

## **The Climate-Migration Nexus: An International Law Perspective**

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Thank you very much for having me here, as well. It's a pleasure. I've learned a lot this morning and this afternoon, and it's a huge responsibility to be the last speaker before the comments today. Some of what I wanted to say today has already been said, but I think that I have a few meaningful things to add, so I'm going to speak about the international law perspective. What can international law do to address this issue that Nina and John have explained before?

I will start with some general observations. The first is that climate is changing. Obviously, this has far-reaching impacts on human societies. These impacts are often indirect, which means that people are not generally affected directly by climate change. It's not that climate change knocks at your door and you are affected. It's a bit more indirect. Very often, the physical impacts of climate change affect economies, societies, and then individuals in very indirect ways. So, many people are affected by climate change without knowing it, because it is very indirect.

Secondly, these impacts are not necessarily of a new kind, by which I mean that the way you are affected by climate change is not necessarily something that never happened before in a way not connected to climate change. So, a lot of the migration we are talking about actually resembles a lot to scenarios of migration that existed before climate change, and will co-exist without climate change. You may have more people migrating. You may have more forced migrants, and more people in need of relocation — so, you have additional impact, additional suffering, but you don't necessarily have a different kind of suffering induced by climate change.

And the last general observation to which I will come back in the presentation is that climate change may help to open our eyes to some issues that the world had before, sometimes for very long, issues of lack of protection to forced migrants, from which they will cause an issue of lack of solidarity between nations and so on. These issues are not new, but they get a new prominence, a new political prominence, in the context of climate change.

I don't speak about climate migration in my research. I speak about the climate migration nexus, to avoid giving the impression that climate change migration is a distinct phenomenon. I believe it is a more complex relationship. I believe that climate change has diverse, often indirect impacts on human migration. So again, climate change will impact societies and economies and then individuals will be affected in most cases. Then, this migration can occur within states or across borders. Most of the impacts of climate change will induce people to migrate a relatively short distance. International migration is the exception, not the rule, and generally it is limited to the neighboring countries. It is quite rare that people affected by climate change have the resources to go to a different country, to fly say to the UK, on their own, if they don't have some sort of institutional support. And the last point here is that it is generally

impossible to attribute individual migrants to climate change — “climate migrants”, because migration, as John has mentioned before, is usually caused by a cluster of causes, and this is illustrated in the next slide (Figure 1), where you can see the kind of indirect relation between, on the top left, climate change increased concentration of carbon dioxide in the atmosphere. The weather events, the physical impacts, of climate change on the right and then you have these kinds of disasters inducing vulnerability, inducing migration, which, in turn, induces vulnerability, which, in turn, can induce migration. This is kind of simplified. You can imagine more complicated, maybe different, kind of scenarios. But this is an illustration of the kind of indirect causation between climate change and migration, and the interaction with other causes, social, economic, political, and demographic factors. And we had an interesting question from Bangladesh before. Bangladesh obviously has at least a demographic factor very much prominent in inducing internal migration. I’m not going to speak about political circumstances which are still not very stable in Bangladesh. It is clearly an economic issue as well. So, all of these factors interact. It is not climate change directly causing migration.

I’m going to speak briefly about field work I did in Mongolia about the migration of herders towards Ulan Bator. This is a relatively important trend of migration in Mongolia. This is affecting about 10-20% of the population over 20 years. So, people herding, having some goats or sheep in the countryside, are generally affected by a combination of drought and snowfall. The drought is quite clearly related to an increase in temperature, which is quite good news, apparently, in Mongolia, but bad news for the sheep and the goats. So, there is less grass. And then, snowfall, because the precipitation doesn’t occur at the same time as it used to. Precipitation used to be mostly in the summer, and now there is a bit more snowfall, which didn’t previously occur in Mongolia. When you have any kind of snow, even a few centimeters, goats and sheep cannot eat grass, and then they cannot keep warm, and then they die. This is called a “dzud” — that’s the name for this kind of composite disaster that occurs in Mongolia, that has occurred much more frequently in recent years — not every year, but every five, six or seven years. And an important one was in 1999, in the winter between 1999-2000, where about 30% of the livestock died. So that’s, of course, huge implications for the economy and for the herders. Many of those lose everything and have no choice but to try to find a job in the town, which is Ulan Bator. So, there is a climate cause, if you will, but there are also a lot of different elements, which my field work was trying to understand by asking different stakeholders what would be the cause of migration.

So there is clearly an economic pool of Ulan Bator, which is developing much faster than the countryside. There is a relation with development policies. The new Mongolian government, since 1990, has invested mostly in Ulan Bator, and mostly in the mines, but not really in agriculture.

There is a social factor, the fact that all education, of course, is in Ulan Bator, and the gap has increased since 1990, and there is clearly a cultural representation as well. Herders now have satellite dishes, and they can watch TV, and they have this impression that everything has to be in Ulan Bator, when they have to leave their traditional way of life. So, there are many different factors interacting, and also in some political discourses, migration would be attributed to climate change, to get

some funding, for instance, but there are also other causes that interact.

So, this debate about the climate change-migration nexus is revealing some gaps in protection: the fact that when a government is unable to protect internal or international migrants, there is not really a safety net or any sort of legal protection or status, with the exception of refugees. But refugees are 16 million international migrants of about 200-300 million in the world, so that's a minority of the international migrants. Most international or internal migrants just depend on the good will of the state under which territory they are to protect them, and on the resources of this government.

And this protection gap is not a new gap. It's just a gap which has become more prominent because of the impacts of climate change.

Then I will look at the three different fields of international law interacting to address this issue. One is environmental and climate law. Then I will look at refugee migration and human rights law. So, the first is about the environment and the climate, whereas the second is about the people. And finally I will look at how these two fields have led to some developments with regard to migration in the context of climate change.

In terms of environmental and climate law, there is, I believe, an obligation (Figure 2) of every state under international law, not to cause serious harm to another state. So, there are some historical cases between Canada and the US about a plant in the Canadian province of British Columbia affecting the territory of the US state of Washington, where an arbitration panel said that Canada had the obligation to prevent activity within its territory from affecting a different state. And this clearly, from my perspective, applies to climate change, so I believe that under this principle there is an obligation for every developed country which has the resources to do so, to try to reduce their greenhouse gas emissions. To implement this principle, there have been negotiations leading to the UN Framework on Climate Change, the Kyoto Protocol, the Cancun Pledges, and most recently, the Paris Agreement. States have constantly agreed that what they had agreed on in negotiations was insufficient. For instance, there is no denial that the Paris Agreement, while useful, is not sufficient to prevent dangerous climate change. Negotiations have gone some way, but they are far from sufficient to implement general principles of international law.

And there are arguments not just about trying to reduce climate change, to mitigate, to reduce greenhouse gas emissions and mitigate climate change. There are also arguments about responsibilities and compensation. If you breach an obligation and cause damage to a third party, you have to pay damages. If a state does not respect its obligation not to cause harm to another state, then they may have some responsibility.

This has been discussed mostly under the framework convention on climate change. There has been discussion about adaptation to climate change since 1992, and about a concept of loss and damage associated with the adverse impacts of climate change in developing countries, increasing prominence starting in 2007, and within this topic, there has been increasing discussions about migration.

Then, I turn to the other kind of field of law, which is about refugee migration and human rights law, which is about the protection of individuals (Figure 3). Here,

there is a much longer tradition of international law trying to force states to protect individuals. It starts with the 1948 Universal Declaration on Human Rights, which was followed by two treaties in 1966, the International Covenant on Economic, Social and Political Rights, and International Covenant on Civil and Political Rights — so, two covenants covering different fields of human rights law, and most recently, the 1990 convention on the protection of the rights of all migrant workers, and members of their families.

However, there has been very little political support for the application of these first two documents to migrants, and for the ratification of the last document. The 1990 Convention on Migrant Workers has mostly been ratified by countries which send migrant workers, and not by countries which receive them, and it was the longest UN human rights treaty to enter into force after about 15 years.

Then there's the 1951 Convention on the Status of Refugees, which in 1951 was negotiated and ratified in order to manage the stock of refugees that were in different countries in Europe. It was only applicable to Europe, and it was only applicable to people who had already been displaced during the war. This was not really seen as a general framework on refugee law. It was extended by the 1957 protocol, to become universal, but it is still very much limited by the definition of Article 1A, according to which it only protects people who are persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. That means that anyone forced to migrate to a different country, or unable to return to their home country, because of anything else done — persecution, for any other than one of these five reasons, cannot be protected. So, this is a very, very narrow definition. And then you have some soft laws and interpretative documents speaking about internal displacement, which try to push states, incentivize states, to apply human rights law to internally displaced persons, with limited success. It has been reproduced in many domestic legislation, but usually not implemented on the ground.

There have been discussions about a possibility of a convention on climate refugees, which I don't really see the point of, because there is no specific category of climate change refugees. People are being displaced for a variety of reasons, and I believe that if you want to protect — if you are able to extend the protection of forced migrants, this shouldn't be limited to migrants which can be attributed to a particular cause. We should look at the need for protection, not to the cause of migration. So, there is no reason to limit this to climate refugees. I believe there is an even more interesting proposal by Alexander Betts, in Oxford, for the protection of “survival migrants,” that would extend to people forced to migrate because of poverty, because of malnutrition, or a variety of other compelling reasons.

Then there have been some discussions about what to do with the climate-migration nexus (Figure 4). There have been some mentions of migration under the Cancun Adaptation Framework, under the Doha discussions, there was some damage, and in the decision adopting the Paris Agreement, a coordination facility has been established. It's not really sure what it will do, if anything, except for exchanging good practices. The objective of developing countries pushing for this coordination facility was to get some funding, but funding seems to be excluded from the negotiations at present. So, there has always been some plans for funding for assistance on the part

of developing countries, and developed countries have only agreed to provide some forums to exchange good practices and to look at what we can do, but really without committing any international funding.

There is some allusion to displacement in the Sendai Framework for disaster reduction. And, as Nina mentioned, there is the Nansen Initiative on Disaster-induced Cross-Border Displacement. That actually kind of supports my claim that you shouldn't really focus on climate migration, because the negotiations started in 2011, with a conference on climate migration and then, over the 3-4 years of the process, turned to cross-border disaster-induced migration in the context of climate change, because the negotiators, the stakeholders, realized that it was very difficult to try to attribute migration to climate change, and this was not really the point. The point was to protect people in need of protection, not to try to make new categories of migrants based on considerations not directly relevant to their protection needs.

This initiative has been prolonged by the platform on disaster displacement, and at the moment, this is limited to, again, some exchange of good practices, some agenda setting meetings, but without any really legal implications, and it's a question of whether the states are actually willing to create some international obligations, or even transfer some funding on these issues.

Then, I believe the current debate on the climate-migration nexus actually has three different main arguments: one is about the protection of — one is about the climate change issue, trying to reduce climate change to address the consequences, and in this discourse, migration is seen as some kind of symbol of the impact of climate change. We have to do something, otherwise we have these floods of climate refugees. And this promotes a very alarmist discourse, which often relies on very strong numbers of millions of climate refugees, which have really no backing, I believe, in migration studies.

Then there is a different discourse which comes from human rights and migration studies, which is much more nuanced, which explains that we can't really attribute any migrant to climate change, but we have protected these very big numbers of forced migrants. We have to do something to make sure that people migrating within Bangladesh get some protection and their dignity is protected, but here there is not clearly any relation to climate change, just an awareness that climate change makes the issue bigger.

And then there is a third kind of argument, which is about security. And this is an argument that we tend to forget in the academic circles, because there are not really representatives of this kind of discourse in the research community, or not in the same kind of research communities. But there is a general feeling in many societies that receiving a lot of migrants is a risk, is a security threat, for the receiving country. We can agree or not with this, but that's an argument which is present in many places. These three arguments interact in many complex ways, and that's why I believe that if we turn to the first argument about this alarmist discourse on the flood of climate refugees, there is a risk that this will actually amplify the third argument, the fears of migrants, and this can actually be very counter-productive. So, I would call for a lot of attention, a lot of caution, in this kind of alarmist argument. I believe alarmism can be

very counter-productive in this argumentative area.

So, just the conclusion: is there any solution in sight? I believe that the solution is not to make it short. It's not necessarily specific to climate migration. I believe a solution is a better protection of all migrants, and this might be what the global compact on migration is doing: trying to find a solution for the inequality in the right of moving from country to country. For me, going to Japan was quite easy, but for many people, going to the next town may be quite difficult. So, there is a huge inequality, which is new in history, which has not always been the case, in the possibility of migrating from one place to another. And it's really something that, I think, is at the core of the issue, that this concept of climate migration is showing. So, we shouldn't look at the finger, which is the climate migration. We should look at what it points to, which is a much bigger issue of protecting the rights of migrants.

Thank you very much.

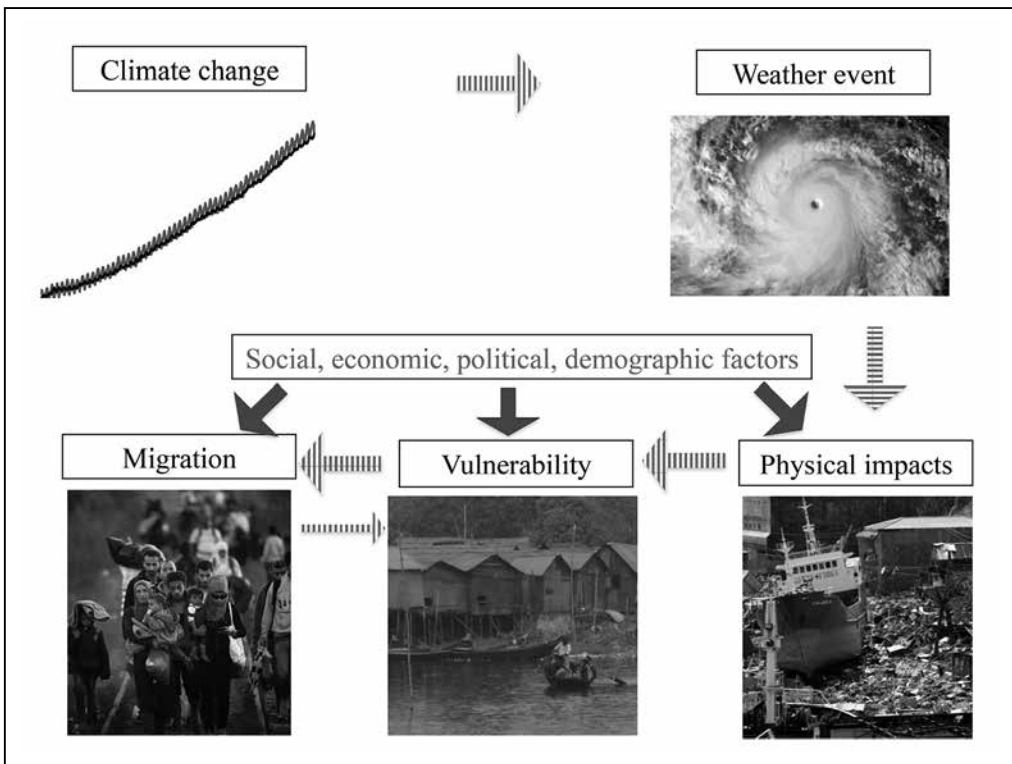


Figure 1

# 1. Environment and climate law

- Obligation of States not to cause serious transboundary environmental harm
- Treaty regime established by the 1992 United Nations Framework Convention on Climate Change
  - Kyoto Protocol
  - Cancún pledges
  - Paris Agreement
- Arguments on responsibility and compensation
  - Adaptation to climate change
  - Loss and damage associated with the adverse impacts of climate change

Figure 2

# 2. Refugee, migration and human rights law

- International protection of human rights
  - 1948 Universal Declaration of Human Rights
  - 1966 Covenants on Economic, Social and Political Rights, and on Civil and Political Rights
  - 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- 1951 Convention on the Status of Refugees
  - Condition: “persecute[ion] for reasons of race, religion, nationality, membership of a particular social group or political opinion”
- Debates on the extension of protection
  - 1998 Guiding Principles on Internal Displacement
  - Convention on “climate refugees”? “Survival migrants”?

Figure 3

### 3. Specific provisions on the climate-migration nexus

- Mentions in decisions of the Conference of the Parties to the UN Framework Convention on Climate Change
- Allusions in the Sendai Framework for Disaster Risk Reduction
- Consultations:
  - Nansen initiative on disaster-induced cross-border displacement (2012-15)
  - Platform on Disaster Displacement (since 2015)

Figure 4