most human rights provisions permit a balancing test between the interests of the individual and the state. In light of the “new normal” of climate change with more frequent and severe disasters, however, it can no longer be “virtually impossible for an applicant to establish that control on immigration was disproportionate to any breach of such human rights” (*Kacaj v. Secretary of State for the Home Department* [2002] EWCA Civ 314, para 26, referred to in McAdam and Sau 2008). These rights will often also be linked to the right to life, and could arguably also be linked to the ban on inhuman and degrading treatment. And, as already mentioned, even if return is not a strictly impermissible, it may be considered unreasonable.

Related to the question of permissibility and reasonableness of return is the principle of return in safety and dignity. International treaties, UN resolutions, UNHCR handbooks and the High Commissioners’ speeches indicate that important elements of the norm include participation, voluntariness, restoration of rights and sustainability of returns (Bradley 2007).

If return is not possible, permissible or reasonable due to circumstances in the place of origin and personal conditions including particular vulnerabilities, a person should receive protection regardless of the initial cause of movement. The Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons has argued that in the context of climate change such persons could in fact be considered displaced (Kälin W 2008b). In cases of slow-onset disasters it would not be so much a question of why someone left initially, but rather whether the gradual degradation has reached a critical point where they cannot be expected to return *now*. In the annotations to the definition of internally displaced persons in the 1998 UN Guiding Principles on Internal Displacement, people who have left voluntarily to another part of their country but cannot return to their homes because of events occurring during

their absence that make return impossible or unreasonable, are also considered displaced (Kälén W 2008a). To a certain degree this line of thinking is also acknowledged in traditional refugee law with the recognition of *sur place* refugees who were not refugees when they left their country, but who became refugees at a later date due to circumstances arising in the country of origin or as a result of their own actions.

Naturally, it is the present and future risk of rights violations, rather than the past, which is crucial in determining protection need. Where this need is acknowledged, a clear protection status should also be granted. Existing human rights law, including the *non-refoulement* principle, does not provide for a right to stay nor dictate the content of any protection, but it must include non-rejection at the border to be effective and can provide a basis for some form of complementary protection.

State Practice and Complementary Protection in Natural Disaster Cases

Complementary forms of protection have been granted to persons who do not fit so well in the refugee definition, but nonetheless are considered to be in need of substitute protection. The conditions to obtain and the content of complementary protection depend on national and regional legislation. The rights are often similar to or somewhat less favourable than those afforded refugees according to the 1951 Convention. States have granted protection in several cases of natural disaster displacement. This may be either because they consider return impermissible due to human rights and *non-refoulement*, or because they consider return unreasonable and therefore see protection as a humanitarian gesture and within their sovereign discretion. In any case this practice relates to the question of return and can be built upon to address the normative protection gap.

The people of Tuvalu and Kiribati are not comfortable with the media and public opinion labelling them “climate refugees” (Inside Story 2009). They say it is the actions of other countries that will ultimately force their movement, not the actions of their own leaders. We should not assume that people displaced by climate change and disasters will automatically and permanently lose the protection of their state of origin. The responsibility of neighbouring and more distant states receiving the displaced should come in support of that of the state of nationality. The American Temporary Protected Status mechanism seems to reflect such thinking. In 1990, Temporary Protected Status (TPS) was adopted as the statutory embodiment of safe haven in the USA for those who do not qualify as refugees but are nonetheless reluctant to return to potentially dangerous situations. According to the 1965 Immigration and Nationality Act section 244, the nationals of a foreign state can be designated for such status if three conditions are fulfilled:

- 1) There has been an environmental disaster in the foreign state resulting in a substantial, but temporary, disruption of living conditions;
- 2) The foreign state is unable, temporarily, to handle adequately the return of its own nationals; and
- 3) The foreign state officially has requested such designation.

In the aftermath of the hurricane Mitch in 1998, the USA took an unprecedented decision to grant TPS to Hondurans and Nicaraguans and other Central Americans. 81,875 Hondurans and 4,309 Nicaraguans benefited from TPS in the first years (Wasem and Ester 2006). The repeated US extensions of TPS for Hondurans and Nicaraguans is commendable, but it does not change the fact that the individuals in question are still residing in the country on a temporary basis ten years after the disaster struck. The TPS provision states that a bill or amendment that provides for the adjustment to lawful temporary or legal permanent resident (LPR) status for anyone receiving TPS requires a supermajority vote in the Senate (i.e., three-fifths of all Senators) voting affirmatively (Wasem and Ester 2006). Legislation to allow Hondurans and others to adjust to LPR status received considerable attention in past Congresses, but was not enacted (Wasem and Ester 2006).

Only a few of the other nationalities that appear to qualify for TPS have been accepted. The wide discretion in designating countries for TPS raises a concern that the failure to designate a country may be due to domestic politics, ideology, geographical proximity to the United States, foreign policy interests, the number of nationals present in the United States who would benefit from a designation and other factors unrelated to human rights protection (Frelick and Kohlen 1995). Furthermore, in extreme disaster scenarios, the state of origin may be unable to even advocate with other states on behalf of its citizens in distress. There are also cases in which displacement relates to a certain unwillingness to protect on part of the state of origin, including even active human rights violation. While the American model recognises a role for the state of origin, it is not a strong, legal obligation to protect the individual. It is facultative; a state *can* be designated for such status. It is a deal between the USA and another *state*, not first and foremost a duty to the individual.

In Finland and Sweden another model has been chosen. While they emphasise that the first alternative in natural disasters is internal flight and international humanitarian help, the countries also recognise that complementary protection may be necessary (Kolmannskog V and Myrstad F 2009). There are provisions in both countries' Aliens Acts to extend either temporary or permanent protection to foreign nationals who cannot return safely to their home country because of an "environmental disaster" (see for example the Swedish Aliens Act 2005:716, Chapter 4 Section 2; Kolmannskog V and Myrstad F 2009). The content of such protection is similar to refugee protection and regular citizen standards, including for example the right to work.

While other countries may not have an explicit recognition of such displacement in their legislation, some have an inclusive practice of temporary or discretionary “humanitarian” stay. From 2001 to 2006 there was a presumption in Denmark that families with young children, and eventually also landless people, should not be returned to Afghanistan due to the drought there (Kolmannskog V and Myrstad F 2009). In non-EU countries there is also increasing attention being paid to the topic. Norway recognises the need to be able to grant (possibly temporary) residence permits to people who come from an area affected by a natural disaster (OT.PRP. 75 (2006-2007), para 38(c); and Kolmannskog V and Myrstad F 2009).

State Practice and Complementary Protection in Conflict Cases

In addition to sudden-onset and slow-onset disaster displacement, climate change and disasters could also contribute to increasing conflict and related cross-border displacement. People fleeing generalised violence, including climate-related violent conflict, are often recognized as refugees by many states and by UNHCR. In other states they benefit from complementary forms of protection on the basis of human rights law, including at a minimum protection against forcible return. Regional instruments like the OAU Convention and the Cartagena Declaration include as refugees persons fleeing from “generalised violence.” The EU Temporary Protection Directive provides for temporary protection in mass-influx situations of persons fleeing armed conflict, and the EU Qualification Directive extends subsidiary protection if there is “a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict” (article 2 e, cf. 15 c). The tension between the criteria “individual threat” and “indiscriminate violence” has been the subject of some debate. According to the Advocate General Maduro of the European Court of Justice, the standard of proof for demonstrating the individual nature of the threat is lower than under 15 a (death penalty) and b (torture or inhuman or degrading treatment or punishment); and the more severe the violence, the less is the need for an applicant to demonstrate an “individual threat” (*Elgafaji v. (the Dutch) Staatssecretaris van Justitie*, case C-465/07, 9 September 2008). Apart from those of the OAU and the EU many countries do not yet recognize people fleeing generalised violence as refugees or persons qualifying for complementary protection. This area of law therefore also needs further harmonisation and binding force. As in the disaster displacement cases, one could build further on human rights and *non-refoulement*, which guide law on when return is permissible and reasonable and when a protection status should be granted.

Conclusion and Recommendations

This paper has explored law and policy on cross-border displacement in the context of climate change. Some displaced persons may qualify as either stateless persons or refugees and states should recognise them as such. States should also ensure that migration management systems provide for the entry and protection of others in need. The human rights regime and complementary protection mechanisms can be built on for such solutions. While bilateral deals such as those under the American TPS, is one option, the receiving states must also use their sovereign right to grant safe haven in accordance with basic human rights commitments. If return is not possible, permissible or reasonable due to circumstances in the place of origin and personal conditions including particular vulnerabilities, a person should receive protection. Temporary or more permanent protection would of course also alleviate pressure on a state struggling with disasters or violent conflicts. As many of the domestic approaches are discretionary and vary greatly, there is a need to address these questions at a regional and international level, but states should also already start adapting their national laws to better respond to climate change and cross-border displacement. Finally, since most of the displaced persons remain in developing countries, the rich, polluting countries must also contribute to protection by supporting these countries.

Reference

- Barnett J and Webber M 2009 Accommodating Migration to Promote Adaptation to Climate Change, a policy brief prepared for the Secretariat of the Swedish Commission on Climate Change and Development and the World Bank World Development Report 2010 team, available on <http://www.ccdcommission.org/Filer/documents/Accommodating%20Migration.pdf>
- Black, R. et al., 2008, Demographics and Climate Change: Future Trends and their Policy Implications for Migration, Development Research Centre on Migration, Globalisation and Poverty, University of Sussex, Brighton, available at http://www.unicef.org/socialpolicy/files/Demographics_and_Climate_Change.pdf
- Bradley 2007 Return in Dignity: A Neglected Protection Challenge, RSC Working Paper No. 40, University of Oxford, available at <http://www.rsc.ox.ac.uk/PDFs/RSCworkingpaper40.pdf>
- CIREFCA 1989 International Conference on Central American Refugees, United Nations High Commissioner for Refugees, Document CIREFCA/89/9 (English Version)
- Edwards A 2006 Refugee Status Determination in Africa, *RADIC*, 14.
- Emergency events database at www.emdat.be/
- Frelick and Kohlen 1995 Filling the gap: Temporary Protected Status, *Journal of Refugee Studies*, 8(4), p 339-363.
- Guardian 2008 Paradise almost lost: Maldives seek to buy a new homeland, 10 November 2008, available at

- <http://www.guardian.co.uk/environment/2008/nov/10/maldives-climate-change>
Holmes 2008, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Opening Remarks at the Dubai International Humanitarian Aid and Development Conference and Exhibition “DIHAD 2008 Conference”, 8 April 2008, available at: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/YSAR-7DHL88?OpenDocument>
- IDMC 2007 *Resisting Displacement by Combatants and Developers: Humanitarian Zones in North-West Colombia*. Geneva: Internal Displacement Monitoring Centre.
- Informal Group on Migration/Displacement and Climate Change of the IASC 2008, Climate Change, Migration and Displacement: Who will be affected?: Working paper submitted by the informal group on Migration/ Displacement and Climate Change of the IASC - 31 October 2008, available at <http://unfccc.int/resource/docs/2008/smsn/igo/022.pdf>
- Inside Story 2009 We aren't refugees, 29 June 2009, available at <http://inside.org.au/we-arent-refugees/>
- Intergovernmental Panel on Climate Change 1990 *Climate Change: The IPCC Scientific Assessment: Final Report of Working Group I*. New York: Cambridge University Press.
- Intergovernmental Panel on Climate Change 2007 *The Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, available at www.ipcc.ch
- International Strategy for Disaster Reduction 2004 Terminology: Basic terms of disaster risk reduction, available at <http://www.unisdr.org/eng/library/lib-terminology-eng%20home.htm>
- Kälin W 2008 Guiding Principles on Internal Displacement: Annotations, *Studies in Transnational Legal Policy*, No. 38. Washington DC: The American Society of International Law and The Brookings Institution – University of Bern Project on Internal Displacement, available at <http://www.asil.org/pdfs/stlp.pdf>
- Kälin W 2009 *Protection of Internally Displaced Persons in Situations of Natural Disasters*, Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, to the Human Rights Council, tenth session, A/HRC/10/13/Add.1, 5 March 2009.
- Kolmannskog V 2008a *Future floods of refugees*, Oslo: Norwegian Refugee Council, available at <http://www.nrc.no/arch/img/9268480.pdf>
- Kolmannskog V 2008b Climates of Displacement, *Nordic Journal of Human Rights*, 26(4), p 302-320
- Kolmannskog V and Myrstad F 2009 Environmental Displacement in European Asylum Law, to be published in *European Journal of Migration and Law*.
- Kolmannskog V 2009a Dignity in Disasters and Displacement – Exploring Law and Policy on Internal Displacement, Relocation and Return in the Context of Climate Change, article to be published in the book *The Changing Environment for Human Security: New Agendas for Research, Policy, and Action*, Global Environmental Change and Human Security Project.
- Kolmannskog V 2009b Towards a Humanitarian Climate Change Agreement, *Forced Migration Review* 33, September 2009, available at <http://www.fmreview.org/FMRpdfs/FMR33/72.pdf>
- Mahanirban Calcutta Research Group 2006, *Voices of the Internally Displaced in South Asia*. Kolkata: Mahanirban Calcutta Research Group, available at <http://www.mcrp.ac.in/Voices.pdf>
- McAdam and Sau 2008 An Insecure Climate for Human Security? Climate-Induced Displacement and International Law, Sydney Centre Working Paper No. 4. University of Sydney, available at

<http://www.law.usyd.edu.au/scil/pdf/SCIL%20WP%204%20Final.pdf>

OCHA and IDMC 2009 *Monitoring Disaster Displacement in the Context of Climate Change*, available at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/12E8C7224C2A6A9EC125763900315AD4/\\$file/monitoring-disaster-displacement.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/12E8C7224C2A6A9EC125763900315AD4/$file/monitoring-disaster-displacement.pdf)

OHCHR 2009 *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc A/HRC/10/61, New York: United Nations, available at <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1116540>

UNHCR 1992 *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UN Doc HCR/IP/4/ENG/Rev.1. Geneva: UNHCR, available at <http://www.unhcr.org/publ/PUBL/3d58e13b4.pdf>

UNHCR 2009a *Climate Change and Statelessness: An Overview*, submitted by the United Nations High Commissioner for Refugees (UNHCR) supported by the International Organization for Migration (IOM) and the Norwegian Refugee Council (NRC) to the 6th session of the Ad Hoc Working Group on Long-Term Cooperative Action (AWG-LCA 6) under the UN Framework Convention on Climate Change (UNFCCC) 1 to 12 June 2009, Bonn, Germany.

UNHCR 2009b *Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective*, 14 August 2009, available at:

<http://www.unhcr.org/refworld/docid/4a8e4f8b2.html>

Verheyen R and Roderick P 2008 *Beyond Adaptation*, WWF-UK, available at http://assets.wwf.org.uk/downloads/beyond_adaptation_lowres.pdf

Wasem and Ester 2006 *Temporary Protected Status: Current Immigration Policy and Issues*, CRS Report for Congress, available at <http://trac.syr.edu/immigration/library/P332.pdf>