

**REMARKS BY KAYLY OBER\***

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I would like to begin my remarks with one contentious word, which underpins how we view the law—and that word is “climate refugee.” I would like to interrogate this word from a variety of viewpoints. Since we are at a law conference, we can start with the legal perspective. The 1951 Refugee Convention does not in any way shape or form reference environmental change, disaster, or climate change. It is very narrow and specific. Some might say that it is purposefully narrow. It defines refugees as those who cross borders because of “persecution” on five sacred grounds, including race, religion, nationality, political opinion, and social group. From a legal perspective, then, a “climate refugee” does not exist.

From an academic or research perspective, there are additional challenges, including problems with calculation and attribution—to what extent can we point to climate change as the driving factor behind displacement?

Additionally, refugee advocates have a few fears.

First, they fear we will remove attributes related to human dimensions and point to things that are amorphous and harder to pin down, which allow the real culprits behind displacement to escape blame. Syria is a good case in point. Prolonged drought and the inability to grapple with that drought were due to climate-related factors; however, only focusing on this elides the fact that the Syrian government was responsible for many of the reasons behind why people were not able to adapt to the drought. Longstanding agricultural policies, including inefficient irrigation methods, led to the overuse of groundwater aquifers, which contributed to decreasing access to water and water scarcity. The Syrian government also liberalized the economy in the 2000s, getting rid of agricultural subsidies that farmers relied on during times of crisis.

Second, refugee advocates are weary of renegotiating or opening up the black box of the Refugee Convention. Today, the Convention is a relatively strong international law and is binding—and opening it up may end up watering it down.

Despite these challenges, there has been some progress in recent years to grapple with the Convention’s applicability in the context of climate change. In October 2020, the UN High Commissioner for Refugees released “Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters.”

A few excerpts are relevant to this conversation.

Paragraph 5 makes the case that “assessment of claims for international protection made in the context of the adverse effects of climate change and disasters should not focus narrowly on the climate change event or disaster as solely or primarily natural hazards. Such a narrow focus might fail to recognize the social and political characteristics of the effects of climate change or the impacts of disasters or their interaction with other drivers of displacement.” Just focusing on climate change does not mean you are assessing claims on international protection. They also go into more detail in paragraph 10, where the paper says that:

In the context of the adverse effects of climate change and disasters, a well-founded fear of being persecuted may arise especially for people who are already marginalized or vulnerable. The willingness or ability of a State to prevent the adverse effects of climate change and disasters, as well as to respond adequately to them if they occur, may vary for particular groups, reflecting differences in race, ethnicity, religion, politics, gender or social groups. It could, for example, include situations in which a government withholds, or deprioritizes protection by denying relief aid to specific populations; where post-disaster relief is politicized; or where the

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environment, its natural resources or ancestral lands are deliberately destroyed to persecute particular populations.

Paragraph 11 also claims:

People may also have a valid claim for refugee status where the adverse effects of climate change or disasters interact with conflict and violence. These adverse effects may exacerbate violence, or vice versa, and render the State incapable of protecting the victims of such violence, resulting in a well-founded fear of being persecuted for reasons of one or more Convention grounds.

These are things to keep in mind that try to find room for maneuvering within the Convention. It demonstrates that UNHCR is trying in earnest to engage on this issue. In the past, it has been hesitant to engage on the issue of climate change, so this constitutes some progress.

The legal considerations paper also notes that regional refugee definitions are important. Both the 1969 OAU Convention and 1984 Cartagena Declaration provide a more generous approach to defining refugee protection to, *inter alia*, “every person who, owing to . . . events seriously disturbing public order.” There are many refugee scholars who have made reference to these regional frameworks to contextualize or add a dimension under more expansive definition.

These are small gains that may come to fruition in a variety of ways—through the courts potentially, but also through administrative application. It remains to be seen if we will see some movement on these fronts.

#### REMARKS BY CECILIA JIMENEZ-DAMARY\*

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As the panel title provides, climate change is the defining crisis of our times, and this is manifested by the intense effects of climate change on mobility within countries themselves. The numbers are increasing yearly. In 2020, the available data from the Internal Displacement Monitoring Center (IDMC)<sup>1</sup> provide that there were 9.8 new displacements due to armed conflict and violence, compared to 30.7 new displacements due to “disasters,” a number of which may be linked to climate change.

In this short presentation, I would like to articulate international human rights law in discussion of human mobility in the context of climate change, with the United States as an example. While we all realize the dramatic effects of sudden-onset hazards on populations—such as those of Hurricane Ida in Louisiana last August 2021, not many of us are fully aware of the tremendous effects of slow-onset hazards—such as on the coastal regions of Alaska. Disaster risk reduction and mitigation efforts are usually focused on sudden onset hazards and these efforts are now only starting to include slow onset hazards. I therefore would like to focus on the latter, as this is not much discussed in human rights terms as related to internally displaced persons.

Indeed, human mobility in the context of the slow-onset adverse effects of climate change can take many forms, including displacement, migration, and planned relocation, and this may be internal or cross-border. In most cases, movement is not entirely voluntary or forced, but rather falls somewhere on a continuum between the two, with different degrees of voluntariness and constraint. However, where such voluntariness is absent, such mobility would fall squarely in the notion of forced displacement.

\* UN Special Rapporteur on the Human Rights of Internally Displaced Persons (IDPs) (2016–2022).

<sup>1</sup> Internal Displacement Monitoring Center 2021 Grid. These have now been replaced by higher numbers for 2021.