

BOOK REVIEW

CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW

A book by Jane McAdam
(New York: Oxford University Press, 2012)

Reviewed by: Demola Okeowo*

OVERVIEW

The book *Climate Change, Forced Migration, and International Law* is an authoritative compendium of the real issues in discourse on climate change related movement and its implications in international law. Prior to reading this book, I had read a lot of articles and stories on blogs, which have exaggerated the issue of 'climate change refugees'. Some of the articles went to the extent of saying that some States will in fact disappear completely at the end of a given time if nothing drastic is done about climate change.¹ Professor McAdam describes these authors as 'alarmists'.²

The other point of exaggeration was the number of those that will be displaced due to climate change impacts.³ As a matter of fact, the United Nations

* LL.B, BL (Nigeria), LL.M (Groningen, The Netherlands), LL.M (Queen's, Canada), Doctoral Student, Faculty of Law, University of British Columbia, Canada. I am grateful to Professor Benjamin Richardson of the Faculty of Law, University of British Columbia, Canada who recommended the book under review to me

¹ Ajay Chhibber, "Statements at the Pacific Islands Forum Leaders' Meeting" UNDP Cairns Convention Centre, (6 August, 2009). Online: <<http://www.undp.org/content/undp/en/home/presscenter/speeches/2009/08/06/ajay-chhibber-statement-at-the-pacific-islands-forum-leaders-meeting.html>>. Ajay Chhibber is an Assistant Secretary General of the United Nations and Assistant UNDP Administrator and Regional Director for Asia and the Pacific. In this 2009 speech, Ajay Chhibber stated among other things that 'our experience in the Pacific also shows that climate change can trigger significant movements of populations, both within and across borders, and has the potential to render some people stateless'. See also Ajay Chhibber, "Rising Tides Threaten Pacific Islands" Online: <content.undp.org/go/cms-service/download/asset/?asset_id...> where he was also quoted as saying that 'the islands of the Pacific Ocean can be likened to the proverbial canary in a coalmine as far as the climate change grows, and the canary is drowning...it needs an immediate life jacket'. See also Rayfuse Rosemary, "Whither Tuvalu? International Law and Disappearing States" (Working Paper No. 9, University of New South Wales, April 2009); President Mohamed Nasheed (Maldives), "Address to the United Nations General Assembly" (21 September, 2009) online: <<http://www.unmultimedia.org/tv/unifeed/d/13548.html>>; Susin Park, "Climate Change and the Risk of Statelessness: The Situation of Low-Lying Island States", UNHCR Legal and Protection Policy Research Series, PPLA/2011/04 (May 2011).

² Jane McAdam, *Climate Change, Forced Migration, and International Law* (New York: Oxford University Press, 2012) 26.

³ See Norman Myers, "Environmental Refugees: An Emergent Security Issue" (13th Economic Forum, Prague, 23-27 May 2005); Norman Myers, "Environmental Refugees in a Globally Warmed World" (1993) 43 *BioScience* 752; Norman Myers, "Environmentally-Induced Displacements: The State of the Art" in IOM/UNHCR, *Environmentally-Induced Population Displacements and Environmental Impacts Resulting from Mass Migration* (Geneva: IOM/UNHCR International Symposium, 1996); Christian Aid, *Human Tide: The Real Migration Crisis* (UK: Christian Aid, 2007); Robin Mckie, "Climate Change Will Cost a Billion People Their Homes, Says Report" *The Observer* (London, 28 November 2010) 11; Friends of the Earth Australia, *A Citizen's Guide to Climate Refugees* (Melbourne: Friends of the Earth Australia, 2007).

was not left out in the exaggeration as it had stated in 2005 that about 50 million people will be displaced by climate change environmental impacts in the year 2010 but this assertion has turned out to be baseless.⁴ The book under review serves as a veritable source of authority to counter these misleading views. It has carefully analysed the real issues and have dealt with them in a rather empirical and scientific manner. One of the benefits of reading this book is that it gives the reader a clear understanding of the subject of climate change and climate change related movements. It has also made useful suggestions on how to protect this emerging class of migrants while faulting the workability of an earlier popular suggestion by most writers on this issue of an adoption of an international treaty on climate change refugees.⁵

The book has an introductory note, nine chapters and a general conclusion. Chapter one basically deals with conceptualizing climate change-related movement. The nature of the displacement occasioned by climate change was x-rayed. Pertinent questions that bother on whether climate change causes movement and if yes, how many people will move were answered. The historical context of migration in the pacific island states as well as the invisibility of climate change-related movement was examined. The chapter ends with the author suggesting a human rights approach to the issue of climate change-related movement ‘which views climate change as one of a multitude of possible drivers of movement – and which advocates for solution to those wider problems’.⁶

Chapter two of the book examines the relevance of international and regional laws on the protection of refugees to people displaced by environmental impacts. Specifically, the definition of refugees as provided in the *1951 Refugee Convention*⁷ read in conjunction with its *1967 Protocol*⁸ was examined with a conclusion that this treaty definition of refugee is inapplicable to people displaced by environmental impacts.⁹

⁴ United Nations University, “As Ranks of “Environmental Refugees” Swell Worldwide, Calls Grow for Better Definition, Recognition, Support” (12 October 2005) online: <<http://www.ehs.unu.edu/file/get/3916>>; Axel Bojanowski, “UN Embarrassed by Forecast on Climate Refugees”, Spiegel Online (18 April 2011) online: <<http://www.spiegel.de/international/world/0,1518,757713,00.html>>; Amos Aikman, “World Still Waiting for ‘50 Million Climate Refugees by 2010’”, The Australian (Australia, 21 April 2011) online: <<http://www.theaustralian.com.au/national-affairs/world-still-waiting-for-50-million-climaterefugees-by-2010/story-fn59niix-1226042490227>>; Gavin Atkins, “What Happened to the Climate Refugees?” (11 April 2011) online: <<http://asiancorrespondent.com/52189/what-happened-to-the-climate-refugees/>>.

⁵ Geetanjali Ganguly, “Climate Change, Disappearing States and Forced Human Displacement: The Desirability and Merits of a Protocol or Convention for Persons Displaced by Climate Change” (28 May 2011) Paper Presented at the ANU College of Law, Environmental Law Student Society Symposium, Towards Rio+20: Contemporary Issues in International Environmental Law, online: <<http://law.anu.edu.au/coast/events/environment/papers/ganguly.pdf>>.

⁶ *Supra* note 2 at 38.

⁷ 1951 Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 150 (entered into force 22 April 1954) [1951 Refugee Convention]

⁸ 1967 Protocol Relating to the Status of Refugees, 31 January 1967, 606 U.N.T.S. 267 (entered into force 4 October 1967) [1967 Protocol].

⁹ For the purpose of bringing people displaced by environmental impact under the 1951 Refugee Convention mechanism, it has been argued that climate change refugees do currently fit within the Convention definition of ‘refugees’ by claiming that government-induced environmental degradation is a form of persecution and furthermore, that such persecution is taking place for reasons of environmental refugees’ membership in a social group. See Jessica Cooper, “Environmental Refugees: Meeting the Requirements of the Refugee Convention” (1998) 6 New York University Environmental Law Journal 480–529. See also Alex Aleinikoff, “Protected Characteristics and Social Perceptions: An Analysis of the Meaning of ‘Membership of a Particular Social Group’ in E Feller, V Turk & F

The definitions of refugee in regional instruments like the *Organization of African Unity (OAU) Convention*¹⁰ in Africa and the *Cartagena Declaration*¹¹ in Latin America were also discussed. Both instruments include, *inter alia*, people who are displaced by events or circumstances seriously disturbing public order as covered by their definitions of refugees.¹²

Speaking about the *OAU Convention*, the author resonates the views of Alice Edwards¹³ who maintained that though neighbouring African states have provided temporary protection to victims of environmental impacts but that these States rarely state that they are doing this pursuant to the applicable provision of the *OAU Convention*.¹⁴ Walter Kalin¹⁵ ‘similarly sees it as rather unlikely that the States concerned would readily accept such an expansion of the concept beyond its conventional meaning of public disturbances resulting in violence’.¹⁶

Since there is currently no basis in international law for the protection of ‘climate refugees’, the author explores the possibility of using the current international human rights law, refugee and asylum law and international humanitarian law structures in national, regional and international law to protect them. This is the crux of the arguments in chapters three and four of the work. Chapter five explores the notion of ‘disappearing states’ and statelessness and the author concludes that there is likely to be a presumption of a State’s continuity for some time, even as the legal indicia of statehood begin to wane and that at some future point, this presumption may cease as the objective characteristics of statehood start to recede and States unilaterally or collectively may gradually withdraw their recognition of an entity as a State.¹⁷

Chapter six focuses on legal and policy measures needed to respond to climate change-related migration in Bangladesh. The current legal framework for protecting internally displaced people in Bangladesh was criticized and suggestions were made on the need for Bangladesh to fashion out a new legal order in this regard that is human rights-based just as can be found in the United Nations *Guiding Principles on Internal Displacement*.¹⁸ The debate¹⁹ generated on whether or not the

Nicholson, eds., *Refugee Protection in International Law* (Cambridge: Cambridge University Press, 2003).

¹⁰ 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, 1001 U.N.T.S. 45, art. 1(2), (entered into force 20 June 1974) [OAU Convention].

¹¹ 1984 Cartagena Declaration on Refugees (adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984) in ‘Annual Report of the Inter-American Commission on Human Rights’ (1984-85) OAS Doc OEA/Ser.L/V/II.66/doc.10, rev 1, 190-3 [Cartagena Declaration].

¹² OAU Convention, art. 1(2) and Cartagena Declaration, art. III(3).

¹³ Alice Edwards, “Refugee Status Determination in Africa” (2006) 14 *African Journal of International and Comparative Law* 204, 225-227.

¹⁴ *Supra* note 2 at 48.

¹⁵ Walter Kalin, “Conceptualising Climate-Induced Displacement” in Jane McAdam (ed.), *Climate Change and Displacement: Multidisciplinary Perspectives* (Oxford: Hart Publishing, 2010) 88-89.

¹⁶ *Supra* note 2 at 49.

¹⁷ *Supra* note 2 at 158.

¹⁸ *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2 (11 February 1998).

¹⁹ There have been a prodigious outpouring of articles and suggestions on the need to adopt a Protocol to the 1951 Refugee Convention. See Frank Biermann and Ingrid Boas, “Protecting Climate Refugees: The Case for a Global Protocol” (2008) 50(6) *Environment* 8. Some have suggested that it is the UNFCCC that needs a Protocol to protect climate change refugees. See MD Shamsuddoha and Rezaul Karim Chowdhury, “Climate Refugees: Requires Dignified Recognition under a New Protocol” (EquityBD, April 2009) online at:

adoption of an international treaty is needed as a solution to the plights of those displaced by environmental impacts was brilliantly dealt with in the seventh chapter of this work. The author faults the call for an international treaty as the solution to climate change-related displacement. Giving the lack of interest and political will by most developed States in recognizing the link between climate change and migration, the author concludes this chapter and rightly in my view that ‘any treaty is necessarily an instrument of compromise, and even once achieved, States must demonstrate sufficient political will to ratify, implement, and enforce it’.²⁰

Chapter eight focuses on how the expertise of a number of relevant organizations can be most effectively utilized and integrated with regards to climate change-related movement. Deliberations and steps taken by the UN Commission on Human Rights, UN Human Rights Council and the Office of the High Commissioner for Human Rights, UN General Assembly and the Security Council, the UN High Commissioner for Refugees, the International Organization for Migration, the UNFCCC and regional responses which led to the adoption of a number of non-binding instruments²¹ were discussed. In chapter nine, the author brilliantly surveyed a range of premises and principles²² drawn from international law that ought to underpin legal, policy and institutional responses to climate change-related movement.²³

The issues and controversies generated in international law about climate change and its implication on migration rage on. Among others, there is the issue about the applicability of the *1951 Refugee Convention* to people displaced by environmental disasters and whether they can be legally referred to as ‘refugees’ and there is the debate about whether or not the adoption of an international treaty is the solution to these issues. In order to resolve these controversies however, this book is obviously an indispensable tool.

<<http://www.equitybd.org/English/Press%20040409/English%20Position%20paper.pdf>>; Frank Biermann and Ingrid Boas, “Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees” (2010) 10 *Global Environmental Politics* 60. A counter proposal to this view can be seen in Mike Hulme, “Commentary: Climate Refugee: Cause for a New Agreement?” (2008) 50(6) *Environment* 50. For those calling for outright adoption of a separate international treaty, see Bonnie Docherty and Tyler Giannini, “Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees” (2009) 33 *Harvard Environmental Law Review* 349, 350, 373; David Hodgkinson & Others, “The Hour When the Ship Comes In: A Convention for Persons Displaced by Climate Change” (2010) 36 *Monash University Law Review* 69; Sujatha Byravan and Sudhir Chella Rajan, “The Ethical Implications of Sea-Level Rise Due to Climate Change” (2010) 24 *Ethics and International Affairs* 239, 253.

²⁰ *Supra* note 2 at 210.

²¹ For example, Niue Declaration on Climate Change, 39th Pacific Islands Forum, Forum Communiqué, Annex B (19-20 August 2008); The Anchorage Declaration of the Indigenous Peoples’ Global Summit on Climate Change (April 2009) and the Ambo Declaration which was adopted in November 2010 by leaders from 12 countries of Australia, Brazil, China, Cuba, Fiji, Japan, Kiribati, Maldives, Marshall Islands, New Zealand, Solomon Islands and Tonga.

²² According to the author, these principles are: the duty to cooperate; the principle of humanity and human dignity.

²³ *Supra* note 2 at 266.