

Protection of the Environment and International Refugee Law^(*)

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1. Protection of Victims of Environmental Disasters under Refugee Law

Some recent developments in international refugee law at regional level, in particular with regard to the current Central American crisis, are worthy of attention. In order to tackle the problem of massive flows of refugees in the Central American area, the U.N. High Commissioner for Refugees (UNHCR) deemed it "necessary to consider enlarging the concept of a refugee". To that effect it adopted criteria on the basis of the precedent of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Article 1(2) - adopted precisely to face a similar problem in Africa -, and of the doctrine upheld in reports of the Inter-American Commission of Human Rights⁽¹⁾. A resulting concept was reached at the UNHCR Colloquy of Cartagena de Indias of 1984⁽²⁾, embodied in the document which came to be known as the "*Cartagena Declaration on Refugees*".

Therein the definition or concept of a refugee recommended for use in the Central American region is one which

"in addition to containing the elements of the 1951 Convention [Relating to the Status of Refugees] and the 1967 Protocol [Relating to the Status of Refugees], includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive

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(1) UNHCR, *op. cit. infra* n. (3), p. 34.

(2) Attended by a group of experts, as well as governmental Delegates from Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela; cf. *ibid.*, pp. 3-8.

violation of human rights or other circumstances which have seriously disturbed public order"⁽³⁾.

The situations above referred to, it can be assumed, are caused by man, or would in principle have to be caused by man, so as to be encompassed by the new, amplified, concept of a refugee recommended by the Cartagena Declaration. It can promptly be asked what does the expression "other circumstances" cover; would, or could, it also comprise, e.g., victims of [man-made] environmental changes or accidents? Before returning to this point, it should be added that the Cartagena Declaration was followed, and dwelt upon, by two other documents. The first one is the 1987 Report of a Group of Experts which met at the UNHCR headquarters in Geneva to examine possible solutions to the problems of Central American refugees.

The 1987 Report, after referring to the 1984 Cartagena Declaration as a regional expression of refugee law (which reflected international practice on the matter and could thus lead to the crystallization of a "regional custom"), warned that the refugee problem in Central America was inserted into a "wider context of *desplazamiento poblacional*"⁽⁴⁾. The Report *inter alia* referred to measures aiming at the *prevention* of causes which originated current massive flows of Central American refugees; those measures concerned the settlement of the conflicts and crisis in the region on the basis of the application of the principles of international law proclaimed in the U.N. Charter, the consolidation of the processes of democratization in the region, the respect for and observance of human rights (in particular those recognized in the 1969 American Convention on Human Rights), and the promotion of economic and social development in the region⁽⁵⁾.

The second and more recent document is the one submitted by a Committee of Legal Experts to the International Conference on Central American Refugees (CIREFCA) in 1989⁽⁶⁾, titled "Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America". The document was advanced as a general framework for assistance to the States concerned in their treatment of refugees, returnees and displaced persons in the Central American region.

The 1989 document, after recalling the "fundamental importance" of the Cartagena Declaration despite of its not being technically a legally binding

(3) ACNUR/UNHCR, *Declaración de Cartagena/Cartagena Declaration* (Coloquio/Colloquy), Cartagena, ACNUR/Universidad de Cartagena, 1984, pp. 14 and 34.

(4) ACNUR/UNHCR, *Grupo de Consulta sobre Posibles Soluciones a los Problemas de los Refugiados Centroamericanos* - Informe (1987), Geneva, UNHCR, 25-27.05.1987, pp. 2-3.

(5) *Ibid.*, pp. 7-8.

(6) The Conference was held in Guatemala City on 29-30 May 1989. The document, prepared in January 1989, counted on comments submitted by the Governments concerned. Cf. UNHCR, *op. cit. infra* n. (7), p.1.

instrument⁽⁷⁾, then provides an interpretation of the expanded concept of a refugee - passage above quoted - advanced by the 1984 Cartagena Declaration (*supra*). According to the 1989 document, the expression "other circumstances which have seriously disturbed public order" ought to cover "the result of human actions and not of natural disasters". Moreover, "economic migrants" should not be confused with "victims of natural disasters"; these latter - the 1989 document adds - do not qualify as refugees, unless there occur "special circumstances" closely linked to the refugee definition⁽⁸⁾.

Might it here not be added that a distinction should be born in mind between natural disasters and environmental disasters? The victims of "pure" natural disasters (e.g. volcanoes, lightning, earthquakes, hurricanes, tidal waves, etc.) would remain outside the scope of the 1984 Cartagena definition. But the victims of environmental disasters (caused by human error or negligence, e.g., nuclear disasters, international water pollution accidents, oil spills, forest fires, droughts as consequence of climatic change, etc.) could fall under the "other circumstances" provided for by the 1984 Cartagena definition (*supra*), and thus benefit from refugee law protection. It could in this connection be argued that climatic change is not only a "natural disaster", or not a purely one, as it presents human intervention⁽⁹⁾; the victims of climatic changes (e.g., affecting the production of food) could thus arguably count on the protection envisaged herein.

Displaced persons in different circumstances constitute a category which requires careful attention and not seldom are in greater need of protection than the refugees who have left the country, - as admitted by the 1989 document itself⁽¹⁰⁾. There is, furthermore, a close link between the flows of refugees and human rights protection, as gross violations of human rights bring about flows - at times in a massive scale - of refugees⁽¹¹⁾, raising difficulties for the mechanisms of protection. The protection of refugees and displaced persons is thus to be properly coordinated with the mechanisms of human rights protection (at global and regional levels)⁽¹²⁾. And the emergence of human collectivities in need of special attention and

(7) [UNHCR] document CIREFCA/89/9, 1989, p. 3 (English revised version).

(8) *Ibid.*, pp. 7-8.

(9) To environmental disasters there thus apply, besides the general duty of preventing them, the general duty of minimizing damage and providing emergency assistance, - comprising the obligations to notify promptly and to provide information, to develop contingency plans, and to cooperate in minimizing damage, - and the general duty of compensating for injuries from them. Cf. E. Brown Weiss, "Environmental Disasters in International Law", *Anuario Jurídico Interamericano* (1986) pp. 141-169; and cf. A. Kiss, "L'accident de Tchernobyl et ses conséquences au point de vue du Droit International", *32 Annuaire français de Droit international* (1986) pp. 139-152.

(10) Cf. *doc. cit. supra* n. (7), p. 14.

(11) Cf. *ibid.*, p. 15.

(12) Cf. *ibid.*, p. 15.

protection - internationally displaced persons, internal displaced persons, returnees, so-called "economic migrants", etc. - give a new and wider dimension to international refugee law.

2. *The Inter-Temporal Dimension of International Refugee Law*

For the purposes of the present study, besides the possible assimilation of victims of environmental disasters to protected persons under refugee law, there is another point deserving of attention, and likewise unexplored to date: that of the intertemporal dimension of international refugee law. This dimension is always present, at distinct levels; for example, environmental disasters, though appearing as "immediate" - term phenomena, may affect people also in the long term. There may be victims of phenomena or accidents caused by man with long-term effects. Such long-term victims may well appear as displaced persons for the purpose of protection under international refugee law.

The temporal dimension is further manifest in the endeavours of *prevention* or *forecasting* of refugee flows. It is precisely the *threat* of likely violence that leads to movements of refugees; the time element is underlying the very notion of forced migrants, who leave home on perceiving a *threat* or probability of violence⁽¹³⁾. In this connection, the expression "*early warning*", coined in the realm of environmental law, has lately been utilized also in the ambit of refugee law and human rights protection.

Thus, the U.N. Secretary-General himself has had occasion to stress the importance of providing early warning of developing situations concerning possible refugee outflows. The special rapporteur of the U.N. Commission on Human Rights on the question of massive exoduses recommended in 1981 the establishment of an early-warning system on the basis of impartial information-gathering so as to forewarn potential exoduses and to consider preventive action before the start of a mass movement. In U.N. debates on the matter, the possibility was raised of elaborating guidelines of a preventive nature to avert new flows of refugees and to cope with problems raised by mass flows of refugees⁽¹⁴⁾. In that same year the U.N. General Assembly established a Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees, which reported on the matter in 1986. The need has been stressed of rendering the U.N. system "more effective in anticipating major humanitarian problems, particularly those which could lead to

(13) L. Gordenker, *Refugees in International Politics*, London/Sydney, Croom Helm, 1987, pp. 170 and 179, and cf. pp. 168-173 and 176-180.

(14) B.G. Ramcharan, *Humanitarian Good Offices in International Law*, The Hague, Nijhoff, 1983, pp. 141-149.

mass movements of populations"⁽¹⁵⁾, using the U.N. Centre for Human Rights as the focal point in developing U.N. mechanisms to that end.

Endeavours to prevent floods of refugees were in fact undertaken, on the basis of an agreement signed in 1979, by Vietnam and the UNHCR⁽¹⁶⁾. In another case, in a resolution adopted in 1985, the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities alerted the U.N. Commission on Human Rights that the *human rights situation in Pakistan* was one with "great potential to cause a mass exodus, especially of members of the Ahmadi community"⁽¹⁷⁾.

Early-warning, to cope with the problems raised by forced migrants - especially when in large numbers and in conditions of distress, - comprises the gathering of information and projections from that information, so as to enable "a prediction of future disaster"⁽¹⁸⁾. That information can further be used for "the framing of policies and programmes to cope with forced migration"; the employment of early-warning can be directed largely to two main situations, namely, to "the prevention or containment of an outflow of people" or, when that is no longer possible (when migration has already begun), to the amelioration of the situation⁽¹⁹⁾. In either case, early-warning would be directed at inter-governmental organisations and relevant voluntary groups concerned so as to take the necessary (preventive) measures and to prepare assistance⁽²⁰⁾.

In 1984 the U.N. Centre for Human Rights suggested the following criteria as a basis for the assessment of the gathered information, so as to identify situations which could lead to massive movements of people:

"(a) a large number of people are affected; (b) a serious likelihood exists that a mass movement of people might take place; and (c) the movement taking place might extend across international borders;"⁽²¹⁾.

Situations of the kind, affecting human collectivities, call for compliance with obligations similar to those propounded for treating victims, or potential victims, of

(15) B.G. Ramcharan, "Early-Warning at the United Nations: the First Experiment", 1 *International Journal of Refugee Law* (1989) n° 3, p. 382, and cf. pp. 379-382.

(16) For a criticism of the "preventive programmes" of the so-called "orderly departure system" and the "moratorium on departures" in the *Vietnam case* (1979-1984), cf. L. Gordenker, *op. cit. supra* n. (13), pp. 181-183.

(17) *Cit. in.* B. G. Ramcharan, *op. cit. supra* n. (15), p. 384.

(18) L. Gordenker, *op. cit. supra* n. (13), pp. 174-175.

(19) *Ibid.*, p. 174.

(20) *Ibid.*, p. 174.

(21) *Cit. in.* B.G. Ramcharan, *op. cit. supra* n. (15), p. 383.

environmental disasters (e.g., prevention, prompt information, minimization of distress, contingency plans and emergency assistance, compensation)⁽²²⁾.

Last but not least, we could not conclude these considerations without a word of warning: even though most governments still do not recognize environmental decline (e.g., land degradation, toxic wastes, "unnatural" disasters, expected sea-level rise by global warming) as a cause of refugee flows, current figures indicate that about 10 million people represent today "environmental refugees", a total which "rivals that of the officially recognized refugees and is sure to overtake this group in the coming decades"⁽²³⁾. Land degradation remains so far the "single most important cause of environmental refugees" (mostly in Africa), and these latter have become "the single largest class of displaced persons in the world"; those who have been permanently displaced constitute "both the largest and the fastest growing" category of environmental refugees⁽²⁴⁾. It should be kept in mind that the halting of environmental refugee flows appears ultimately as a question of environmental management⁽²⁵⁾. This dramatic situation lies at the confluence of international refugee law and environmental law, and discloses the interactions between human and environmental conditions and the urgent need to improve them altogether.

(22) Cf. *supra*, note (9). Cf. further, in particular, e.g., the two 1986 IAEA Conventions on Nuclear Accidents (Early Notification, and Assistance); texts in *25 International Legal Materials* (1986) n° 6, pp. 1369-1386.

(23) UNHCR internal working-paper, based on J. Jacobson, "Environmental Refugees: A Yardstick of Habitability" (*Worldwatch* paper 86, Nov. 1988), and on E. El-Hinnawi, "Environmental Refugees" (UNEP, 1985), pp. 1-2 (mimeographed, restricted circulation).

(24) *Ibid.*, p. 5.

(25) *Ibid.*, p. 3. - For more recent studies on the matter, cf. Natural Heritage Institute, *Field Staff Report Series on Environmental Refugees, 1990-1991*; the Series is so far composed of five monographs, on environmental refugees in South Asia, Brazil, Haiti and Sub-Saharan Africa.