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Climatic Deterritorialization as an Accelerator to Statelessness

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ABSTRACT

Climate change leads to many direct and indirect consequences throughout the world. A major ancillary to global warming is raising sea levels resulting in territorial dissipation of island states. This areal degradation has resulted in environment determined displacement directing massive migratory trends which eventually intensify statelessness. As the statistics and severity of storms and floods like cyclones, hurricanes, tornados and tsunamis and other cataclysms have been on a rise, sinking of island states is unavoidable. Once the islands and other coastal settlements are inundated causing deterritorialization, the prospects of the remaining population getting adapted to the reversed conditions get restricted. It permits migration as the only alternative. This external displacement is permanent in nature and the migratory inhabitant lives get dependent on the legal status provided by the host country. Correspondingly, if the sovereignty of the island state is endangered and the populace is not granted citizenship status by any other state, they per se becomes de jure stateless.

Through this article, an effort is contrived to understand in detail the extensive impact of environmental degradation on the increasing stateless population globally. This paper also offers an overview of the interconnectedness between the climatic and social, political or economic factors leading to statelessness, parallely working on understanding the probable provisions to be implemented to aid such people. Furthermore, an endeavour to understand different solutions for preventing statelessness in the context of low-lying island States has been made.

Keywords: *Deterritorialization, environment, statelessness, displacement, island states, migration.*

I. INTRODUCTION

Climate change has become a major concern for the international community due to regular intensification in the distillation of substances and fossil fuels through industrial and scientific means and greenhouse gas emissions. As a repercussion around one billion populace of the

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world lives in areas bare to climatic putrefaction.³ Exposure to different natural calamities propels the inhabitants of such areas to move towards zones with better living prospects, which eventually makes them internally displaced.

A major ancillary to global warming is raising sea levels resulting in territorial dissipation of island states. However, it is improbable for these island nations to provide safer terrains for relocation due to their total exposure to the environment. This areal degradation has resulted in environment determined displacement accelerating massive inter-state migratory trends which eventually intensify statelessness.⁴

II. CLIMATIC STATELESSNESS AND INTERNATIONAL LAW

In world history for the first time, every human being's right to nationality was enumerated in the Universal Declaration of Human Rights.⁵ The 1954 Convention on the Status of Stateless Persons and the 1961 Convention on Reduction of Statelessness are the major international provisions dealing with the concept of statelessness and the obligations of states and other non-state actors in eradicating, preventing and reducing statelessness and in protecting stateless people worldwide.⁶

A stateless person is defined as "a person who is not considered as a national by any State under the operation of its law."⁷ Notwithstanding the existing range of legislative mechanisms, United Nations High Commissioner for Refugees (Hereinafter UNHCR) evaluates that there are around ten million stateless currently existing globally.⁸

The definition of a sovereign state as per the Montevideo Convention on the Rights and Duties of States, 1933 is constructed on four characteristics i.e., a territory, a population, a government, and relations with other States.⁹ Therefore, both the political extermination and loss of territory disturbs the sovereignty of the state destructively, ultimately affecting the citizenship status of its citizens.¹⁰ Such people become stateless if they are not provided with

³ Stephanie Garcia, What a UN Ruling Could Mean for Climate Refugees, PBS NEWSHOUR (Dec. 13, 2019), <https://www.pbs.org/newshour/science/as-cop-25ends-a-look-at-why-climate-migrants-dont-have-refugee-status>

⁴ *Id.*

⁵ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 15(1) (Dec. 10, 1948).

⁶ MARILYN ACHIRON, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, NATIONALITY AND STATELESSNESS: A HANDBOOK FOR PARLIAMENTARIANS 10 (2005).

⁷ Convention Relating to the Status of Stateless Persons, art. 1, Sept. 28, 1954, 360 U.N.T.S. 117.

⁸ STATELESSNESS AROUND THE WORLD, <https://www.unhcr.org/en-us/statelessness-around-the-world.html> (last visited Feb. 16, 2022).

⁹ Convention on Rights and Duties of States (Montevideo Convention), art. 1, Dec. 16, 1934, 165 L.N.T.S. 19.

¹⁰ Antonio J. Delgrande, Statelessness in the Context of Climate Change: The Applicability of the Montevideo Criteria to "Sinking States", <https://www.nyuilp.org/wp-content/uploads/2021/07/5-Online-Annotations-DelGrande-152-161.pdf>.

the legal status of citizenship by any other nation.

The impact of environmental issues on migration and their interconnectivity with other social, political and economic factors are significant to be observed. It suggests that the reasons that upsurge human vulnerability to climate change and the process through which they affect, are to be analysed in detail. Subsequently, scrutiny of diverse approaches adopted by the relevant people to deal with migration caused due to climate change is a must to actually make a paradigm shift in impractical methods of managing it. Furthermore, relevant protection should be granted to those in the situation of vulnerability and there should be increased responsibilities of states and of the international community in providing such protection. If such protection is not provided and these vulnerable people are left without any legal status, they would be rendered stateless.¹¹

As the statistics and severity of storms, floods, drought and desertification like cyclones, hurricanes, tornados and tsunamis and other cataclysms like rising sea levels have been on the rise, sinking of island states is unavoidable.¹² Though to date, there are no precedents of a total loss of territory due to climate change still lack of fresh water and fertile land eventually forces migration. States can device artificial protections like uplifting the island with surrounding material or building seawalls, though its chances are meagre as all these efforts are dependent on financial strength.¹³ Few low-lying islands states whose populace are at risk of statelessness due to climate change in future are Maldives, Tuvalu, Kiribati and the Marshall Islands.¹⁴

According to the Intergovernmental Panel on Climate Change (Hereinafter IPCC), “once the islands and other coastal settlements are inundated causing deterritorialization, the prospects of the remaining population getting adapted to the reversed conditions gets restricted. It permits migration as the only alternative.”¹⁵ This external displacement is permanent in nature unless the territory of the particular state is protected or ceded by another state.

As the sovereignty of the home state is itself in dilemma, the migratory inhabitant lives get dependent on the legal status provided by the host country.¹⁶ Though in the international community there is still no precedence of a vanishing state due to loss of territory, there are

¹¹ ETIENNE PIGUET, ANTOINE PÉCOUD AND PAUL DE GUCHTENEIRE, *MIGRATION AND CLIMATE CHANGE: AN OVERVIEW*, CENTRE ON MIGRATION, POLICY AND SOCIETY, WP-10-79 (2010).

¹² Intergovernmental Panel on Climate Change (IPCC), *Report of the International Working Group II, Impacts, Adaptation and Vulnerability, Climate Change 2007*, IV p.317, <http://www.ipcc.ch/ipccreports/ar4-wg2.htm>.

¹³ *Id.*

¹⁴ UNHCR, *Climate Change and Statelessness: An Overview*, submitted to the 6th session of the Ad Hoc Working Group on Long-Term Cooperative Action (AWGLCA 6) under the U.N. Framework Convention on Climate Change (UNFCCC) 1 to 12 June 2009, Bonn, Germany, at 1 (May 15, 2009).

¹⁵ *Id.* at 733.

¹⁶ *Id.* at 736.

climatic conditions that showcase that it might happen in future. Correspondingly, if the dominion of the island state is endangered and the populace is not granted citizenship status by any other state, they per se becomes de jure stateless.

III. HISTORICAL OVERVIEW

Environmental factors leading to migration is not a new concept rather its existence can be dated back to the nineteenth century when the initial migratory theories surfaced.¹⁷ Certainly, the environment was not the only pull factor rather it motivated migratory activities in consonance to economic factors, oppressive legislations, heavy taxation, uncongenial social surroundings.¹⁸ Many theorists were of the view that technological progress and economic factors play a determinative role in causing migratory activities.¹⁹ Evading environmentally induced migration the concept of “States makes refugees” surfaced in the geopolitical theory.²⁰ Nevertheless, an alarming situation of around one fifty million environmental migrants was expected by the end of the twenty-first century. In 1990, the first United Nations intergovernmental report on climate change stated that the gravest effects of climate change may be those on human migration as millions will be displaced.²¹ One of the first international debates on migration issues referred that, “Governments were encouraged to consider requests for migration from countries whose existence, according to available scientific evidence, was imminently threatened by global warming and climate change”.²²

There has been a constant divide in the past between the environmental scientists and migration specialists wherein the former considered environmental deterioration as the major cause of migration and the latter referred to it as one of the other factors impacting migration.²³ The different approaches in detail are, few say people living in island states are certainly at risk of future statelessness due to rising sea levels, others say there is a direct connection between global warming and other factors causing displacement and the huge number of people get affected. Specifically, there are two approaches namely maximalist and minimalist. The former assumes that environmental degradation results in billions of people getting displaced²⁴ and the

¹⁷ Ravenstein E. G., The Laws of Migration, Journal of the Royal Statistical Society 52(2): 241- 305 (1889).

¹⁸ *Id.*

¹⁹ Harris J. and M. P. Todaro, Migration, Unemployment and Development: A Two-Sector Analysis, American Economic Review vol. 60(1): 126-142 (1970).

²⁰ Marx E., The Social World of Refugees: A Conceptual Framework, Journal of Refugee Studies vol. 3(3): 189-203 (1990).

²¹ Intergovernmental Panel on Climate Change (IPCC-1) 1990.

²² The Programme of Action of the International Conference on Population and Development 1994, para 10.7, <https://www.unfpa.org/events/international-conference-population-and-development-icpd>.

²³ Castles S., *Environmental Change and Forced Migration: Making Sense of the Debate*, New Issues in Refugee Research, UNHCR Research Paper 70 (2002).

²⁴ MYERS N., ENVIRONMENTAL REFUGEES IN A GLOBALLY WARMED WORLD 43, 252, 257 (1993).

latter refers that migration is a result of manifold intricate grounds and climate change is simply one of such causes.²⁵ However, in the current times, it is quite evident from the increasing number of natural disasters caused by global warming and specifically rising sea level, that a major rise would transpire in the number of people getting affected. According to statistics of the Norwegian Refugee Council's Internal Displacement Monitoring Centre and the United Nations (Hereinafter UN) Office for the Coordination of Humanitarian Affairs, around twenty million people got displaced due to climatic disasters in the year 2008.²⁶

However, currently, the rift over considering climate change as a foremost cause of statelessness and referring to it as simply one of the broader reasons for statelessness is being overcome by both sides.²⁷ When people already move for economic reasons, forced migration becomes more likely due to environmental factors. Environmental degradation leads to food insecurity and health problems that force migration. Climate change is globally a predominant issue today which causes many alarming problems and 'environmental migrants eventually becoming stateless' is one such pressing concern.

Such a huge societal disbalance furnishes many tasks to be refurbished at domestic levels of the state, namely arranging for a better financial, legal and executive framework to manage the increasingly dire need of fortification and support of the displaced populations. States have to individually manage the climatic societal disbalance by specifically dealing with three aspects namely vindicating climate change, reducing the impact of climate change and protecting and aiding displaced people due to climate change.

Rising sea level (Hereinafter SLR) is one of the most crucial environmental factors that abundantly drives migratory trends in consonance to cyclones, floods, droughts and desertification. Referring to severe rains, storms, cyclones and floods, it is nearly impossible to conclude through any climatic prototype that such situations precisely occur in thickly populated areas or where people are settled at a vast distance. Such situations cannot be precisely forecasted as per time and exact location. However, such climatic disasters only lead to intrastate displacements and they don't result in interstate movements at a large level. In fact, an important element to be noticed here is that people who are living in financially weaker

²⁵ Morrissey J., Environmental Change and Forced Migration: A State-of-the-Art Review' (Background Paper for the Environmental Change and Migration: Assessing the Evidence and Developing Norms for Response), Refugee Studies Centre (2009), <http://www.rsc.ox.ac.uk/PDFs/Environmental%20Change%20and%20Forced%20Migration%20Review%20-%20Morrissey.pdf>.

²⁶ UN Office for the Coordination of Humanitarian Affairs, the Internal Displacement Monitoring Centre and the Norwegian Refugee Council, *Monitoring Disaster Displacement in the Context of Climate Change: Findings of a Study by the United Nations Office for the Coordination of Humanitarian Affairs and the Internal Displacement Monitoring Centre* 8-9 (2009).

²⁷ Hugo G., *Migration, Development and Environment*, International Organization for Migration (2008).

sections of the society and in economically underdeveloped countries do not have many resources to move to farther areas. They either settle in the same locations after some time or just travel to nearby areas. Whereas due to droughts when there is a shortage of water for drinking and fertilization, migration is not initiated at a large scale rather the movements are more stable with properly thought over considerations. Stating SLR here, in comparison to the other climatic disasters, it is SLR that eventually directly connects with migratory trends due to climate change. SLR is an irretrievable and unalterable phenomenon which exists since time immemorial.

SLR is permanent in nature and it gets established over a long period of time. In the case of island states where the possibility of new dykes and embankments is nearly impossible, long term forced migration clubbed with fear of possible disappearance of the island state in future, is a necessary corollary.

Though movements can take place long before the place actually becomes ramshackle still there are possibilities for the residing populace to take up steps to adapt and mitigate the changing environment. However, financial resources play an important role in finalising this outcome.²⁸

Correspondingly, there are many social factors that specifically influence the nexus between climate change and statelessness. One of the foremost concerns is that everyone does not have recourse to a similar standard of resources with reference to the situation of adaptation to environmental change. There is an assortment of social elements that impact different people differently and eventually makes them susceptible to climate change. The geographical dimensions that clarify the areas that would be more vulnerable to environmental impression are devoid of discussing the bearing of social milieu on people of such area. One of the most influential examples in this context is of gender concerns. Both men and women are inversely placed in society and gender plays an important role in the repercussions caused due to environmental degradation, like the type of risk factors in the case of women is far more complicated than that happens with men. Similarly, both the genders' reactions to climate change and displacement are very contrarily. Affluence and financial means are other causes that inversely affects the susceptibility of the masses towards displacement. It is the poor that are excessively hit harder than compared to their richer counterparts. Therefore, climate change affects people according to their peculiarities in the social scene as the same situation would

²⁸ Kabat Pavel, Louise O. Fresco, Marcel J. F. Stive, Cees P. Veerman, Joos S. L. J. Van Alphen, Bart W.A. H. Parmet, Wilco Hazeleger, and Caroline A. Katsman, Dutch Coasts in Transition, *Nature Geoscience* 2 450–52 (2009), <http://stive51.home.xs4all.nl/ngeo572.pdf>.

impact otherwise placed people differently.²⁹

An important element to be focused on here is that, what essentially is the status of the residents of sinking island states. Actually, a person not considered a national under the operation of the law of any country is only considered stateless.³⁰ So, to become stateless not having a nationality is a must, and it is irrelevant whether a person is without a physically existing state. Just because a state lost its existence physically due to sinking does not ipso facto make its citizens stateless. Even if some land of the state is left or it totally sinks, it does not mean that the law of the land also sinks with it. Certainly, the habitats of such states would become de facto stateless due to no legal place to live *per se*, but addressing them as de jure stateless would be too farfetched a situation.³¹

According to the Montevideo Convention, a state is so called only if it has four foundations intact, i.e., a permanent population, a defined territory, a government and the capacity to enter into relations with other states.³² Therefore, simply because any state loses on any of such elements it does not *per se* drop its statehood and evaporates robotically. Rather, currently in the international law “a strong presumption against the extinction of States once firmly established”³³ exists.

Subsequently, it is also improbable that the dowsing island states would simply announce their extermination and pull out their membership from the UN. However, it would be the sole objective of such sinking states to somehow manage some of the other emblematic presence physically in the international framework. They could do it by simply controlling a small piece of land fenced from all the sides with banks and continue with its nationals living in farther safer nations from the point of climatic destruction. In such situations, it is not necessary that the land be a part of the formerly occupied land only, rather such nations can put efforts to obtain some other safer lands globally.³⁴

Therefore, it is to be concluded that simply because a state has lost its territory geopolitically, it would not lead it to lose its status of being a nation-state, however until the state has a running government body and legal citizens, it would retain its statehood. Simply losing territory won't

²⁹ Hugo, G. (2008). *Migration, Development and Environment*. Geneva, IOM International Organization for Migration, 31.

³⁰ The 1954 Convention, *supra* note 5.

³¹ McAdam and Saul, *An Insecure Climate for Human Security? Climate-Induced Displacement and International Law* in Edwards A. and Ferstman C. (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* 374, 378 (2010).

³² Montevideo Convention on the Rights and Duties of States Dec. 26, 1933, 165 LNTS 19, Art 1.

³³ CRAWFORD J, *THE CREATION OF STATES IN INTERNATIONAL LAW*, 2nd edn 715 (2006).

³⁴ *Sinking Island's Nationals Seek New Home*, CNN (Nov. 11, 2008), <http://edition.cnn.com/2008/WORLD/asiapcf/11/11/maldives.president/index.html>.

exterminate them, and a very symbolic example of this is the Sovereign Order of Malta which actually lost its land in 1978 by losing against Napoleon Bonaparte, though it still continues to be a subject of international law.³⁵

Hence, the main concern should not be dealing with the issue of statelessness caused due to climate change, rather the focus should be on how such displaced people could be legally acknowledged to the other countries. Parallely, efforts should be made over managing solutions for such people retaining their nationality of the place of origin and still positive amalgamation into the welcoming states. Subsequently, emphasis should be supplied in creating an international legal framework that would be binding on all the nations to maintain the rights of such impoverished populations by avoiding their religious and ethnic relegation in the broader communities.

IV. PROBABLE SOLUTIONS

It is important that some productive methodology be prepared globally to control the menace of statelessness intensified due to climate change. One of the best alternatives at the domestic level is to put efforts into making situations favourable for relevant states for climate adaptation and applying better extenuation measures. Furthermore, in situations of inevitable mass exodus, there are better methods suggested by the UNHCR that are practical in geopolitics.³⁶

The first option is majorly in reference to the low-lying island States, as per which another prevailing state should cede some territory under its sovereignty to the disappearing state so that it could continue its physical existence. In such a case, the forbearing country has to completely loosen its hold on the relevant territory. A very relevant example is the Maldives whose president has drifted the idea of purchasing land from Sri Lanka or India.³⁷

The second solution can be the construction of artificial islands for occupancy by the people in dilemma. However, this is not a very full proof solution as, this would lead to more confusion on international territories as per the UN Convention on the Law of the Sea, which has serious limitations on the expansion of territorial waters and state jurisdiction over artificial islands.³⁸

The additional prospect can be an amalgamation with another state as an alliance.³⁹ Herein, by the insinuation of provisions of the 1961 Convention in its article 10 and the Draft Articles on

³⁵ Gazzoni F, 'Malta, Order of' in Max Planck Encyclopedia of Public International Law.

³⁶ UNHCR, *supra* note 12, at 2.

³⁷ Susin Park, Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States, UNHCR DIV. INT'L PROT., at 18, U.N. Doc. PLA/2011/04 (May 2011).

³⁸ Rosemary Rayfuse & Emily Crawford, Climate Change, Sovereignty and Statehood, SYDNEY L. SCH., LEGAL STUD. RES. PAPER NO. 11/59, at 11 (2011).

³⁹ UNHCR, *supra* note 12, at 2.

the Nationality of Natural Persons in Relation to Succession of States in article 21, specific safeguards to prevent statelessness will be applied.⁴⁰

If none of these options would be applied, the only solution for such people with probable or existing statelessness is acquiring the nationality of another state. It is certainly a mammoth task to be achieved successfully due to ambiguous provisions on eradicating statelessness at domestic levels.

However, no single policy framework is enough to control climatic statelessness as they all have their own complications for practical application. A combined application of different strategies would be more beneficial. Actually, investigating such a combination, UNHCR concluded on an intermediate solution between territorial reconstruction and emigration.⁴¹ It has also recommended that climatic statelessness be also identified in the international legal regime, especially with the UN Framework Convention on Climate Change. Parallely suggests the formation of multidimensional treaties that would administer inhabitancy and consideration of culture and social rights of the people at risk of statelessness in the host countries.⁴²

Though such an expansion would be reasonable from the point of view of the stateless it would put a substantial financial burden on the host country with its limited resources, subsequently putting the security and sovereignty of the state also at risk. In such a situation, if the international community would come forward with the element of burden-sharing arrangements, it would be really useful.

Correspondingly, UNHCR emphasizes the unanimous concurrent involvement of the troubled population and concerned government in the formal agreements. The reasoning behind this consideration is that such inhabitants are not willing to leave their roots and even if they agree for the same, they are more concerned about maintaining their socio-legal rights.⁴³

However, UNHCR has not referred to climatic statelessness notwithstanding the fact that it has launched an IBelong Campaign in 2014 to end statelessness by 2024.⁴⁴ Nevertheless, the UN Global Compact on Refugees of 2018 might reinitiate the process, as it explicitly recognizes in its Paragraph 43 that environmental degradation and natural disasters increasingly interact with the drivers of refugee movements and calls for the establishment of “a global academic network

⁴⁰ United Nations Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175.

⁴¹ UNHCR, *supra* note 12, at 2.

⁴² COUNIL CHRISTEL, *THE PROTECTION OF ENVIRONMENTAL REFUGEES IN INTERNATIONAL LAW, MIGRATION AND CLIMATE CHANGE*, (ed.) ETIENNE PIGUET, ANTOINE PÉCOUD, AND PAUL DE GUCHTENEIRE, 359–87 (2011).

⁴³ McAdam Jane, *Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010–2013*, *Refugee29*, vol. 2 11–26

⁴⁴ UNHCR Global Action Plan to End Statelessness 2014–2024.

on refugee, other forced displacement, and statelessness issues to facilitate research, training and scholarship.”⁴⁵

V. CONCLUSION

Climate change has severe consequences in terms of human migration and mobility, which are on arise in the current era of global warming. Climatic statelessness as a policy area may be relatively recent, but most of these issues represent long-standing challenges for states and the international community. The element of concern here is what methods be implemented through which such displaced island states nationals are positively admitted by other countries and they can acquire the nationality of these welcoming states. Correspondingly, it is also to be understood how such people be saved from becoming marginalised in their new states of residence. Therefore, the policies that focus on the climate change – migration nexus must be accompanied by renewed efforts to combat the very context that make people vulnerable in the first place. Attention should be given to both human rights and legal points of view.

The foremost imperative is to conclude over an internationally harmonious settlement on understanding the persisting concern of adaptation vis-à-vis displacement causing statelessness. It is correspondingly essential at the geopolitical level to back and support the pretentious states in their exertions towards averting climate change, simultaneously helping them in devising a methodology to curb the issue. However, the clear objective behind all these efforts should be to maintain a harmonious balance between the exertions for adapting to the changed social milieu due to displacement and efforts to control global warming. At the geopolitical level efforts were made to form such an agreement, through the UN Climate Change Conference held in 2009, though all such efforts went in vain. The state parties could not conclude on a particular common framework for a better environment degradation control mechanism.

There is a dire need for efforts by states and non-state actors to devise appropriate solutions for potentially affected populations in the current scenario of the world. Implementation of energy should not be only towards creating specific frameworks rather also to pledge to put efforts in mitigating climate change altogether.

⁴⁵ United Nations Global Compact on Refugees 2018, p. 16, <https://www.unhcr.org/5c658aed4.pdf>.