

Analyzing the individual and social rights condition of climate refugees from the international environmental law perspective

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Received: 8 May 2011 / Revised: 2 July 2011 / Accepted: 28 August 2011 / Published online: 23 November 2011
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Abstract In evaluating international treaties, in particular, the United Nations Framework on Climate Change Convention, this paper shows that necessary preparations have not been made to protect the rights of individuals who are refugees or have been forced to migrate from their homeland. Immigrants are deprived of the most essential human rights, such as language, culture, and having a right to a healthy living environment. The current legal administration has not made the necessary contingencies for responding to the environmental consequences of immigration and is extremely inefficient in expanding this phenomenon. This paper seeks to address the question of to what extent existing forms of legal and operational protection can apply in climate change-related displacement in general and cross-border displacement in particular. In this work some strategies have been proposed for dealing with these existing gaps. It is expected that analyzing these gaps and determining the international community's duties and commitments (governments and international organizations) can result in efficient management of this crisis and prevent the outbreak of chaos across the globe.

Keywords Convention · Environmental law · Global warming · Semi natural disasters

Introduction

Welfare and economic growth along with excessive use of natural resources have become dominant themes in many

countries across the globe. There are no signs of change in the general thrust of this destructive global trend, even though there have been beneficial attempts made in specific areas. About 70% of natural disasters currently occurring are the result of climatic changes and it seems that this trend is increasing. Poverty, lack of water and nutritional resources, threats to healthcare and massive migration have also been on an increasing trend. Based on reports of IPCC (Intergovernmental Panel on Climate Change), climatic changes, migration and the movement of millions of people is recognized as the biggest effect of this phenomenon. In these conditions, analysis of the aftermath and man's preparation for adjusting to such new conditions is of great significance.

Studies have shown that despite international attempts to reduce the effects of global warming, the emission of greenhouse gases is trending up, and because the emission increase rate for developing countries is greater than developed countries, it is predicted that this condition will become more critical in future (Fig. 1, UNDP 2008).

For these reasons, the earth's temperature maintains an upward trend and based on the predictions of the IPCC, the earth's temperature will be about 1.4–5.8°C warmer in the year 2100 than in 1990. This temperature increase may result in melting of the ice and rising of the Pacific Ocean's water level over 16 cm by the year 2030 and more than 50 cm by the year 2070. A half meter increase in the water level can affect 100,000 km² of coastal and delta regions such as Bangladesh and profoundly alter millions of people's lives (Preston et al. 2006).

In the previous two decades, the number of natural disasters recorded has increased from 200 to 400 per year and during this time, people effected by natural disasters resulting from climatic changes has gone from 1.7 billion to 2.4 billion (Ammer 2009). Figure 2 shows the number of

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Fig. 1 Increasing trend of greenhouse gases in developed and developing countries (UNDP 2008)

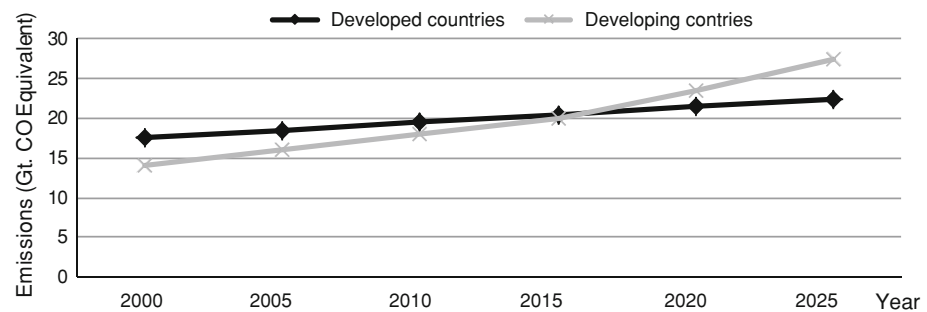
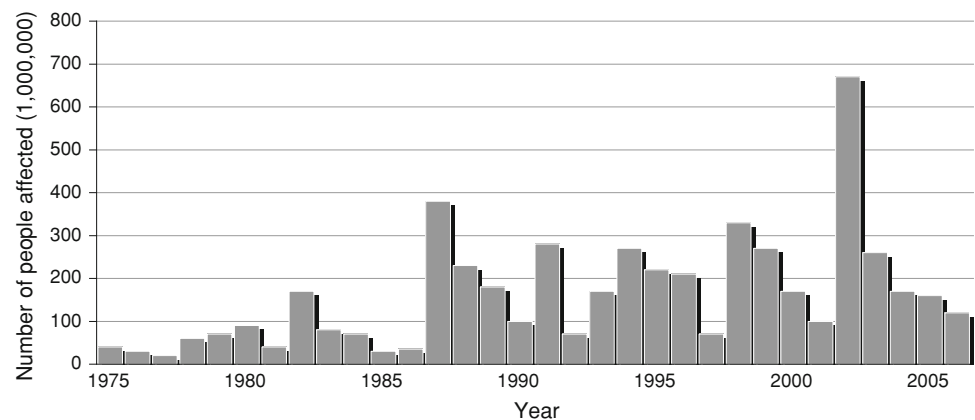


Fig. 2 Number of people reported affected by natural disasters 1975–2006 (EM-DAT 2006)



people affected by natural disasters during 1975–2006, which clearly shows the increasing trend. Expenditures resulting from these disasters also increased to 10 times the amount from 1992 to 2008 (Ammer 2009). Residents of Tuvalu in northeastern Australia, located in the Pacific Ocean, are leaving their homes due to a rise in sea level and 300 residents of this city have currently left their homes (Friends of Earth Australia 2007). Presently, 90% of natural disasters are due to climatic changes (Holmes 2008). Asia, Africa, and Latin America have both faced the most intense environmental problems and have depended the most on the environment for livelihood which indicates that environmental migration will be relatively more prevalent in these regions (Reuveny 2007).

Aftermath and effects of these phenomena have resulted in certain occurrences which can be called “semi-natural disasters”, whereas natural disasters are those whose cause is uncontrollable by human beings, such as storms and earthquakes. But when up to 90% of these disasters are the result of man’s actions, they can no longer be considered natural disasters. Therefore, it is better to refer to them as “semi-natural disasters”, because they resemble natural disasters, but their cause is actually not natural and is the result of human activity. Thus, floods, droughts, and storms resulting from climatic changes should be called “semi-natural disasters” rather than natural disasters. “Semi-natural disasters” result in a decrease in water resources and agricultural products, which are threats to the safety of

nutrition and human health, elimination of human habitats and consequently leading to the unpleasant phenomenon of migration. However, from the viewpoint of reputable international conventions and legal documents, immigrant is attributed to an individual or individuals who move to a location outside of their homeland due to religious-racial-political reasons. But consequences of climatic change have resulted in a new term called “environmental refugees” besides other types of immigration. These are individuals who are forced to leave their homeland due to lack of vital facilities such as residence, water, food and employment. The Norwegian Refugee Council has announced that only in the year 2008, 20 million people have migrated due to natural disasters resulting from climatic change (EJF 2009). According to these statistics, there were 25 million environmental immigrants across the world in the year 1995 (Meyers 2001) and it is predicted that by the year 2050 the world environmental immigration rate will reach 250 millions people. This phenomenon could possibly be the biggest catastrophe of the century if the number of immigrants reaches many times its amount in about half a century. Even though the relation between climatic changes and immigration is not a new issue (Holmes 2008), studies have shown that over 98% of people being affected by unexpected events resulting from climatic changes between the years 2000 and 2004 belong to the under-developed countries. These countries are generally unable to provide adequate disaster management



Table 1 Ratio of refugees to host country populations 2001 (Salehyan 2003)

| Host country | Ratio of refugee population to total population | Number of refugees |
|-------------------|---|--------------------|
| Jordan | 1:03 | 1,643,900 |
| Lebanon | 1:11 | 389,500 |
| Iran | 1:26 | 2,558,000 |
| Djibouti | 1:27 | 22,000 |
| Yugoslavia | 1:27 | 400,000 |
| Congo-Brazzaville | 1:30 | 102,000 |
| Zambia | 1:36 | 270,000 |
| Guinea | 1:40 | 190,000 |
| Liberia | 1:53 | 60,000 |
| Pakistan | 1:72 | 2,018,000 |
| Tanzania | 1:73 | 498,000 |
| Sudan | 1:104 | 307,000 |

during such events, due to the high level of poverty and low human development. Nevertheless, other countries are also vulnerable to the negative consequences of this phenomenon, because they are physically under the pressure of immigrants and morally under the pressure of the world's public opinion for accepting these immigrants and will be more so in the future. This type of immigration, due to its special features, has carried with it new legal issues and problems for which no substantial response has been provided thus far. One of the possible consequences of environmental immigration is its affect on nationalities and civilizations. In more exact terms, nations who are losing their habitats face the danger of extinction, and nations who are accepting the immigrants are faced with racial changes.

Table 1 shows the ratio of immigrants to the population of a number of countries in the year 2001. It is predicted that with the increase in environmental immigrants, this ratio will once more be to the disadvantage of the country accepting the immigrants and thus national characteristics of the host country will face noticeable metamorphosis. In this paper, while analyzing the environmental immigration phenomenon, its effect on cultural metamorphosis and decline of civilizations will be studied.

Results and discussion

Main reasons for environmental immigration

Environmental immigration is a type of immigration which occurs due to the loss of living conditions in a nation. This issue can be allotted to part of a country, the whole country, or a region consisting of a number of countries. The main

reasons for the loss of living conditions due to climatic change can be summarized in the following three points:

- Islands and low altitude shores going underwater; for example, a 45 cm rise of sea level resulted in 10.9% decrease in Bangladesh's boundaries, leaving 5.5 million people homeless (Barnett 2003).
- Devastation of water resources and as a result, the loss of agriculture, nutritional protection and employment are examples of drought in the African Sahara, expanding from 60 to 90 million hectares, with a loss of over 26 billion dollars by the year 2060 (UNDP report 2008).
- Destruction and devastation of lands due to floods, storms and drought, whereas living conditions are completely obliterated. One out of every five Brazilians born in the northeastern part of this country is forced to move to other regions of the country. The Pakistan flood of 2010 affected 15–20 million people, which is greater than all the populations which were affected by the tsunami of the Indian Ocean or the Kashmir earthquake in 2005, Narges storm in 2007, or this year's Haiti earthquake. At least 160,000 square hectares have submerged which is almost equal to the size of the state of New York and resulted in the migration of one million people.

Environmental immigration characteristics

- *Simultaneous and in large numbers*: Climatic changes that occur in any region usually include all residents of that region. For example, life for all residents of a region that goes under water, or where the water resources are destroyed, becomes inconceivable and they are all forced to abandon their homes. While for other forms of immigration, such as political or economic, individuals or confined groups are forced or inclined to immigrate. It seldom occurs that all residents of a region leave their homeland for political, economic or similar reasons all at once.
- *Mandatory*: Another characteristic which differentiates environmental immigration from other forms is the freedom and free will in non-environmental immigration. Immigration which is not related to environmental changes is usually voluntary and the result of the immigrants' own tendency and their goal is usually reaching better living conditions. Even political immigration is indirectly the result of free will and a decision to continue life in their homeland might not be favorable, but it is not prevented. Regarding environmental immigrants, the factors of free will and freedom have no meaning, and regardless of how much the tendency exists to continue life in their homeland, due



Table 2 Differences between environmental immigrants and other types of immigrants

| Title | Environmental immigrants | Other immigrants |
|-----------------------|---|---|
| Range | All or most residents of a region | Usually individuals or small groups |
| Motivation | Habitat destruction (being submerged in water, lack of water and nutritional resources) | Political, religious, racial, economical, cultural, ... |
| Free will | Being forced to migrate and lack of survival facilities | Conscious, liberal, with an inclination to migrate |
| Identity | Inability to legally respond to destruction of homeland | If the related country accepts, citizenship is given |
| Historical background | An issue which has become crucial during the past years | Has existed from old times |
| Legal devices | Not compiled | Genève Convention and related protocols |
| Boundaries | Mainly under-developed countries | Has no boundaries and encompasses all countries |

to minimal living conditions, they are deprived of such a possibility and are forced to leave their country.

- *Motivation*: As it is also stated in the Convention Related to Refugee Conditions (1951) context, non-environmental immigrants resort to migration with political motivations and fear of persecution and torture, while the motivation of environmental immigrants is losing home, job and access to minimal living conditions in general which are the necessary basic conditions to continue life.
- *Eradicating identity*: One of the most important distinguishing features of environmental and other types of immigration is that in the non-environmental form, immigrants migrate from their homeland, while their country and the identity of residents' remains intact, because immigration pertains to a person or people of a tribe or nationality. People migrate but those remaining will protect the culture and identity.
- *Historical background*: World War I in 1914 and great revolutions that occurred afterwards resulted in huge populations searching for refuge in foreign countries (Barnett 2002) and was somehow grounds for the formation of the rights for current refugees (Convention de Genève 1951) forced to leave their homeland for political reasons and fear. Meanwhile, issues related to environmental refugees are relatively recent, considering the main reasons for climatic change is human activity and the resulting pollution, having had an upswing during the previous decade and so created many problems.
- *Legal devices*: The most reliable legal document available as support for refugees is the Genève Convention and its related protocol, while no special treaty or agreement has been compiled which can respond to environmental refugee's rights.
- *Boundaries*: Studies have shown that most uncalled for events and resulting damages have caused foreign immigration in under-developed countries, especially in Africa and Asia (Bates 2002). The main reasons for this can be lack of economic capacity and lack of correct natural resource management and supportive implementation in

these countries. It seems improbable that if a similar event occurred in a developed country, a great proportion of the population would leave their homeland. As is also shown in Table 2, the 20 countries with the most migration resulting from unpredicted incidents are mainly from less developed and developing countries.

Stability of environmental immigration

Environmental immigration can be temporary or permanent. Even though this immigration can be somehow a domestic transfer, it is aimed to analyze the issues related to foreign immigration. Here, these two types of immigration will be studied:

- *Temporary immigration*: In most cases, critical housing conditions are such that they may return to original conditions and the immigration is temporary. Therefore, after the end of a disaster, residents can go back to their homeland. If unavailability of food and water resources has created living limitations, but other living aspects are still obtainable, it is evident that all governments and international organizations will prefer rescue and relief operations or providing necessities in that region and country in order to prevent any aftermath. Some of these consequences are directed at immigrants while others are directed towards the host country. Economic and financial aspects imposed on the host countries as well as security issues due to a sudden influx of individuals to the region without authorization or general jurisdiction.

These issues, however, only apply when rescue efforts are possible in the region. In some cases such conditions do not exist, and residents and individuals of that country will inevitably have to migrate to neighboring countries until appropriate living conditions are established. It appears countries will abstain from accepting this group of people in order to preserve their political condition and to maintain a reputation for reliability in the international community.

- *Permanent immigration*: If the above conditions are met, analysis is undertaken to establish the possibility



for relief and rescue efforts by international authorities. If relief is possible in that country, the authorities will begin a temporary short-term phase and if providing relief efforts is not possible in the disaster-stricken country, a long-term temporary plan will be carried out. In other words, this evaluation is carried out during the displacement stage and after the crisis. Unfortunately, issues and problems related to this group of people will become evident when conditions for returning to their homeland are not ensured, even for the long-term. It is in this situation that performance assessment of governments in accepting these people becomes quite different, and the possibilities and marginal issues related to each will be evaluated in this study.

Conclusion

Responding to environmental immigration

As it was previously stated, environmental immigration cases have been observed around the world to this date, which by all means have not been on a large scale. It is anticipated, however, that in the near future, many island and coastal countries such as the Maldives, Tuvalu and parts of Bangladesh will submerge underwater. Among these, 20 countries shown in Table 3 have been in high rankings of consequential displacements from natural disasters in the year 2008.

Even though this occurrence will most probably take place, it appears that the global community has not prepared itself for confronting this issue and has not designed the necessary legal, executive, judicial and managerial

means to do so. Therefore, in case such a phenomenon does occur, those injured and the international community will face great difficulties. Thus, evaluating the preparation for a response and reaction to environmental immigration will assume great significance. Difficulties related to environmental immigrants can be categorized as two groups of before and after seeking refuge.

Before seeking refugee

The most important problem before seeking refuge is the lack of compliance from other countries and finding the destination country. However, regarding individual immigration, countries have management over refugees and are able to refrain from accepting refugees or impose special conditions on them. But regarding group immigration, host countries are faced with a situation where they cannot turn them down and probably have no choice but to accept. Countries mainly withstand accepting immigrants in large numbers because of the supervision challenge, while resulting disorder and insecurity can cause commotion and disrupt the peace, and order and security of the host community. The humanitarian intentions of the host countries might however be effective in terms of their behavior towards the refugees. This is especially the case with the propaganda and international image of the issue, which can be a positive factor for appropriate behavior and gathering international aid. At times it might be possible that acceptance of refugees is mainly for political benefit and might imply to a certain extent extremist intentions.

In any case, restraint from accepting refugees is the most probable response which might be expected from countries because in today's world, itself afflicted by numerous difficulties, such as an increase in population, increase in incurable diseases, economical crisis, conflicts, domestic oppositions and identity crisis, it appears improbable that a country would volunteer to accept a large number of refugees. This is because immigrants will surely add to these problems. If no country accepts the immigrants, what will happen to them? With regard to the fact that all lands are controlled by various countries and there are no new lands to be inhabited by immigrants, solutions must be sought out for the problem, and even if this issue imposes great pressure on countries, at least it appears probable. This issue might only be solved with the legal implementations previously provided by the international assemblies such as the United Nations and affiliated councils such as the Human Rights Council and the Security Council. Based on the main jurisdiction principle of states, no government and no country have a right to interfere with the future plans and jurisdiction of other countries; therefore, by asserting this principle, any country can refrain from accepting this issue. Thus, the only response given might be compiling

Table 3 Twenty countries with the most effective displacements from natural disasters in 2008 (UNOCHA 2009)

| Country | Total displaced and evacuated | Country | Total displaced and evacuated |
|---------------------------|-------------------------------|------------------|-------------------------------|
| Peoples Republic of China | 19,979,423 | Nepal | 197,500 |
| India | 6,705,085 | Benin | 150,000 |
| Philippines | 2,736,389 | Sri Lanka | 136,345 |
| United States | 2,014,473 | Haiti | 123,811 |
| Cuba | 980,000 | Vietnam | 102,650 |
| Myanmar | 800,000 | Pakistan | 89,200 |
| Indonesia | 400,815 | Papua New Guinea | 75,000 |
| Brazil | 381,035 | Chile | 74,610 |
| Mozambique | 289,486 | Ethiopia | 72,805 |
| Thailand | 202,680 | Honduras | 70,250 |



legal implementations in the international realm, such as multilateral, regional or national treaties, for those groups of countries deemed most vulnerable. These protocols, similar to insurance methods, will obligate a number of countries with similar risk for disaster to aid each other in emergency conditions. With regard to the fact that most vulnerable countries are situated among Asia and Africa, in the less-developed countries, developed countries which are situated farther from the disaster region also need to undertake a role. Considering the high costs of displacement for this group of people from far-off countries, the best approach in this respect is temporary refuge to neighboring countries and reduction in housing and living costs of this group until the time comes to provide a normal life by more developed countries. It is apparent that these issues necessitate a united managerial system to appoint governments to carry out preplanned commitments.

Another issue is that not all immigration occurs legally and with the approval of the accepting country, and there is a possibility of many people not having the chance to live in their own homeland might attempt illegal immigration to other countries as environmental refugees.

After seeking refugee

The most important problem after immigration is providing living conditions for immigrants. After solving the problem of accepting people by the host country, the legal condition of immigrants is at stake. This issue is looked at from various perspectives:

- Individual circumstances
 - *Right of having identity*: If these individuals lose their identification documents, how will their identity be expressed?
 - *Right of having property*: This is among those rights which the citizens of a country may hold. For example, if immigrants reside in a country, do they have a right to property or housing or does the host government only allow them a camp site in which to reside?
 - *Issues related to private situations*: Considering these individuals face issues such as marriage-divorce, heritage. On the basis of what rights will their grievances be resolved?
 - *Right to court of justice*: In case of any disagreement, each refugee must freely be able to refer to the court of law.
 - *Residential rights*: Do individuals residing in these regions have a right to vote, to take out insurance, a visa, public subsidies and other benefits like other residents of that country?
 - *Right to freedom of religion*: Freedom in carrying out religious duties and not being forced to carry out religious duties specific to the host country.

- Social circumstances

- *Social and psychological behavior of refugees*: Refugees of other countries, especially a country with a higher level of economic and social development, are usually psychologically insecure. On one hand, they are dependent on their culture, and on the other hand are avaricious in accepting the new culture. Communication problems with the surrounding people and environment also worsen this insecurity. Refugees in the host countries are usually placed in the lowest social positions, except when they have special capabilities.
- *Local people's reaction to refugee acceptance*: Local people's insecurity towards refugees has always caused them to be second-rate citizens. Refugees in the workplace usually receive lower wages than others and this problem is greater when the refugee is from an unknown country. Even in developing countries, keeping distance from refugees is observed because refugees are considered to be transmitters of epidemic diseases which can contaminate the environment. It is for this reason that people prefer to employ their own unemployed rather than refugees, even though they accept lower wages.
- *Host country policies*: Even though host governments are implementing plans for refugees in order to facilitate refugee acceptance in host societies, such as language teaching, higher income jobs, and various skills and techniques, this has only reached favorable results in developing countries and it appears that if host countries are among developing countries themselves, it is unlikely that they will have such high potential.

Assessing the legal condition of refugees based on reliable international documents

Based on principles of international rights, individuals having to flee from storms, and the aftermath, are considered refugees. The international community considers these people homeless and refugees and applies a set of special international standards in their regard. Refugees are people who escape from their homeland because their respective governments continuously oppress them and do not adhere to human rights by supporting them against dangers from a third party. International rights support such individuals through compulsory resources such as the Global Human Rights Manifesto of 1948 or compulsory resources such as the Convention Related to Refugee Conditions (1951) and its protocol (1967) and other regional documents such as the American Convention on Human Rights (1969) and the Cartagena Declaration on Refugees (1984).

The term environmental refugee was first brought forth in the Global Human Rights Manifesto of 1948. This term was announced before changes in domestic boundaries were



proposed as a group with protection rights (Kolmannskog 2008). Currently, no specific international convention (treaty) exists in the realm of supporting rights of individuals who are homeless in their national borders because of natural disasters or other reasons. Even though manifestos and declarations regarding the support of this group of injured people exist, there are still no specified privileges in this realm in comparison to the increasing number of individuals and their problems and consequences.

According to the Environmental Justice Foundation people who are forced to move their homes as a result of climatic changes are not officially recognized in international rights.

Semi-natural disasters challenge international responsibility fulfillment in the realm of protecting individuals against refugee status because prevention against earthquake, flood, tornado, tsunami and other natural disasters as a result of climatic changes is beyond the ability and capacity of governments. In the Hyogo Declaration on disaster reduction which was approved in the World Conference on Disaster Reduction in Kobe, Japan in January 2005, Article 4 confirmed that the government has initial responsibility in protecting people and their belongings against dangers and they must place disaster-risk reduction among the initial national policies based on their capabilities and resources at hand (Hyogo Declaration on Disaster Reduction 2005). It is evident that avoiding unexpected events is impossible and no matter to what extent a government implements risk reduction in its policies, it is still be probable that because of initial living conditions in a country, possibility for continuing life in that country would not exist and in such a condition, administering the rights of individuals forced to immigrate and take refuge in other countries would still remain unanswered.

In this realm, living rights have a key role in international human rights. This is due to governments' commitment in respecting living rights which has two aspects. That is, on the one hand, commitment will prevent arbitrary living deprivation by their officials and on the other hand, it is the implementation of maneuvers and steps for protecting people's lives against predictable hazards from other resources, whether these hazards are from a third party or the result of natural disasters.

From another standpoint, at the level of Human Rights World Committee, it is stated that governments are obligated to adopt positive steps for protecting living rights and cannot arbitrarily deprive any individual of living rights (without justification). This issue has been asserted in Article 6 of the International covenant on Civil and Political Rights (1966), in which the contents of the human rights declaration has been more clearly analyzed. Based on the third clause of Article 12 of the Civil and Political Rights Convention, limitation on freedom of migration is

officially recognized only to a certain extent, which is necessary for protecting issues such as public health.

One of the documents receiving utmost attention from the global community regarding the refugee condition across the world is the World Human Rights Declaration. In Article 14 of this declaration, it is stated that anyone has a right to adopting shelter in other countries if fleeing from persecution, torture and molestation. However, unfortunately, despite the fact that refugee rights are officially recognized in this global declaration, due to the fact that it has not clarified immigration reasons, it cannot be responsive to the abused rights of people forced to leave their homeland and take refuge in other countries because of environmental reasons and results of climatic changes.

Although, regardless of it being declared in Article 25, anyone has a right to health and welfare for himself and his family, regarding nutrition, housing, healthcare, and necessary social services and also has the right to respectable living conditions in situations of unemployment or other matters out of his hands. Yet it appears none of the above factors, even if the respective government cannot adhere to an individual's fundamental rights, can be a justification for becoming a refugee in other countries.

The 1951 Geneva Convention can be considered the main legal source of refugees in international regulations. Based on Article 31 of this convention regarding refugees who reside illegally in the host country, it has resolved that: cosignatory governments will not penalize immigrants who have directly left their homeland due to hazards, and illegally entered the host country without their permission. This is only on the condition that they are immediately introduced to the related authorities and provide substantial reasons for their entrance or illegal presence. The respective government will also have no limitations other than those required for the going back and forth of these immigrants and the aforesaid limitation will only be until the refugee's situation is not determined in the host country or they have not received permission for entrance to another country.

By reflecting upon the above mentioned points, it is concluded that refugee rights are for those individuals threatened or in danger and on the other hand, is a task allotted to the cosignatory government regarding the acceptance of this group of people. Thus, generalizing the regulations of this group of refugees to environmental refugees is not possible because the definition stated for refugees are reasons other than environmental reasons.

Even though at the international level, there is no specific agreement to support the rights of this group of people, at the national regulation level, a limited number of countries have taken positive steps in this realm. For example, according to Switzerland's law, which is among a number of immigration laws of the European members,



there is a specific categorization for that group of people who cannot return to their countries due to natural disasters. Australia has a definition for environmental refugees which gives the Refugee and the Immigration Ministry the possibility of considering climatic changes as a type of natural disaster and further to consider possibilities for the regions tolerability and a countries capacity for attracting immigrants (Ammer 2009).

New Zealand is also one of the countries which accept environmental immigration based on the immigration law treaty, regardless of their limited number (75 from Tuvalu and Kiribati, 350 from Tango). These immigrants are chosen each year based on votes and specific regulations (IOM 2010). The Pacific Access Category (PAC) is an immigration arrangement that was negotiated in 2001 between the governments of Tuvalu, Fiji, Kiribati, Tonga and New Zealand to enable people from these nations, which are already experiencing the effect of climate change, to move to a less vulnerable location (Beniston 2004).

A number of authorities believe that when determining refugee conditions, if a group faced certain problems, where governments cannot grant that group collaborative refugee rights exist, such a group needs to be given the opportunity to put forth individual cases separately. This is especially the case where the incompetence of a group is not necessarily due to individual group members not having independent reasons for becoming refugees (Nazari 1999). It appears if this regulation can be implemented for environmental refugees, it may be responsible for a limited number of immigrants and will not solve this group's problem because during the outbreak of unexpected events, the situation is so critical that if this group does not receive refugee status, struggle and security issues might arise due to their inability to return to their own country and an inability to survive.

Among the important principles of the 1948 Global Human Rights Declaration, all individuals should have human rights and freedom without any discrimination. In condition, where basic rights and freedoms do not exist, abandoning the respective country and taking refuge in other countries with better living conditions is one of the human rights principles. One might be able to find a rationalization for environmental refugees among available legal resources, but considering that giving refuge is under the government's authority, on this basis, the human rights principle cannot force any government to take such actions. Also, the number and expense of such individuals and problems they are prone to bring with them to the second country (such as security, economic, etc.) are considered impeding factors for the host country.

With a brief glance at the refugee's legal status, including the Protocol related to Refugee Status of 1967, it

is clear that all legal aspects of environmental refugees are to be considered, this group should also benefit from rights similar to other immigrants as indicated by the following:

- *Permission for residency*: the most important legal consequence of accepting refugees is their residency.
- *Freedom for transit*: issuing a refugee residency card not only to reside in the country, but also allowing the refugee free transit inside the country, provided the rules and regulations pertaining to foreigners are respected.
- *Right to owning property*: one of the issues emphasized by the Convention Related to Refugee Conditions is the right to own movable and immovable property. Article 13 of the Convention states that cosignatory governments shall act favorably regarding the ownership of movable and immovable property and other rights and also regarding rental contracts or other rights relating to ownership of movable and immovable property.
- *Right to court of justice*: every refugee should be able to freely refer to the judicial courts and there should be no discrimination between refugees and citizens.
- *Right to insurance*: having health insurance is among one of the refugee rights which is officially recognized in the Convention Related to Refugee Status and according to Article 24 of the Convention, if a refugee passes away as a result of an accident or disease in consequence of work, the legal right which should be paid in this regard is up to the respective government.
- *Freedom of religion*: freedom to fulfill religious obligations and religious instruction for children is one of the issues identified in the Convention Related to Refugee Obligations, and according to Article 4 of the Convention, respective governments are required to act similarly regarding refugee liberty in fulfilling religious affairs and religious instruction to children at least as they would their own citizens.

Evaluating the formation of environmental refugees

Firstly, the initial stages in which conditions for becoming a refugee exist or are developing. In this stage, evaluating the main reasons for identifying the great number of refugees becomes very significant, especially when finding a sustainable solution is at stake. With regard to environmental refugees, the most important reasons are the loss of the minimum living conditions (water, food and housing).

Secondly, a stage in which the formation of such a mass is most probable.

What is significant in this phase is preventing conditions which would result in such circumstances because prohibiting the movement of people who might have been



forced to leave their homeland will not be of any help towards this aim of returning this group of people.

Thirdly, a stage during which a mass of people is formed was observed.

In this phase, all concrete problems related to this group effort reveal themselves. Due to numerous reasons the host countries both do not accept this group of people and prevent them from coming, or they return them to their homeland. However, the non-refoulement principle has prevented the spread of such actions (Safaie 1995). Yet, whereas this principle has still not been officially recognized concerning environmental refugees, and does not have the force of law, it cannot be considered an executive way to solve the problem of these individuals. It has been proven by experience that granting temporary refuge can be a valuable and supportive tool in relation to group movements of refugees.

Fourth, the stage after formation of groups necessitates special solutions.

One of the solutions is voluntary return of refugees; however this is only possible if the original homeland has the ability to provide the minimum basic living conditions. Four factors should be considered such as rights, responsibilities, and benefit to each party, i.e., the refugees, the country of origin, the host country and the international community for which these factors have a mutual effect. For example, the commitments of the country of origin to the host country do not only depend on the individuals or countries inclination, rather, provisions for the voluntary return of refugees mainly depend on international rights and commitments of other governments. Without a doubt, what will facilitate the voluntary return of refugee groups is fulfilling commitments by all parties.

Even though traditional international rights are based on absolute sovereignty and are sometimes incapable of dealing with issues such as collaborative human heritage or general human benefits based on bilateral relations and profit, the advent and development of present-day international rights, especially creating and developing international environmental law to respond to mutual human distress, does include legal capabilities and capacities. Nevertheless, it seems that one of the reasons why lawyers and judicial authorities have fallen behind in officially recognizing the significance of environmental rights as an important human right, especially regarding issues and consequences resulting from climatic change, is probably that pollution and severe destruction of the environment through human causes is relatively a new phenomenon. In fact, until the industrial revolution, only floods, earthquakes, volcanoes and famine were considered as continuous threats and as national disturbance, while human activity did not have a significant role in the occurrence of these natural disasters. But today, it is increasingly human

activity which has been a major cause of environmental disasters.

In international laws, the effectiveness of environmental regulations necessitates international cooperation as a global entity, while pollutants and environmental violators are often successful in impeding their efforts for implementing environmental laws due to lack of coordination between governments and regional institutions. This is with the exception of a limited number of multilateral treaties that have determined institutions for supervising environmental violations. In this manner, even though the Hague International Court of Justice was qualified for attending to environmental disagreements, its qualification was limited to governmental disputes, and individuals, companies and private institutions are not able to take their disputes to this court.

Environmental rights have individual and group perspectives. An individual right gives each environmental destruction victim the right to prevent all environmentally destructive actions and abstain from such actions himself. A group right is that which includes governmental duties in international cooperation or aid to solve global environmental issues. The group perspective of environmental rights clarifies the important fact that all governments and other players in the international realm need to consider human benefits prior to national benefits. Today, international environmental regulations are recognized as dominant international laws and their violation, like the violation of human rights laws, are the violation of the fundamental architecture of international laws, and thus put forth the international commitment laws of governments.

The mutual, but different commitment principle of governments in protecting the environment is blurred by the principle of justice in international law. The justice principle renders those governments having had the greatest role in polluting and destroying the environment, and who have greater facilities and capabilities compared to other developing countries, to have a more effective role in environmental protection. On the other hand, in this process, needs and conditions of developing countries must also be considered. This principle has also been stated in numerous international documents such as the Rio Conference Declaration and the UN Climate Change Convention.

Issues related to environmental refugees (climate refugees) are problematic and subject to discussion because no specific international treaty exists for them. On the other hand, all agree that there should be legal approaches to support these individuals and importantly in regard to issues related to environmental refugees prevention methods are evaluated for this mass of people. Even though non-intervention in domestic affairs of countries has been accepted based on the commonalities of the modern international rights, nevertheless, those international



regulations which overlook the initial rights of every human being should be adhered to by governments. Apart from this, boosting international agreement between governments will to a great extent decrease mutual hostility among them regarding mass immigration.

Refugee rights have been dealt with as theoretical laws in international documents, but unfortunately, in the practical sense, acceptance of environmental refugees has not become an international convention and countries have the authority to act according to their own policies when giving refuge. Most of their decisions regarding refugees depend on national benefits and domestic laws. Therefore, it is necessary that this right be transformed into an international custom especially for environmental refugees.

Among the human rights supporters, it is believed that countries' anxiety for domestic security should be compensated by the mutual commitment to refugees based on standards created by the Humanitarian International Law. Thus, countries can accept these groups of natural disaster victims without any worries regarding the disruption of national security.

With a review on the above mentioned issues a number of proposals are given in response to the existing legal gaps:

Proposal #1: Revision of regulations and existing legal implementations such as the revision of the 1951 Convention on Refugees and its protocol by extending it to cover the environmental refugees. The opposing party, however, believes this issue can create a deceptive relation between climatic changes and immigrants.

Proposal #2: Compiling a new legal framework regarding those groups of individuals who are forced to flee their nation's borders due to unexpected events. It is noteworthy to mention that determining whether unexpected events are the result of climatic changes or not is a difficult task; therefore, it is better that all environmental refugees be included in the new law and it being not specific to climatic refugees.

Proposal #3: Signing agreements and regional contracts between those countries which are vulnerable and in danger of high risk from this phenomenon. For example, those coastal countries facing the probability of submerging underwater can prevent further damages and resulting problems by securing international support and regional agreements between neighboring countries.

Proposal #4: Creating international insurance companies for unexpected accident insurance in order to compensate for the resulting damages and support individuals who have lost their homes and have been afflicted by financial and spiritual losses. Where the establishment of such companies necessitates a budget and supportive financial investments, it appears that developed countries can have an effective role in this area.

Even though the most substantive method for preventing such events is the appropriate management and limitation of greenhouse gas emissions and mitigation of climate change, unfortunately, the Conference of Parties (COP) of the UNFCCC so far has not been fully successful in reaching agreement among the parties for implementation of the Convention after 16 COPs. The reason could be that there is not a strong enough incentive and political will to resolve an important and challenging environmental problem such as climate change. The world economic crisis is another reason for such delays and disagreements. This forces the international community to consider the occurrence of unexpected events and environmental refugee issues as a real possibility and not simply hypothetical and so plan out the legal framework for such an issue.

As a result, the most important question put forth in this regard is whether a supportive legal administration can be considered as an all-inclusive regulation for environmental immigrants, in which governments are committed to international cooperation based on international law, the charter of the United Nations and other conventional and contractual resources? The responses to this question may lead to further legal research in order to develop and expand international environmental law. In this respect, a new perspective on the concept of international security and peace is flourishing.

Acknowledgments The authors are thankful to Dr. Yousef Hojjat (Tarbiat Modares University) and Dr. Farhad Dabiri (Islamic Azad University) for their valuable remarks and suggestions, which have contributed to this paper significantly.

References

- Ammer M (2009) Climate change and human rights: the status of climate refugees in Europe, Ludwig Boltzmann Institute of Human Rights (BIM), Austria, Research project on climate change
- Barnett J (2003) Security and climate change. *Glob Environ Change* 13(1):7–17
- Barnett L (2002) Global governance and the evolution of the international refugee regime. *Int J Refugee Law* 14(2–3): 238–262
- Bates D (2002) Environmental refugees? classifying human migrations caused by environmental change. *Popul Environ* 23(5): 465–477
- Beniston M (2004) Issues relating to environmental change and population migrations. *A Climatologist's Perspective* 20(12):1–24
- Boyd S, Roach R (2006) Feeling the heat. A report from Tearfund
- Cartagena Declaration on Refugees (1984) Colloquium on the international protection of refugees in Central America, Mexico and Panama, Columbia, 19–22 November 1984
- Convention de Genève (1951) du 28 juillet 1951, relative au statut des réfugiés entrée en vigueur le 22 avril 1954 Préambule
- EJF (2009) No place like home: climate refugees. Report of The Environmental Justice Foundation
- EM-DAT (2006) The OFDA/CRED International disaster database (Center for Research on the Epidemiology of Disasters)



- Friends of Earth Australia (2007) A citizens guide to climate refugees. Revised and Updated version
- Holmes J (2008) Opening remarks at the Dubai International Humanitarian Aid and Development Conference and DIDHA 2008 Conference
- Hyogo Declaration on Disaster Reduction (2005) World Conference on Disaster Reduction in Kobe, Japan
- International Covenant on Civil and Political Rights (1966)
- IOM (2010) Climate change and international migration. Background paper WMR
- Kolmannskog V (2008) Future floods of refugees: a comment on climate change, conflict and forced migration. Norwegian Refugee Council
- Meyers N (2001) Environmental refugee: a growing phenomenon of the 21 st century. *R Soc Lond B*2002(357):609–613
- Nazari H (1999) Group refugee increasing. *Politic Econ J* 1(8):14–18
- Preston et al (2006) The Commonwealth scientific and industrial report. Climate change in the Asia Pacific region
- Reuveny R (2007) Climate Change- induced migration and violent conflict. *J Polegeo* 26(23):656–673
- Safaie J (1995) Statues of refugees in international law. IRIB Foreign Ministry publishing
- Salehyan I (2003) Human security and climate change. An international workshop, Oslo, 21–23 June
- UNDP (2008) Fighting climate change: Human solidarity in a divided world. Human Development Report 2007/2008
- UNOCHA (2009) 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 GH-1211 Geneva 10, Switzerland

