

A Study on the Concept Recognition Possibility of Ecorefugee

Jong-Ryeol Park*, Sang-Ouk Noe**

Abstract

Since 1980s, 30 years has passed after issues on environmental refugee began to appear. However, why environmental refugee is not considered as refugee officially in international society? Above all, it seems that main point is the responsibility given to those developed countries if they, whom led the climate changes, officially acknowledge environmental refugee. The problem is that environmental refugee has no direct responsibility for causing climate changes. Actually, the responsibility should be granted to the developed and industrialized countries which caused climate changes.

In accordance to the refugee protection system established under current international law, it is difficult to include them into refugee category and thus, they can hardly have enough support. It is urgently needed that new refugee treat which have the new standard and solution added to it shall be adopted. To allow new refugee treat to be effective it is compulsory to have constant and binding policy determination and willingness of execution from a united international organization. Of course, before this, countries should try to have common recognition on recognizing new refugee problem and its seriousness as well as solving those problems together. In reality, it is worth considering adoption of semi-forceable type of system as a more effective way, which allocates responsibility of accepting refugee by amount of carbon emitted. Also, as refugee issue has an important influence on mother company and the third countries, execution process of the system has to be defined clearly. For those permanent organizations, they should accurately define environmental factors making refugee and set standards to minimize possibility of abuse and misuse.

▶ Keyword: Climate refugee, Environmental refugee, Ecological refugee, UNHCR, International refugee law

I. Introduction

The concept of environmental refugee might sound strange as it is not firmly positioned in international law. However, in reflection to the seriousness of environmental risk our humanity is facing with today, one should consider that environmental factors can cause

refugee and it has actually reached its critical point already. Environmental refugee problem caused by environmental changes is resulted from indiscriminate resource development and excessive consumption after Industrial Revolution and it is neglected in global society without enough legal, economical, cultural, and

• First Author: Jong-Ryeol Park, Corresponding Author: Sang-Ouk Noe.
*Jong-Ryeol Park(park3822@kwu.ac.kr), Kwangju Women's University, Professor.
**Sang-Ouk Noe (nosang2424@daum.net), Joongbu University, Professor
• Received: 2016. 04. 15 Revised: 2016. 04. 29, Accepted: 2016. 05. 08.

institutional support. Therefore, proper solution for this is required as soon as possible. This research first looks into the concept of environmental refugee and moves onto reviewing whether its status can be accepted by international law or not. Lastly, it tries to identify present and future international legal tools that could protect the problem.

II. Concept

The term environmental refugee is a general term for defining environment problem induced refugee. In global academy, it is referred to as environmental refugee or ecological refugee and especially for environmental refugee caused by climate changes, they are also called climate refugee. Although some issues regarding those people who had to flee from their homes due to environmental disaster or destruction were raised but discussion on climate refugee, one of sub-concept of environmental refugee is becoming active gradually as interests and concerns on global warming have increased recently.

Norman Myers, a renowned environmental refugee specialist in America, he defined them as people unable to have a stable living anymore in their home country due to environmental factors fundamentally affecting special scope. These environmental factors include drought, desertification, destroy of forest, soil erosion, and other types of decrease in quality of soil. In more details, following examples are included; lack of resources like water, deterioration of living condition due to urbanization, climate changes caused by global warming, and natural disasters such as tornado, rain storm, storm surge, flood, and earthquake. What is more, examples of other factors that could worsen environmental problem are population increase, poverty, starvation, and disease[1].

The first use of the term, environmental refugee, can be found in a report established in 1985 in UNEP and written by El-Hinnawi. According to El-Hinnawi, environmental refugee means those people who have to flee from their traditional residence temporarily or permanently due to obvious environmental destruction threatening their lives or giving a serious influence on their life quality. Environmental destruction here means

physical and chemical changes in ecology which accompanies temporary or permanent biological transition inappropriate to human life.

Generally, environmental refugee is resulted from complex cause and many professionals categorize types of environmental problem causing environmental refugee into the following three types[2].

(1) Long term environmental changes: global warming, rise in sea level, forest destruction, soil erosion, salinity, desertification, etc.

(2) Abrupt environmental changes: earthquake, volcanic eruption, flood, hurricane, monsoon, tsunami, tornado, etc.

(3) Environmental accident: industrial or chemical disaster.

III. Possibility of accepting concept of environmental refugee in international law

1. Principles of Criminal Jurisdiction Related to International Criminals Difficulties of accepting concept of environmental refugee

It is difficult to accept environmental refugee in their typical status as they do not exist in a single form but rather overlapped with other groups in a broader concept. It is not only possible to shift responsibility to the government but also to the world for international responsibilities, thus, sharing of responsibilities is not easy. From a realistic point, national burden for those countries allowing refugee has increased due to unemployment from economic crisis, repulsion to a different ethnic, religious difference, and abuse of refugee system for illegal stay. Therefore, global society is in the trend of being in a passive position regarding acceptance of those refugee including environmental refugee and this has become a big barrier for them. For those countries accepting refugee, if they consider those ambiguous and general environmental refugee by adding them into one of various types of refugees, then, it will be too harsh for those countries. Finally, they might fear the possibility of all those refugee from environmentally inferior countries rushing towards their countries.

However, necessity and importance of making a clear

definition on environmental refugee and an improvement for them cannot be offset by those difficulties. Destruction of environment caused by climate changes is an obvious phenomenon that no one can say no and it really is a natural phenomenon that seriously threatens people. Those people who have lost their home and at life threatening situation are just the victims of this happening.

2. Basis for accepting environmental refugee

2.1 Reformation of Law and Institution on Cyber Crime

Human right is a moral basis for political justification of a country and moreover, it is also an international standard for political justification. It is not easy to come to an agreement philosophically on human rights but there is a political consonance of international society on list of human rights indicated on the Universal Declaration of Human Rights and two International Covenants on Civil and Political Rights[3].

Among explicitly approved human rights in International Bill of Human Rights agreed globally, ones that could be applied to environmental refugee issue as follows[4][5].

- Rights of freedom and safety (D3, C9)
- Equal rights without discrimination (D1, D2, E2, E3, C2, C3)
- Right to life (D3, C6)
- Right to be acknowledged as a human being before the law (D6, C16)
- Freedom to live and move (D13, C12)
- Right to exile from political oppression (D14)
- Rights for food, clothing, and shelter (D25, E11)
- Social and global order for realizing rights (D28)

2.2 Additional review on right to asylum indicated in Article 14 of Universal Declaration of Human Rights

Refugee protection means mediation of global societies in terms of international law to guarantee their basic rights once their own countries failed to do so[6]. This personal rights from international law is indicated in Article 14 Clause 1 of Universal Declaration of Human Rights as "Everyone has the right to seek and to enjoy in other countries asylum from persecution." This has become the very abstract but basic foundation for

accepting status of those refugee and there is a high possibility of it being applied to environmental refugee. In Clause 2, it says "This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations" to make a condition.

To apply Article 14 of Universal Declaration of Human Rights to environmental refugee, concept of "environmental persecution" should be adopted to the concept indicated there.

If concept of environmental persecution is adopted, thinking from the countries who have to accept those refugee, there might be worries of this term generalizing provision of status to refugee due to too broad concept on them. Even today, because of economic difficulties, offering status to refugee has gone through very local and strict process as if it is something not accepted yet. What is more, the number of refugee whose minimum rights as a human being are not guaranteed under extreme condition in the world are overwhelming. However, some nations in developing countries may abuse or misuse this protection system as a tool to increase quality of their individual life and social status or to make a crime.

If the concept of environmental persecution is regulated in international law, those damages caused by this such as global warming, climate changes, and natural disaster will be a 'common liabilities[7]' resulted from all the human beings. Also, in terms of the fact that its scope of application is already designated, it is public responsibility in this global society and a problem for all. To conclude, except those countries in high land, all other countries in the world will experience land loss due to rise in sea level and they will have to face with unusual weather and disaster without any preparation. Under this circumstance, ranking of individual economic size as well as political interests won't matter and at some point, those victim countries may turn into supporting countries and vice versa. Risk of institutional misuse and abuse can be prevented to a certain level if international organizations such as UNHCR provides a reasonable and clear standard. However, present system which totally blocks possibility of accepting status of environmental refugee is not something that we can avoid.

Finally, for damage caused by environmental pollution, cooperation from global society based on cognition that this is a public matter and their solidarity spirit is

required instead of considering that the problem at hand only belongs to the country. Based on this, academic field should officially extend the concept of 'persecution' indicated in Universal Declaration of Human Rights to 'environmental persecution.'

2.3 Legal system in international law for protecting refugee

Actually, legal system for protecting refugee is consisted of International Refugee Law and International Law of Human Rights and in special cases, International Humanitarian Law and International Criminal Law are also included. One of the main factors composing international law dealing with refugee is treaty. Good examples of treaties made under international law regarding refugee are Statute of the Office of the UN High Commissioner for Refugees (1950), Refugee Convention (1951), Convention Relating to the Status of Refugees as known as Refugee Protocol (1967).

However, regulations made by Office of the UN High Commissioner for Refugees was just a resolution of UN General Assembly and thus, had no legal binding. Geneva Agreements also does not accept rights of refugee for those 'economic migrants' who run away from cruel poverty for a better life or 'environmental refugee' who lost their home due to environmental reasons. What is written in Refugee Protocol is also very similar to that of Refugee Convention.

Customs and practices of each country are so firm and standardized that they might have some kind of binding as a Customary International Law. Nevertheless, it is realistically difficult to expect International Common Law to be formed to protect current refugee. Rather, it is more common for international societies to operate closed immigration regulation for not only environmental refugee but also for overall refugee problems. Its international political background is that due to collapse of Soviet Union and end of Cold War, most part of political basis for refugee treaty created to temporarily protect refugees resulted from World War were lost. Especially, after 911 terror in America, the country has rapidly decreased number of refugee accepted to the country and even European countries have strengthened their regulations for refugee[8]. Those developed countries are adopting policies that allows nearby countries to accept refugee and they providing support to those countries instead of themselves allowing entering of refugee. At the end, this

has resulted in increased refugee burden for those developing countries.

As mentioned above, rather than legal terms, those international treaties regarding refugee are more close to soft law showing political bond among those countries to protect refugee. In some cases and under special circumstance, according to Article 7 of the Charter of United Nations, United Nations Security Council can form legal system on international protection based on their resolution with legal binding.

3. National responsibility based in International Environmental Law

3.1 Concept of International Environmental Law

International Environmental Law means international regulation made on purpose to protect environment. Since the UN Conference on the Human Environment held in Stockholm 1972, international discussion on environmental issues started to develop. Afterwards, its capacity and influence started to expand through World Charter for Nature of UN General Assembly in 1982 and "Brundtland Report" of World Commission on Environment and Development in 1987. International Environmental Law usually lays its bases on convention and various types of international documents, however, it does not actually exist as a comprehensive and general statute law. It is in forms of agreement, convention, consent, protocol and behavioral plan and regulates rights and responsibilities required for cooperating environmental preservation on local and detailed agenda. There are no clear system for international environmental regulations formed so far and as they are sporadic, it is true that they contain no compulsory binding as law.

3.2 Environmental pollution across the border

Environmental pollution across border means source of pollution starting from a certain country crosses over boarder through shared natural resources and influencing other countries. This may take place as a single incidence happening from one country and affecting environment of another country or by continuous emission of harmful materials polluting environment to other countries[9]. Good examples are climate changes, global warming, acidic rain, and dust wind.

Those environmental issues over the border are very basics of International Environmental Law and ones that promote its development. Discussing about environmental

pollution across the border in terms of international law by global societies is meaningful from the viewpoint that countries share cognition that they should have a joint responsibility as this happens in each country or from interaction. This is not solely based on activity of one country.

3.3 International responsibility on harmful result

Today's international law is in the trend of accepting 'national responsibility on harmful result' instead of only accepting 'national responsibility on illegal action.' The national responsibility on harmful result means when a country causes a harm to another country even if it has done an appropriate control and protection, regardless whether this activity has gone against international responsibility or not, the country is imposed with reasonability for indemnification of the damage. Another terms for this are 'risk liability' and 'liabilities arising from act not prohibited by law.' These principles accompany complex controversy and no uniform agreement but are individually recognized in treaties related to highly risky activities. Based on this liability principle, each country can find possibility of imposing responsibilities and compensation for environmental pollution caused by economic development activities that do not go against law and done for economic development.

3.4 National responsibility based on International Environmental Law

Looking at the draft regulation on national liabilities regarding internationally wrongful acts adopted by UN International Law Commission, Article 1 defines that every internationally wrongful act generates international responsibility of the nation for each country. In Article 2, it defines conditions of national liabilities. To establish national responsibilities, those behaviors forming commission or omission shall (a) belong to the nation based on international law and (b) be one that goes against international liability of the country. If this is combined with environmental pollution act, especially with carbon emission, one of the main reasons for creating environmental refugee, the result as follows;

If subject of national act is involved in an action that evokes environmental pollution this action belongs to the

country. Different from performer of national act being limited to national organization, there is a tendency of acknowledging national responsibility to corporate and individuals who have an effective role in national function. Solely from individual company or private corporate, principally no national liabilities arise from them. However, if the country did not pay much attention to preventing pollution, it has the responsibility. Then, after Industrial Revolution, it would be appropriate to consider emission of carbon dioxide as a commission of a country. What is more, it is also possible to vest action of not imposing any administrative regulation as an omission into the country. Based on objective and scientific statistical figures, CO₂ emission rate can be adopted as a detailed practice category in international treaty where responsibility as a country making environmental pollution can be imposed. Although environmental pollution is a result of action not prohibited by law and implemented for national flourish and development this can be considered as 'national liability for causing harmful result.'

Whether the problematic action belongs to the country or not becomes a subjective condition for establishing national liability and any violation of international responsibilities related to this become its objective condition. National action requires ones to have illegality based on international law. International Law Commission (ILC) considers not only going against international law but general term of going against international law as a condition for establishing national liabilities. This means that national responsibility for environmental contamination across border is both illegal to international environmental law and one of illegal conditions imposed by jurisdiction made by international court on environment, resolution of international environmental organizations, and unilateral declaration of a country which has the legal binding. Therefore, along with The United Nations Framework Convention on Climate Change and Kyoto Protocol, declarations, actions, and international system dealt in Stockholm 1972, Rio De Janeiro 1992, and Johannesburg 2002 all become liabilities as well.

In terms of other establishment conditions of national responsibilities to be considered, we should first discuss intention and mistake of the country. First of all, in terms of whether national responsibility is based on detailed and practical damaged generated from national action, it is widely accepted that damage is not the absolute condition

for establishment of all country liabilities. In draft Article 48 of regulations on national liabilities by ILC, it accepts responsibilities of country and by country instead of victim nation[10]. This implies that even those countries without actual damage can claim for international compensation based on treaty or international common law. However, for international responsibilities established by actions that are not illegal by international law, one can ask for compensation to the origin country only if there is a damage caused.

Here, regarding environmental pollution act, how much illegality should internationally illegal behavior have? There are no standards that fit to international law to this question. As detailed definition of connection principle that has to be kept morally by each countries and *Sic utere tuo ut alienum non laedas* are not made yet, there is no clear point describing how much damage one should have to impose responsibilities. This limitation is a factor making it difficult to be applied to international environmental law in reality. Thus, those professionals are complementing these lacking by specifically defining standards of national actions to protect environmental pollution across border in treaties. For climate changes, Kyoto Protocol to the United Nations Framework Convention on Climate Change asks those developing countries (38 countries) with historical responsibilities on greenhouse gas emission over the past Industrial Revolution to reduce average emission rate by 5.2% compared to that of year 1990 starting from 2008 to 2012, during the first promise period. In terms of international environmental problem involved with many countries, it is difficult to define damage and what has caused this. As this is the cause, this shall be solved by attempt to have an obvious and detailed definition on international law.

It is difficult to accept national responsibility as intention and mistake has both psychological and subjective perspectives. Recently, 'liability without fault' is superior and even ILC countries are not acknowledging intention or mistake as conditions for establishing responsibilities in their draft[11]. Therefore, it is common not to consider it as a term for establishing national responsibility.

Liability without fault can be divided into strict responsibility of a country taking all responsibility before decision is altered by proof of accused country and absolute responsibility which is applied where there are

no appealing reasons of exempting responsibility. Unless it is highly risky activity, it is considered as responsibility of the counterpart in principle. In contrast to the difficulties of defining environmental pollution act as an intention or mistake, borderless pollution is impossible to cancel. Therefore, it is reasonable to establish national responsibility without intention or mistake.

3.5 Possibility of questioning national responsibility on environmental refugee issue

To practically solve problems of environmental refugee based on principle and system indicated on International Environmental Law, those refugees should be created by action that belongs to accused country and its violation on international liability should be recognized. Regarding belonging of the action, under the condition that environmental refugee is caused by rise in sea level due to global warming, it is possible to scientifically prove cause and result of actions take by countries that have been continuously emitting greenhouse gas after Industrial Revolution. However, regarding violation of international liability, some are various definitions are made by international treaty, declaration, and agreement but punishment articles that have the legal binding are indirectly defied. Moreover, level of illegality is unclear and to ask nations to have practical responsibility, we have to go through a process of establishing specific system, and standards. After making an agreement on practically clear standard and implementation method, it would be possible for those countries facing with risk caused by environmental refugee to ask for execution of saving policies to those countries which have kept emitting polluting materials.

International Environmental Law is more focused on preservation rather than post-aiding. Due to its characteristics of involving scientific uncertainty, it is realistically impossible to ask responsibilities to a certain country or a group of countries. If later, instead of utopian system, practical and forceable regulation is made, those responsible countries will be able to make solutions for accepting environmental refugee. To do this, not only adopting environmental agreement that is too loose and has no legal binding, even focused more on interests and harmony of each country, we should transform environmental international law more clearly and practically based on actively adoption of 'risk liability'

and 'liability without fault.'

4. Conclusion

The nation has the responsibility to secure rights of its people. However, if one's right for protection is denied from the country and cannot receive any service due to various reasons, there rises the necessity of international protection. In case of general refugee, the main responsibility of providing international protection is assigned to the country that individuals request for protection. This is responsibility resulted from creating refugee by failing to stabilize domestic political issues or prevent any conflicts. Actually, all the countries are obligated to offer international protection based on responsibilities defined in international law including International Human Rights Law and Customary International Law. Especially, in accordance to the terms indicated in treaty on position of refugee concluded in 1951 and protocol made in 1967, all the participating countries are obliged to take responsibilities. Above measures are taken to secure fundamental rights and liberty of refugee by recognizing social and humanitarian characteristics of refugee problem in global society and forming a smooth relationship among countries through international cooperation.

For environmental refugee, there is no difference in essence of their problems in the perspective of securing one's right and liberty by international law. Rather, when discussing about responsibilities of creating these environmental refugee, it is unreasonable to ask the nations which those refugees belong to take full responsibilities as global societies have brought about environmental pollution and destruction, therefore, more general measure is required. Disaster caused by climate changes such as rise in sea level is resulted from life style of people living in 'developed countries,' consuming high energy made from fossil fuel[12]. In contrast, rights of environmental refugee who are forced to move residence due to climate issues are not secured by international law at all. I personally think it is unfair to assign all the burden to the nation suffering from the environmental damage.

IV. Conclusion

International society has common responsibility for environmental pollution and climate changes. Especially for those countries with big damages where people they have to move out, they are mostly developing countries lack in economic condition and social welfare. What is more, their influence on environmental issues is very mere. From this point, we can say that is so unfair for them to suffer a lot due to their weakness in dealing with climate changes.

For current refugee protection system defined by international law, it includes environmental refugee inside definition of refugee and thus, it is impossible to provide enough support to them. It is necessary to adopt a new refugee treaty by re-defining acceptance standards for refugee and solutions to this problem. Uniform political decision and willingness of international organizations to execute this is compulsory for refugee treaty to be valid. Of course, prior to this, each country should recognize seriousness of the new refugee problem and try to build common recognition on solving this problem.

For more practical and effective solution it is considerable to adopt a system which semi-forcibly assigns responsibility for accepting refugee based on amount of carbon emitted. What is more, as refugee issue can affect both the country of refugee as well as the third country they wish to enter, process of executing system should be defined clearly. In those organizations where they inspect refugee issues, they should have a careful examination to explicitly define environmental factors causing refugee. Also, they should set standards to reduce misuse and abuse as much as possible. Before it is too late, we should protect environmental refugee for their safe and minimum life as a human and by doing this, all countries should participate in making an international legal system which wisely deals with these risks.

REFERENCES

- [1] Myers, N and Kent, J, Environmental Exodus: An Emergent Crisis in the Global Arena, Climate Institute, Washington DC, 1995, p.18.
- [2] Wonsang Seo, "Human Rights-Based Approach to 'Environmental Refugees' in International Law". 『Environmental Law and Policy』, Volume 3 2009,11, p.131.
- [3] Jeongwon Park, "International Human Rights – Reality of international human rights and its possibility and limitation", Jack Donnelly, translated. 1998, p.49-52
- [4] Inseop Jeong, 『International Human Rights Treaty』, Kyungin Printing, October 2008, p.55.
- [5] D= Universal Declaration of Human rights, E= International Covenant on Economics, Social, and Culture Rights, C= International Covenant on Civil and Political Rights.
- [6] Refugee protection: understanding on international refugee law (a handbook for the Congress) The UN Refugee Agency/The Inter-Parliamentary Union, 2001, p.8.
- [7] Andrew Sims, NEF, "Environmental refugee : Recognized the right to refugees", 2003, p.39.
- [8] Eunsuk Ryu, "Human rights and don't get the credit to a subject of refugees", 『Human Rights called Al Oreum』, No.121, 2008, p.45.
- [9] Byungdo Park, "Environmental refugee legal status", 『Institut de Droit International collection of writings』.No.3 of the 46 books. 『Korean Society of international law』, 2002, p.16.
- [10] Yearbook of ILC, Vol. II, 1973, p.186.
- [11] Wonmok Choi, 『International law』, Ewha Womans University Press, 2007, p.85.
- [12] New Economics Foundation (NEF), 'Environmental refugee: for approval of refugee rights,' September 2003, p.23.

Authors



Jong-Ryeol Park received the Ph.D. degree in Laws and Civil Law from Chosun University, Korea, in 2001, 2006 respectively. Dr. Park joined National Communication Ombudsman District Prosecutors' Office in Gwangju in 2009 and was a member of Metropolitan Police Agency Administrative Disposition of a Driver's Licence Review Committee in Gwangju in 2010. Also he was Policy Advisers in Gwangju. Jeonnam Regional Military Manpower Administration. He is currently a professor in the Dept. of Police & Law at Kwangju Women's University. He is interested in Civil Special Act and Registration of Real Estate Act.



Sang-Ouk Noe received the Ph.D. degree in Police Studies from Wonkwang University, Korea, in 2015. Voluntarily resigned from human resources department of Posco Gwangyang steel mill in 2008 and worked as professor for industry-academy cooperation in Gangneung Wonju National University and Cheonnam National University, trying to promote employment and field practices. Since 2015, I have been working as an assistant professor in Police Law Department of Joongbu University. Furthermore, I was designated as a professional member of Korea Industry Commercialization Association in 2014.